AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

8–3–94
Vol. 59 No. 148

federal register

Wednesday
August 3, 1994

NOW AVAILABLE ONLINE!
Subscribe Now ... Only $375 Per Year
See Page II for Details.

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

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

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

8-3-94
Vol. 59 No. 148
Pages 39413–39672

Wednesday
August 3, 1994

Federal Register

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. It is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. The annual subscription fee for a single workstation is $375. Six-month subscriptions are available for $200 and one month of access can be purchased for $35. Discounts are available for multiple-workstation subscriptions. To subscribe, Internet users should telnet to wais.access.gpo.gov and login as newuser (all lower case); no password is required. Dial in users should use communications software and modem to call (202) 512–1661 and login as wais (all lower case); no password is required; at the second login prompt, login as newuser (all lower case); no password is required. Follow the instructions on the screen to register for a subscription for the **Federal Register** Online via *GPO Access*. For assistance, contact the *GPO Access* User Support Team by sending Internet e-mail to help@eids05.eids.gpo.gov, or a fax to (202) 512–1262, or by calling (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $444, or $490 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $403. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $6.00 for each issue, or $6.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 59 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806

Online:

Telnet wais.access.gpo.gov, login as newuser <enter>, no password <enter>; or use a modem to call (202) 512–1661, login as wais, no password <enter>, at the second login as newuser <enter>, no password <enter>.

Assistance with online subscriptions	202–512–1530

Single copies/back copies:

Paper or fiche	512–1800
Assistance with public single copies	512–1803

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 59, No. 148

Wednesday, August 3, 1994

Agricultural Marketing Service
RULES
Almonds grown in California, 39417–39419
Marketing orders; expenses and assessment rates, 39415–39417, 39419–39421
Oranges and grapefruit grown in Texas, 39414–39415
Peanuts, domestically produced, 39421–39423
PROPOSED RULES
Cotton research and promotion order:
Supplemental assessment rates, 39480–39485
Potatoes (Irish) grown in—
Oregon and California, 39479–39480

Agriculture Department
See Agricultural Marketing Service
See Federal Crop Insurance Corporation
See Rural Telephone Bank
NOTICES
Agency information collection activities under OMB review, 39541
Agricultural commodities, overseas donations; types and quantities, 39541–39542
Privacy Act:
Computer matching programs, 39542–39543

Army Department
NOTICES
Environmental statements; availability, etc.:
Fort Campbell, KY; railroad by-pass between Masonville and Caskey, KY, 39547–39548

Centers for Disease Control and Prevention
NOTICES
Meetings:
Vital and Health Statistics National Committee, 39570

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Delaware, 39543
Minnesota, 39543

Coast Guard
RULES
Marine casualties and investigations:
Immediate reporting requirements; clarification, 39469–39471
Ports and waterways safety:
Hazardous conditions notification; clarification, 39458–39460
Kirwan Creek, MD; safety zone, 39460–39461
New York Bay, NJ and NY, 39461–39462
Safety and security zones, etc.; list of temporary rules, 39456–39458
Regattas and marine parades:
16th Annual Wilmington Family YMCA-Physicians Health Plan Triathlon, 39456
Hampton Bay Days Festival, 39456
Vessel documentation and measurement:
Admeasurement deep frames; policy statement Correction, 39635

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Oman, 39546
Taiwan, 39546–39547
Textile and apparel categories:
Correlation with U.S. Harmonized Tariff Schedule 39547

Defense Department
See Army Department
NOTICES
Privacy Act:
Systems of records, 39548–39549

Education Department
NOTICES
Agency information collection activities under OMB review, 39549–39551
Contracts, grants, and cooperative agreements; cash expenditures reporting and payment requests submission for expiring Federal funds, 39668
Meetings:
Student Financial Assistance Advisory Committee, 39551

Energy Department
See Federal Energy Regulatory Commission
See Southeastern Power Administration
NOTICES
Agency information collection activities under OMB review, 39551–39552
Grants and cooperative agreements; availability, etc.:
Buildings energy analysis program, 39552
Trespassing on Department property:
Waste Isolation Pilot Plant, NM; off-limits area designation, 39553

Environmental Protection Agency
RULES
Air pollution control; new motor vehicles and engines, etc.:
Alternative-fueled automobiles CAFE incentives; fuel economy test procedures and labeling requirements, 39638–39665
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Alachlor, 39464–39466
Cadusafos, 39466–39467
Demeton, 39467–39468
Tebuconazole, 39462–39464
PROPOSED RULES
Air quality implementation plans:
Preparation, adoption, and submittal—
Gas dilution systems performance and accuracy during field test; verification; test method, 39501–39502
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Avermectin B1, etc., 39505–39506
Calcium hypochlorite, 39504–39505
Tefluthrin, 39502–39504

NOTICES
Pesticide, food, and feed additive petitions:
Rhone-Poulenc Ag Co., 39568–39569

Executive Office of the President
See Presidential Documents'

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus Industrie, 39432–39434
Beech, 39431–39432
Boeing, 39429–39431
Airworthiness standards:
Special conditions—
Canadair model CL–215–6B11 (CL–415 variant) airplanes, 39427–39429
Class D airspace, 39435
Class D and Class E airspace, 39435–39436
Class E airspace, 39434–39435
IFR altitudes, 39436–39438
NOTICES
Civil penalty actions; Administrator's decisions and orders; index availability, 39618–39628
Meetings:
Aviation Rulemaking Advisory Committee, 39628–39629
RTCA, Inc., 39629
Passenger facility charges; applications, etc.:
Pellston Regional Airport, MI; correction, 39635

Federal Communications Commission
RULES
Industrial, scientific, and medical equipment:
Magnetic resonance systems; unnecessary authorization requirements removed, 39471–39472
NOTICES
Agency information collection activities under OMB review, 39569

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Nursery crop; premium payments, 39413–39414

Federal Election Commission
RULES
Presidential nominating conventions, publicly financed; transmittal to Congress
Correction, 39635

Federal Energy Regulatory Commission
NOTICES
Meetings:
Pricing policy for new and existing facilities constructed by interstate natural gas pipelines; public conference, 39553–39557
Natural Gas Policy Act:
Self-implementing transactions, 39557–39567
Applications, hearings, determinations, etc.:
Equitrans, Inc.; correction, 39635
KN Interstate Gas Transmission Co., 39567
National Fuel Gas Supply Corp., 39567
NorAm Gas Transmission Co., 39567
Northern Natural Gas Co., 39567–39568
Pacific Gas Transmission Co., 39568

Federal Highway Administration
PROPOSED RULES
Motor carrier safety standards:
Parts and accessories necessary for safe operation—
Automatic brake adjusters and brake adjustment indicators, 39518–39522
NOTICES
Environmental statements; notice of intent:
Marion County, WV, 39629

Federal Maritime Commission
NOTICES
Casualty and nonperformance certificates:
Silversea Cruises, Ltd., 39569

Federal Reserve System
NOTICES
Meetings; Sunshine Act, 39634
Applications, hearings, determinations, etc.:
Bollman, John, 39569
Hibernia Corp., 39569–39570

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Arkansas river shiner, 39532–39540
Fat three-ridge, etc. (seven freshwater mussels), 39524–39532
NOTICES
Endangered and threatened species permit applications, 39573

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Chlortetracycline soluble powder, 39438–39440
PROPOSED RULES
Food for human consumption:
Crabmeat; common or usual name regulation amendment
Correction, 39635
Human drugs:
Labeling policy (OTC); interchangeable words; monograph requirement, 39499–39501
NOTICES
Biological products:
Advertising and Promotional Labeling Staff procedural guidance; availability, 39570–39571
Monoclonal antibody products for human use; points to consider in manufacture and testing; document availability, 39571–39572

General Accounting Office
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 39570

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping and countervailing duties:
Administrative review requests, 39543–39545

International Trade Commission
NOTICES
Import investigations:
Canned pineapple fruit from—
Thailand, 39574
Dielectric miniature microwave filters and multiplexers containing same, 39574
Fresh garlic from—
China, 39574–39575
Skinless sausage casings and resulting product manufacturing processes, 39575–39576
Stainless steel threaded pipe fittings (Class 150) from—
Taiwan, 39576

Interstate Commerce Commission
PROPOSED RULES
Practice and procedure:
Rail abandonments—
Rights-of-way used as trails; rulemaking petition denied, 39524
NOTICES
Railroad services abandonment:
Missouri Pacific Railroad Co., 39576–39577

Labor Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Nontraditional Employment for Women Act demonstration programs, 39577–39578

Land Management Bureau
RULES
Public land orders:
Alaska, 39468–39469
Montana, 39469
New Mexico; correction, 39635
NOTICES
Withdrawal and reservation of lands:
Montana; correction, 39635
Oregon, 39573–39574

National Aeronautics and Space Administration
NOTICES
Meetings:
Minority Business Resource Advisory Committee, 39578

National Credit Union Administration
RULES
Credit unions:
Loan interest rates, 39423–39425
Truth in Savings Act; implementation:
Compliance date extension, 39425–39426
PROPOSED RULES
Truth in Savings Act; implementation:
Official staff interpretation, 39486–39499

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Safety belt comfort and fit, 39472–39476
PROPOSED RULES
Motor vehicle safety standards:
Lamps, reflective devices, and associated equipment—
Abrupt release of accelerator pedal to operate stop lamps; petition denied, 39522–39524
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 39632–39633
Motor vehicle safety standards; exemption petitions, etc.:
B.A.T. Inc., 39629–39630
Chrysler Corp., 39631–39632
U.S. Electricar, Inc., 39630–39631

National Institutes of Health
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Therion Biologics Corp., 39572–39573

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 39477–39478
Pacific Halibut Commission, International:
Pacific halibut fisheries, 39476–39477
PROPOSED RULES
Endangered and threatened species:
North and South Umpqua River sea-run cutthroat trout Correction, 39540
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 39545
New England Fishery Management Council, 39545–39546

Nuclear Regulatory Commission
PROPOSED RULES
Radioactive wastes; licensing requirements:
Low-level waste sites; land ownership requirements, 39485–39486
NOTICES
Environmental statements; availability, etc.:
Omaha Public Power District, 39579
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 39579–39608
Petitions; Director's decisions:
Arizona Public Service Co. et al., 39608–39609
Applications, hearings, determinations, etc.:
Jones Inspection Services, 39609–39610
Toledo Edison Co. et al., 39610–39611

Pension Benefit Guaranty Corporation
NOTICES
Agency information collection activities under OMB review, 39611

Presidential Documents
PROCLAMATIONS
Special observances:
Warsaw Uprising, 50th Anniversary of the (Proc. 6709), 39671
ADMINISTRATIVE ORDERS
Haiti; humanitarian-relief air services; aircraft insurance provision by Secretary of Transportation (Presidential Determination No. 94–39 of July 26, 1994)
Correction, 39635

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Personnel performing operating or maintenance activities on hazardous liquid, carbon dioxide, and gas pipelines; training, 39506–39518

Rural Telephone Bank
NOTICES
Meetings; Sunshine Act, 39634

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Cincinnati Stock Exchange, Inc., 39611–39613
Applications, hearings, determinations, etc.:
Bush Industries, Inc., 39613
Gabelli Equity Trust Inc. et al., 39613–39616
McDonald's Corp., 39616
Regency Health Services, Inc., 39616
Variable Annuity Fund II Separate Account, 39616–39617

Small Business Administration
RULES
Small business size standards:
Size protest procedures, 39426–39427
NOTICES
Applications, hearings, determinations, etc.:
BH Capital Partners, L.P., 39617

Southeastern Power Administration
NOTICES
Georgia-Alabama-South Carolina System of Projects; power marketing policy, 39568

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Hearings, etc.—
Aerial Transit Co., 39617–39618
Employee protection program investigations; comment request, 39618

United States Information Agency
RULES
Higher education institutions, hospitals, and other non-profit organizations; uniform administrative requirements for grants and agreements, 39440–39455

Separate Parts In This Issue

Part II
Environmental Protection Agency, 39638–39665

Part III
Department of Education, 39668

Part IV
The President, 39671

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
6709 39671

7 CFR

406 39413
906 39414
922 39415
923 39415
924 39415
981 39417
997 39419
998 39421

Proposed Rules:
947 39479
1205 39480

10 CFR

Proposed Rules:
61 39485

11 CFR

107 39635
114 39635
9008 39635

12 CFR

701 39423
707 39425

Proposed Rules:
707 39486

13 CFR

121 39426

14 CFR

25 39427
39 (3 documents) 39429, 39431, 39432
71 (3 documents) 39434, 39435
95 39436

21 CFR

520 39438

Proposed Rules:
102 39635
330 39499

22 CFR

518 39440

33 CFR

100 (3 documents) 39456
160 39458
165 (3 documents) 39456, 39460, 39461

40 CFR

86 39638
180 (4 documents) 39462, 39464, 39466, 39467
186 39467
600 39638

Proposed Rules:
51 39501
180 (3 documents) 39502, 39504, 39505
185 39505
186 39505

43 CFR

Public Land Orders:
725 (Revoked in part by PLO 7072) 39468
829 (Revoked in part by PLO 7071) 39468
7067 39635
7071 39468
7072 39468
7073 39469

46 CFR

4 39469
68 39635

47 CFR

18 39471

49 CFR

571 39472

Proposed Rules:
192 39506
195 39506
393 39518
571 39522
Ch. X 39524

50 CFR

301 (2 documents) 39476, 39477
672 (2 documents) 39477, 39478

Proposed Rules:
17 (2 documents) 39524, 39532
222 39540

Rules and Regulations

Federal Register
Vol. 59, No. 148
Wednesday, August 3, 1994

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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 406

Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Nursery Crop Insurance regulations effective for the 1995 and succeeding crop years, by allowing a six month delay in the payment of premiums. The premium billing date will be extended for up to six months from September 30, to March 31 of the subsequent year insurance attaches.

EFFECTIVE DATE: August 3, 1994.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Regulatory and Procedural Development, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Executive Order 12866 and Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of the regulations affected by this rule under those procedures. The sunset review date established for these regulations is October 1, 1994.

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

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons. The action will not have a significant economic effect on the producers served by this voluntary crop insurance program because this action liberalizes the terms of the nursery crop insurance contract for the insured. Extending credit to producers may have a minor economic effect on the insurer only if producers do not pay their premium. However, based on past experience, non-payment of nursery crop premiums has been insignificant. For years in which premium payment have been deferred, only two disputes over premium payment have occurred. This represents less than one percent of the total nursery crop policies purchased. As these disputes have not yet been resolved, all premiums may potentially be paid. Further, FCIC will administratively extend the date for payment by the reinsured company when necessary to be consistent with the final date the insured is required to submit premium payment. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, the Paperwork Reduction Act.

It has been determined under section 6(a) of Executive Order 12612, Federalism, that the policies and procedures contained in this rule do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies and procedures in this rule will not have an increased substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule are not retroactive and will preempt state and local laws to the extent such state and local laws are inconsistent therewith. The administrative appeal provisions located at 7 CFR part 400, subpart J must be exhausted before judicial action may be brought for actions taken under this policy or before any proceedings for the imposition of civil penalties under 7 U.S.C. 1506 or under the Program Fraud Civil Remedies may be effective.

Following publication of this rule as proposed, the public was given 15 days in which to submit comments, data, and opinions. No comments were received, however, a non-substantive change has been made to the amended language. Accordingly, this rule is hereby issued as final.

Background

The nursery crop insurance policy is the only Federal crop insurance policy that requires premium payment in full prior to insurance attachment. Premium for other Federal crop insurance policies can be paid later, usually at or near harvest. FCIC took such action for the 1993 and 1994 crop years. Discontinuing this practice would be burdensome to the insured, therefore, FCIC intends to continue to allow the later payment of premiums. The insurance premium will be changed from September 30 preceding the crop year, to March 31 of the crop year.

List of Subjects in 7 CFR Part 406

Crop Insurance, Nursery, Premium deferred.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Nursery Crop Insurance Regulations (7 CFR part 406) effective for the 1995 and subsequent crop years, by amending the provisions for coverage. This rule amends the regulations set forth herein in the following instances:

1. The authority citation for 7 CFR part 406 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. Section 406.7 is amended in the contract by revising subsection 5.a to read as follows:

§ 406.7 The application and policy.

* * * * *

5. Annual Premium.

a. The annual premium is earned and payable on or before September 30 preceding each crop year and will be earned in full when the policy becomes effective. Interest will begin to accrue on March 31 of the crop year. Premium will be delinquent on the termination date.

* * * * *

Done in Washington, DC, on July 20, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–18875 Filed 8–2–94; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV94–906–1IFR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley of Texas; Expenses and Assessment Rate for the 1994–95 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Texas Valley Citrus Committee (TVCC) under Marketing Order (M.O.) No. 906 for the 1994–95 fiscal year. Authorization of this budget enables the TVCC to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1994, through July 31, 1995. Comments received by September 2, 1994, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 720–5127; or Belinda Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 906 [7 CFR Part 906] regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges and grapefruit grown in Texas are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable citrus fruit handled during the 1994–95 fiscal year, beginning August 1, 1994, through July 31, 1995. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 135 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 2,500 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

The Texas orange and grapefruit marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable citrus fruit handled from the beginning of such year. Annual budgets of expenses are prepared by the TVCC, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the TVCC are handlers and producers of Texas oranges and grapefruit. They are familiar with the TVCC's needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The TVCC's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the TVCC is derived by dividing the anticipated expenses by expected shipments of oranges and grapefruit. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the TVCC's expected expenses.

The TVCC met on May 10, 1994, and unanimously recommended total expenses of $1,141,944 and an assessment rate of $0.16 per 7/10 bushel carton for the 1994–95 fiscal year. In comparison, the 1993–94 fiscal year expense amount was $984,319, which is $157,625 less than the recommended $1,141,944 for this season and the assessment rate was $0.15, which is $0.01 less than that recommended for the 1993–94 fiscal year.

Assessment income for the 1994–95 fiscal year is expected to amount to $960,000 based upon estimated fresh domestic shipments of 6 million cartons of oranges and grapefruit. This, in addition to a withdrawal of $181,944 from the TVCC's reserve fund, should be adequate to cover budgeted expenses. In comparison, the assessment income for the 1993–94 fiscal year was estimated at $825,000 based upon anticipated fresh domestic shipments of 5.5 million cartons of oranges and grapefruit.

Funds in the reserve at the end of the fiscal year, estimated at $276,468, will be within the maximum permitted by the order of one fiscal year's expenses.

Major expense categories for the 1994–95 fiscal year include $132,444 for shared administrative expenses with the South Texas Onion and Melon Committees, $650,000 for advertising, compared to $723,425 for the 1993–94 fiscal year, and $174,000 for the Mexican Fruit Fly support program.

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

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

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

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR Part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

2. A new § 906.234 is added to read as follows:

§ 906.234 Expenses and assessment rate.

Expenses of $1,141,944 by the Texas Valley Citrus Committee are authorized and an assessment rate of $0.16 per 7/10 carton on assessable oranges and grapefruit is established for the fiscal year ending July 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: July 28, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18881 Filed 8–2–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Parts 922, 923, and 924

[Docket No. FV94–922–2IFR]

Expenses and Assessment Rates for the 1994–95 Fiscal Year for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes assessment rates for the 1994–95 fiscal year for Marketing Orders (M.O.) No.'s 922 and 923, covering apricots and sweet cherries grown in designated counties in Washington, and M.O. No. 924 covering fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization of these budgets enables the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Marketing Committee (Committees) established under these marketing orders to incur expenses that are reasonable and necessary to administer the programs. Funds to administer the programs are derived from assessments on handlers.

DATES: Effective beginning April 1, 1994, through March 31, 1995. Comments must be received by September 2, 1994.

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

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreements and Marketing Order No. 922 [7 CFR Part 922] regulating the handling of apricots grown in designated counties in Washington; Marketing Order No. 923 [7 CFR Part 923] regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Order No. 924 [7 CFR Part 924] regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, apricots and sweet cherries grown in designated counties in Washington, and fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon are subject to assessments. It is intended that the assessment rates specified herein will be

applicable to all assessable apricots, sweet cherries, and fresh prunes handled during the 1994–95 fiscal year, which began April 1, 1994, through March 31, 1995. This interim final rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

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

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

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

There are about 55 handlers of Washington apricots, 55 handlers of Washington sweet cherries, and 30 handlers of Washington-Oregon fresh prunes subject to regulation under their respective marketing orders. In addition, there are about 190 Washington apricot producers, 1,100 Washington sweet cherry producers, and 350 Washington-Oregon fresh prune producers in the respective production areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of these handlers and producers may be classified as small entities.

An annual budget of expenses is prepared by each marketing order committee and submitted to the Department for approval. The members of the Committees are handlers and producers of the regulated commodities. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each Committee is derived by dividing anticipated expenses by the tons of fresh fruit expected to be shipped under the order. Because the rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the Committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the Committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committees will have funds to pay their expenses.

The Washington Apricot Marketing Committee met on May 16, 1994, and unanimously recommended 1994–95 expenditures of $13,602, which is $1,216 more in expenses than the $12,386 amount that was recommended for the 1993–94 fiscal year.

The Committee also unanimously recommended an assessment rate of $0.00 per ton of fresh apricots, which is a decrease of $2.50 in the assessment rate. In comparison, the 1993–94 assessment rate was $2.50 per ton. The Committee unanimously recommended bringing forward its reserve fund of $22,170 to pay budgeted expenses for the 1994–95 fiscal year as an alternative to charging handlers an assessment rate. Shipments of fresh apricots are estimated at 5,200 tons.

Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $8,568, will be within the maximum permitted by the order of one fiscal year's expenses.

The Washington Cherry Marketing Committee met on May 17, 1994, and unanimously recommended 1994–95 expenses of $100,213 and an assessment rate of $1.00 per ton of sweet cherries. In comparison, 1993–94 budgeted expenses were $139,313, with an approved assessment rate of $3.00 per ton. This represents a $39,100 decrease in expenses and a $2.00 decrease in the assessment rate from the amounts recommended for the current fiscal year.

The assessment rate, when applied to anticipated shipments of 40,000 tons of cherries, would yield $40,000 in assessment income. Adequate funds exist in the Committee's reserve to cover additional expenses.

Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $74,695, will be within the maximum permitted by the order of one fiscal year's expenses.

The Washington-Oregon Fresh Prune Marketing Committee met on June 1, 1994, and recommended 1994–95 expenses of $18,760, which represents a $8,042 decrease in expenses from the $26,802 that was recommended for 1993–94 fiscal year.

The Committee also unanimously recommended an assessment rate of $1.00 per ton of fresh prunes. In comparison, this is $2.00 less than the $3.00 per ton assessment rate that was approved for the previous fiscal year. Shipments of fresh prunes for 1994 are estimated at 6,500 tons, which would yield $6,500 in assessment income. Adequate funds exist in the Committee's reserve to cover additional expenses.

Funds in the reserve at the end of the 1994–95 fiscal year, estimated at $22,800, will be within the maximum permitted by the order of one fiscal year's expenses.

Major expense categories for the Committees are for the administration of these marketing orders and for fresh prune research and sweet cherry market development activities. Administrative expenses include those for salaries, travel, and office operations. The stone fruit marketing Committees share office expenses, based on an agreement among the Committees.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to

give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1994–95 fiscal year for the Committees began April 1, 1994, and the marketing orders require that the rates of assessment for the fiscal year apply to all assessable apricots, sweet cherries, and fresh prunes handled during the fiscal year; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 922, 923, and 924 are amended as follows:

1. The authority citation for 7 CFR parts 922, 923, and 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

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

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. A new § 922.233 is added to read as follows:

§ 922.233 Expenses and assessment rate.

Expenses of $13,602 by the Washington Apricot Marketing Committee are authorized for the fiscal year ending March 31, 1995.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. A new § 923.234 is added to read as follows:

§ 923.234 Expenses and assessment rate.

Expenses of $100,213 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $1.00 per ton is established for the fiscal year ending March 31, 1995. Any unexpended funds may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

4. A new § 924.234 is added to read as follows:

§ 924.234 Expenses and assessment rate.

Expenses of $18,760 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $1.00 per ton of assessable prunes is established for the fiscal year ending March 31, 1995. Any unexpended funds may be carried over as a reserve.

Dated: July 28, 1994.

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18880 Filed 8–2–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Part 981

[Docket No. FV94–981–2IFR]

Almonds Grown in California; Revision of the Definition of Inedible Kernel

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the definition of inedible kernel established under the administrative rules and regulations of the Federal marketing order for California almonds. This revised definition of inedible kernel will better reflect handler processing capabilities and will be more equitable to growers and handlers. This rule is based on a unanimous recommendation of the Almond Board of California (Board), which is responsible for local administration of the order.

DATES: Effective on August 3, 1994. Comments which are received by September 2, 1994 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX Number (202) 720–5698. Comments should reference the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

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

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

The Department of Agriculture (Department) is issuing this rule in accordance with Executive Order 12866

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

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this interim final rule on small entities.

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

There are approximately 115 handlers of almonds that are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000 and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of the almond producers and handlers may be classified as small entities.

This rule revises the definition of inedible kernel in § 981.408—Subpart—Administrative Rules and Regulations by excluding almond kernels, pieces, or particles of almond kernels with web and frass from being considered inedible almonds.

The processing of almonds involves various steps taken by growers and handlers prior to shipment to market. In most situations, growers initially take their almonds to a huller/sheller operation where the hulls and shells are mechanically removed. The almonds are then delivered to a handler, who has the almonds inspected by the Federal-State Inspection Service. The inspector determines the percentage of inedible almond kernels in a sample, as defined in section 981.408. Based upon the inspection, growers are paid by the handlers for the marketable almonds in the lot.

The quality control provisions of the marketing order are designed to provide procedures to remove inedible almonds from human consumption channels. Under this program, handlers incur a disposition obligation of inedible almonds, based on the inspection results. Section 981.442 specifies that the weight of inedible kernels in excess of 1 percent of the inedible kernel weight in the lot determined by USDA constitutes the inedible disposition obligation. In order to meet this disposition obligation, handlers normally deliver packer pickouts, kernels rejected in blanching, pieces of kernel, meal accumulated in manufacturing, or other material to crushers, feed manufacturers, feeders or dealers in nut wastes on record with the Board as accepted users.

In order to ensure that the inedible kernels are diverted to non-human consumption channels, the Board maintains a list of approved accepted users, which includes feedlots and oil mills. Handlers notify the Board at least 72 hours prior to making delivery to an accepted user so the Board, at its option, can witness the disposition.

Section 981.8 of the marketing order defines inedible kernel as meaning "a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds or which has embedded dirt not easily removed by washing." This section authorizes modification of the definition by the Board with the approval of the Secretary. Currently, the definition under § 981.408 of the regulations defines an inedible kernel as "a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds or which has embedded dirt or other foreign material not easily removed by washing." Kernels or kernel pieces with any defect scored as serious damage are considered inedible kernels.

Section 51.2130 of the U.S. Standards for Grades of Shelled Almonds defines serious damage as "any defect which makes a kernel or piece of kernel unsuitable for human consumption, and includes decay, rancidity, insect injury and damage by mold." Section 51.2123 of the Standards defines "insect injury" to mean that "the insect, web, or frass is present or there is definite evidence of insect feeding."

The way the definition is currently applied, web or frass is considered serious damage by insect injury and when present and noted on the incoming inspection, causes the almonds so affected to be classified as inedible. As stated previously, handlers pay their growers based on the percentage of marketable almonds in the lot. Handlers do not pay growers for almonds classified as inedible. Web and frass can be removed from the kernels or kernel pieces during normal processing, thus making them suitable for human consumption. Because handlers pay growers based on the marketable almonds in each lot prior to processing, growers are not compensated for any additional marketable almonds made available due to web or frass removal after processing.

Handlers disposition obligations are based on the inedible kernel content found in the lot prior to processing. When the web and frass are removed during processing, those kernels become marketable, thus making it difficult to generate enough inedible almonds to meet the disposition obligation with inedible almonds. Handlers then often purchase a mixture of inedible almonds and foreign material such as hulls, shells, etc., mixed with almond meats from a hulling and/or shelling operation to satisfy their disposition obligation. It has been determined that the revision of the definition of inedible kernel will make it easier for handlers to meet their inedible obligations because the disposition obligations will more accurately reflect the inedible percentage determined by the incoming inspection. This rule will better address the intent of the quality control program.

For these reasons, the Board and its Quality Control Committee developed plans to further revise the definition. As a result, the Board unanimously recommended on May 16, 1994, to revise the definition of inedible kernel to eliminate kernels with attached frass and webbing from being classified as insect injury and therefore, inedible. This rule will not affect the U.S. Standards for Grades of Shelled Almonds.

This revision is expected to improve the quality control program by making the definition of inedible kernel better reflect handler processing capabilities and providing more equity for handlers and growers. It may also result in growers being paid for marketable almonds which are currently being scored as inedible on incoming inspections and may result in higher returns to growers.

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

After consideration of all relevant material presented, including the Board's recommendation, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) This rule relaxes requirements currently in effect; (2) this

rule should be made effective as close to the beginning of the 1994–95 crop year as possible to be equitable and beneficial to growers and handlers; (3) this rule was unanimously recommended at a public meeting and all interested persons had an opportunity to provide input; (4) this rule is not controversial; and (5) this rule provides a 30-day comment period, and any comments received will be considered prior to finalization.

List of Subjects in 7 CFR Part 981

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

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

PART 981—ALMONDS GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

2. Section 981.408 is revised to read as follows:

§ 981.408 Inedible kernel.

Pursuant to § 981.8, the definition of inedible kernel is modified to mean a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt or other foreign material not easily removed by washing: Provided, That the presence of web or frass shall not be considered serious damage for the purposes of determining inedible kernels, pieces, or particles of almond kernels.

Dated: July 28, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18877 Filed 8–2–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 997

[Docket No. FV94–997–1IFR]

Assessment Obligation for 1994–95 Crop Year Peanuts Under 7 CFR Part 997; Peanuts Not Subject to Peanut Marketing Agreement No. 146

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim rule will implement Public Law 103–66. That law requires the Department to impose an administrative assessment on peanuts received or acquired for the account of handlers who are not signatory (non-signatory handlers) to Peanut Marketing Agreement No. 146 (Agreement). The assessment rate of $.60 per net ton of farmers stock peanuts for the 1994–95 crop year will be the same as the administrative assessment established by the Department and applied to handlers under the Agreement.

EFFECTIVE DATE: The interim final rule is effective August 3, 1994. Comments which are received by September 2, 1994 will be considered prior to any finalization of this interim final rule.

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

FOR FURTHER INFORMATION: Richard Lower or Mark Slupek, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–2020, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), and as further amended December 12, 1989, Public Law 101–220, section 4(1), (2), 103 Stat. 1878, and August 10, 1993, Public Law 103–66, section 8b(b)(1), 107 Stat. 312.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. The Department will establish a 1994–95 crop year assessment rate applicable to non-signatory handlers effective July 1, 1994–June 30, 1995. Segregation 1 farmers stock peanuts received or acquired by non-signatory handlers during that crop year will be subject to the assessment. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this interim final rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 45 handlers of peanuts who have not signed the Agreement and, thus, will be subject to the regulations proposed herein. The Small Business Administration now defines small agricultural service firms (13 CFR 121.601) as those having annual receipts of less than $5,000,000 and small agricultural producers as those whose annual receipts are less than $500,000. A majority of non-signatory handlers and peanut producers may be classified as small entities.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The Agreement was established in 1965 and plays a very important role in the industry's quality control efforts. The Peanut Administrative Committee (Committee) was established by the Agreement and works with the Department in administering the marketing agreement program. Approximately 95 percent of the area peanut crop is marketed by handlers who are signatory to the Agreement. Requirements established pursuant to the Agreement provide that farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) must be diverted to non-edible uses. Each lot of shelled peanuts destined for edible channels must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Committee.

Public Law 101–220, enacted December 12, 1989, amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Approximately 5 percent of the U.S. peanut crop is marketed by non-signer handlers.

Under the non-signer provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Regulations to implement Pub. L. 101–220 were issued and made effective on December 4, 1990 [55 FR 49980] and

amended several times thereafter, and are published in 7 CFR part 997. All such amendments were made to ensure that the non-signer handling requirements remain consistent with modifications to the handling requirements applied to signatory handlers under the Agreement.

Public Law 103–66 (107 Stat. 312), enacted August 10, 1993, provides for mandatory assessment of farmer's stock peanuts acquired by non-signatory peanut handlers. Under this law, paragraph (b) of section 1001, of the Agricultural Reconciliation Act of 1993, specifies that: (1) Any assessment (except indemnification assessments) imposed under the Agreement on signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

This rule will add new permanent § 997.51 Assessments to Part 997—Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement. Notice of the actual assessment rate established for each crop year will be issued as a new section as an Implementing Regulation beginning with § 997.100 Assessment rate, and be sequentially numbered each succeeding year.

The Committee meets in February or March each year and recommends to the Secretary a per ton, administrative assessment of Segregation 1, farmers stock peanuts received or acquired by signatory handlers for the upcoming crop year. The crop year covers the 12-month period from July 1 to June 30. The Committee met on March 16, 1994, and unanimously recommended a $.60 administrative assessment per ton of 1994–95 crop year Segregation 1 peanuts handled by those handlers who are signatory to the Agreement. The Department has initiated rulemaking procedures to implement such an administrative assessment on signatory handlers.

Therefore, pursuant to Pub. L. 103–66, this interim final rule provides notice that the Department will assess non-signatory handlers a $.60 administrative assessment per net ton of Segregation 1 farmers stock peanuts for the 1994–95 crop year. The assessment will be based on: (1) Tonnage reported on incoming inspection certificates of each handler's Segregation 1 farmers stock peanuts received or acquired for the handler's account and (2) tonnage reported on FV–117 "Weekly Report of Uninspected Farmers Stock Seed Peanuts Received for Custom Seed Shelling." For example, in 1994–95, a handler who receives or acquires 100,000 tons of Segregation 1 farmers stock peanuts will pay an assessment of $60.

The assessment will be applied to peanuts intended for human consumption and peanuts intended for non-human consumption outlets such as seed, oilstock and animal feed. The assessment will be applied to peanuts received or acquired for a handler's account, including the handler's own production. Assessment will not be applied on Segregation 1 peanut lots received or acquired by a handler from other handlers or from the Commodity Credit Corporation (CCC) program received for non-edible use, or lots received on behalf of an area association pursuant to warehousing services (§ 997.20(a)).

The assessment will be applied, pro rata, on non-signatory handlers who perform handling functions defined in § 997.14. Handling is defined as engaging in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce. Handling does not include the sale or delivery of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handlers and the sale or delivery of peanuts by such intermediary to a handler.

Section 997.15 defines a non-signatory handler as any person who handles peanuts, in a capacity other than that of a custom cleaner or dryer, and assembler, a warehouse person or other intermediary between the producer and the non-signatory handler.

Speculators, brokers, or other entities who take possession of Segregation 1 farmers stock peanuts, submit such peanuts for incoming inspection, and subsequently enter such peanuts into the channels of commerce will pay assessments on such peanuts. Entities who receive or acquire farmers stock peanuts for the purpose of custom seed shelling will be assessed on the basis of Form FV–117 "Weekly Report of Uninspected Farmers Stock Seed Peanuts Received for Custom Seed Shelling." Form FV–117 is currently required from such entities. Producer/handlers who store peanuts of their own production (farm-stored peanuts) will, at some point prior to further handling, obtain incoming inspection on such peanuts and, at that time, pay the pro-rata administrative assessment on such peanuts.

Only one administrative assessment will be applied to any lot of farmers stock peanuts. Non-signatory and signatory handlers will not pay an administrative assessment on a lot which they purchase from speculators, brokers or other such entities who have already paid an administrative assessment on the lot.

A crop year's original assessment could be increased by the Secretary based on a similar increase applied by the Secretary on signatory handlers. Such an increase will be applied on all peanuts first handled by non-signatory handlers during the crop year in which the increased assessment occurred.

Peanuts will be assessed based on the rate applicable to the crop year in which the lot is presented for incoming inspection.

Also pursuant to Pub. L. 103–66, this rule will establish that non-signatory handlers pay their administrative assessment to the Secretary. The Secretary will bill non-signatory handlers on a periodic basis determined by the Secretary. The non-signatory handler will be responsible for remitting payment by the date specified. Payment in the form of a personal check, cashier's check or money order will be remitted to the Department. Audits of each handler's account may be conducted by the Department to reconcile incoming, farmers stock volume received or acquired and assessments paid.

Violation of the non-signer regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts. The support price for quota peanuts is determined under 7 U.S.C. 1445c–3 for the crop year during which the violation occurs.

The established administrative assessment rate will impose some additional costs on non-signatory handlers. However, the costs will be in the form of uniform assessments on all handlers who are not signatory to the Agreement.

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0163.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary,

and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) Public Law 103–66 requires the Department to impose an administrative assessment on peanuts received or acquired for the account of handlers who are not signatory (non-signatory handlers) to Peanut Marketing Agreement No. 146 (Agreement); (2) the peanut crop year begins July 1, and to achieve the intended purpose of the law this action should be taken promptly; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 997

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

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

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

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

Authority: 7 U.S.C. 601–674.

2. A new center heading and § 997.51 are added to read as follows:

Assessments

§ 997.51 Assessments.

Each first handler shall pay to the Secretary, with respect to peanuts received or acquired by the handler, including the handler's own production, an administrative assessment as approved by the Secretary. The rate of assessment shall be the same as the administrative assessment approved by the Secretary and applied to signatory handlers under the Peanut Marketing Agreement No. 146. Such administrative assessment shall be applied during the crop year beginning July 1 and ending June 30 of the following year. Each handler's pro rata share shall be the rate of assessment fixed by the Secretary per net ton of farmers stock peanuts received or acquired, other than those peanuts described in § 997.20(a)(1) and (2). During the crop year, the Secretary may increase the rate of assessment if such an increase is established under the Agreement.

3. A new center subpart heading and section 997.100 are added to read as follows:

Implementing Regulation

§ 997.100 Assessments.

For the 1994-95 crop year, the administrative assessment is $0.60 per net ton of farmers stock peanuts received or acquired by each first handler.

Dated: July 28, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18878 Filed 8–2–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Part 998

[Docket No. FV94–998–1FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, without change, the provisions of an interim final rule that authorized expenditures for administration and indemnification, established an assessment rate, and authorized continuation of an indemnification reserve under Marketing Agreement 146 (agreement) for the 1994–95 crop year. The rule also increased the administrative assessment rate for the 1993–94 crop year. Authorization of this budget enables the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay those expenses, and settle indemnification claims during the 1994–95 crop year. Authorization of the increase in the administrative assessment rate for the 1993–94 crop year enables the Committee to collect sufficient funds to pay expenses projected for the remainder of that year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

EFFECTIVE DATES: Section 998.407 is effective July 1, 1994, through June 30, 1995. Section 998.406 was effective July 1, 1993, through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or William G. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments, and a deductible type insurance for 1994–95 indemnification expenses. This rule authorizes expenditures and establishes an assessment rate for the Committee for the crop year which began July 1, 1994, and ends June 30, 1995, and increases the administrative assessment rate for the crop year which began July 1, 1993, and ended June 30, 1994. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 47,000 producers of peanuts in the 16 States covered under the agreement, and approximately 76 handlers regulated under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of the producers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

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

The assessment rate recommended by the Committee for the 1994–95 crop year was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received or acquired by handlers from July 1, 1994. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expenses.

The Committee met on March 16, 1994, and unanimously recommended 1994–95 crop year administrative expenses of $1,056,000 and an administrative assessment rate of $0.60 per net ton of assessable farmers' stock peanuts received or acquired by handlers. In comparison, 1993–94 crop year budgeted administrative expenditures were $1,020,000, and the administrative assessment rate was initially recommended and fixed at $0.60 per ton.

Administrative budget items for 1994–95 which have increased compared to those budgeted for 1993–94 (in parentheses) are: Executive salaries, $140,146 ($134,304), clerical salaries, $132,500 ($127,479), field representatives salaries, $290,420 ($278,778), field representatives travel, $110,000 ($107,000), insurance and bonds, $8,500 ($7,500), and furniture and equipment, $9,500 ($4,000). Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Payroll taxes, $43,000 ($45,000), office rent and parking, $50,000 ($52,500), postage and mailing, $12,000 ($13,000), and audit fees, $9,200 ($9,500). All other items are budgeted at last year's amounts. The administrative budget includes $14,234 for contingencies ($4,439 last year).

The Committee also unanimously recommended 1994 crop indemnification claims payments of up to $9,000,000 and an indemnification assessment of $2.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. The 1993–94 crop year indemnification assessment was $1.00 per net ton. Because of the high number of claims being processed during the 1993–94 crop year, the Committee recommended a higher assessment rate so that sufficient reserve funds will be available. The $9,000,000 of indemnification claims coverage to be provided on 1994 crop peanuts includes $5,000,000 in excess loss insurance to be purchased by the Committee—the same as last year.

The cost of the indemnification insurance premium and the costs to carry out indemnification procedures (sampling and testing of 2–AB and 3–AB Subsamples, and crushing supervision, of indemnified peanuts, pursuant to § 998.200(c)), are additional indemnification costs which must be authorized and paid from available indemnification funds. Such costs are not expected to exceed $2,000,000.

The total assessment rate is $2.60 per ton of assessable peanuts ($0.60 for administrative and $2.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,760,000 will yield $1,056,000 for program administration and $3,520,000 for indemnification. The indemnification amount, when added to expected cash carry over from 1993–94 indemnification operations of $12,609,100, will provide $16,129,100, which should be adequate for the 1994 fund, and to maintain an adequate reserve.

The 1993–94 budget was published in the **Federal Register** as an interim final rule on June 11, 1993 (58 FR 32600), and finalized on August 13, 1993 (58 FR 43066). The administrative expenses and assessment rate for the 1993–94 crop year were based on an estimated assessable tonnage of 1,700,000. Due to an unexpected short crop, the assessable tonnage is estimated to be only 1,476,377. In order to have sufficient revenue to cover budgeted expenses of $1,020,000, the Committee unanimously recommended that the 1993–94 crop year administrative assessment be increased from $0.60 to $0.70 per net ton of assessable farmers' stock peanuts.

An interim final rule was published in the **Federal Register** on May 12, 1994 (59 FR 24633). That interim final rule added § 998.407 which authorized expenditures for administration and indemnification, established an assessment rate, and authorized continuation of an indemnification reserve for the Committee. That rule also amended § 998.406, paragraph (c) to increase the administrative assessment rate for the 1993–94 crop year. That rule provided that interested persons could file comments through June 13, 1994. No comments were received.

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

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

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1993–94 crop year began on July 1, 1993, and the 1994–95 crop year for the program began on July 1, 1994, and the marketing agreement requires that the rate of assessment for the crop year apply to all assessable peanuts handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

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

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

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

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule adding § 998.407 and amending § 998.406, which was published at 59 FR 24633 on May 12, 1994, is adopted as a final rule without change.

Dated: July 28, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18882 Filed 8–2–94; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The current 18 percent per year federal credit union loan rate ceiling is scheduled to revert to 15 percent on September 9, 1994, unless otherwise provided by the NCUA Board (Board). A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of federal credit unions. At the same time, prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the Board hereby continues an 18 percent federal credit union loan rate ceiling for the period from September 9, 1994 through March 8, 1996. Loans and line of credit balances existing prior to May 15, 1987, may continue to bear their contractual rate of interest, not to exceed 21 percent. The Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

EFFECTIVE DATE: September 9, 1994.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314–3428.

FOR FURTHER INFORMATION CONTACT: Lindsay L. Neunlist, at the above address. Telephone number: (703) 518–6625.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96–221, enacted in 1979, raised the loan interest rate ceiling for federal credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the Board to set a higher limit, after consultation with Congress, the Department of the Treasury, and other federal financial agencies, for a period not to exceed 18 months, if the Board should determine that: (i) money market interest rates have risen over the preceding 6 months: and (ii) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital, and earnings.

On December 3, 1980, the Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling for 9 months to 21 percent. In the unstable environment of the first half of the 1980s, the Board extended the 21 percent ceiling four times. On March 11, 1987, the Board lowered the loan rate ceiling from 21 percent to 18 percent effective May 15, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. The ceiling has remained at 18 percent to the present.

The Board felt, and continues to feel, that the 18 percent ceiling will fully accommodate an inflow of liquidity into the system, preserve flexibility in the system so that credit unions can react to any adverse economic developments, and will ensure that any increase in the cost of funds would not impinge on earnings of federal credit unions.

The Board would prefer not to set loan interest rate ceilings for federal credit unions. In the final analysis, the market sets the rates. The Board supports free lending markets and the ability of federal credit union boards of directors to establish ban rates that reflect current market conditions and the interests of credit union members. Congress has, however, imposed loan rate ceilings since 1934. In 1979, Congress set the ceiling at 15 percent but authorized the Board to set a ceiling in excess of 15 percent if the Board can justify it. The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this action at any time should changes in economic conditions warrant.

Justification for a Ceiling No Higher Than 18 Percent

Money Market Interest Rates

Both long and short rates have increased significantly in the last few months. Table 1 gives information on past interest rates. There is a general consensus among economists that money market rates will continue to rise as economic growth accelerates. Implied forward rates, the money market's best guess about where interest rates are going, are significantly higher over the next year. By the time this rule becomes effective, money markets will have experienced 6 months of rising rates. The Board is ready to revisit this issue should this expectation not be confirmed.

Liquidity, Capital, Earnings, and Growth and Individual Credit Unions

For at least 1,477 credit unions, market conditions call for rates on unsecured loans to be above 15 percent. For some of these credit unions, three factors combine to require interest rate charges above 15 percent in order to maintain liquidity, capital, earnings, and growth.

TABLE 1.—MONEY MARKET INTEREST RATES

Maturity	Yields as of July 5, 1994	Change since Jan. 1, 1994 in basis points
3-month	4.29	121
6-month	4.82	148
1-year	5.49	186
2-year	6.15	184
3-year	6.46	185
5-year	6.94	165
10-year	7.32	141
30-year	7.61	192

The first factor is low average loan balance. For example, the credit unions with under $2,000,000 in assets have an average unsecured balance of $1,314, with many loans below $1,000. There are fixed costs of granting and processing a loan. Many of these costs are incurred regardless of the size of the loan. Expressed as a percentage of the loan balance on which interest will be collected, these costs can be very high on small loans. As one credit union states, "The total interest earned on a $200 loan at 17 percent for 12 months is $34. Even at 17 percent it costs us more to make the loan than we recover in interest income, assuming it does pay to maturity and is not charged off." The Functional Cost and Profit Analysis by the Federal Reserve System calculates the average cost to a credit union for making an installment loan to be $95.66 plus $5.49 per payment. The $34 does not even cover the cost of accepting the twelve payments.

Many banks will not even consider loan applications for less than $1,000.

Lowering the interest rate ceiling for credit unions will discourage credit unions, too, from making these loans. Credit seekers' options will be reduced, with most of the affected members having no choice but to turn to neighborhood lenders.

The second factor is credit risk. Loans to young members who have not yet established a credit history and loans to those who have built weak credit histories both carry high credit risk. Credit unions must charge rates high enough to cover higher-than-usual losses for such loans. There are undoubtedly more than 1,477 credit unions charging over 15 percent for unsecured loans to such members. Many credit unions have "Credit Builder" or "Credit Rebuilder" loans but must report the "most common" rate on the Call Report for unsecured loans.

The third factor is credit union size. Small credit unions have fewer loans over which to distribute their overhead costs.

Thus, small credit unions making small loans to borrowers with poor or no credit histories are struggling with far higher costs than the typical credit union. Both young people and lower income households have limited access to credit and, absent a credit union, often pay rates of 24 to 30 percent to small loan companies. Or they may be forced to resort to the check-cashing outlet where a post-dated check will be cashed at effective rates of 200, or even 300, percent. Rates between 15 and 18 percent are attractive to such members. The higher rates are necessary to help cover the credit unions' costs of providing this kind of credit.

Table 2 shows the number of credit unions in each asset-size group that charge more than 15 percent for unsecured loans. It also shows the percent of credit unions in each group that do so.

NCUA staff are not aware of any complaints from members of those credit unions offering high-risk, high-interest rate loans.

TABLE 2.—CREDIT UNIONS CHARGING MORE THAN 15 PERCENT ON UNSECURED LOANS

[December 1993]

Asset size group	Count of all CUs of this asset size	Charging GT 15% on unsecured loans	
		Number	Percent
Less than $2 mln	4,133	430	10.4
$2 mln to $10 mln	4,272	558	13.1
$10 mln to $50 mln	2,796	339	12.1
Over $50 mln	1,115	150	13.5
Total	12,317	1,477	12.0

Among the 1,477 credit unions charging more than 15 percent for unsecured loans, there are 356 credit unions with 20 percent or more of their assets in this kind of loan. For these credit unions, lowering their rates would damage their liquidity, capital, earnings, and growth. Table 3 shows credit unions charging more than 15 percent that have more than 20 percent of their assets in these loans. In general the percent of assets in unsecured loans goes down as credit union size goes up.

TABLE 3.—CREDIT UNIONS WITH MORE THAN 20% OF ASSETS IN UNSECURED LOANS

Asset size group	No. of CUs	Percent of size group	Avg pcnt of assets in unsecured lns
Less than $2 mln	198	4.8	37.3
$2 mln to $10 mln	129	3.0	27.9
$10 mln to $50 mln	26	0.9	29.6
Over $50 mln	3	0.3	44.8
Total	356	2.9	31.9

At the same time, lowering the ceiling would not change the rates the vast majority of credit unions are charging, since they are already at or below market. A ceiling can cause rates to be higher than they would have been without the ceiling. The closer a loan rate is to actual market rates, the more likely it is that the ceiling will act as a floor for rates. There are two reasons why this happens. First, setting a ceiling close to market rates creates the impression that the ceiling rate is the "federally approved" rate. Second, if credit unions feel they may not have the flexibility to raise rates in the near future should market rates rise unexpectedly, they are more likely to keep current rates higher than they otherwise would, as insurance against market rate increases. This ceiling-as-floor phenomenon militates against letting the ceiling approach the more common, typical market rates.

In conclusion, the Board has continued the federal credit union loan interest rate ceiling of 18 percent per year for the period from September 9, 1994 through March 8, 1996. Loans and line of credit balances existing on May 15, 1987 may continue to bear their contractual rate, not to exceed 21 percent. Finally, the Board is prepared to reconsider the 18 percent ceiling at any time during the extension period, should changes in economic conditions warrant it.

Regulatory Procedures

Administrative Procedures Act

The Board has determined that notice and public comment on this rule are impractical and not in the public interest, 5 U.S.C. 553(b)(B). Due to the need for a planning period prior to the September 9, 1994 expiration date of the current rule, and the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, final action on the loan rate ceiling is necessary.

Regulatory Flexibility Act

For the same reasons, a regulatory flexibility analysis is not required, 5 U.S.C. 604(a). However, the Board has considered the need for this rule, and the alternatives, as set forth above.

Paperwork Reduction Act

There has been no change in the paperwork requirements.

Executive Order 12612

This final rule does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to federal credit unions.

List of Subjects in 12 CFR Part 701

Credit Unions, Loan interest rates.

By the National Credit Union Administration Board on July 26, 1994.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA has amended its regulations as follows:

PART 701—[AMENDED]

1. The authority citation for Part 701 is revised to read as follows:

Authority: 12 U.S.C. 7152(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782.

1784, 1787, 1789, 1798. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–3610.

§ 701.21 [Amended]

2. Section 701.21(c)(7)(ii)(C) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) * * *

(ii) * * *

(C) *Expiration.* After March 8, 1996, or as otherwise ordered by the NCUA Board, the maximum rate on federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may, however, be charged, in accordance with paragraph (c)(7)(ii)(A) and (B) of this section, on loans and line of credit balances existing on or before March 8, 1996.

* * * * *

[FR Doc. 94–18658 Filed 8–2–94; 8:45 am]

BILLING CODE 7535–01–M

---

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Final rule; extension of compliance date.

SUMMARY: The NCUA Board is publishing a change to the compliance date to part 707 of the NCUA Rules and Regulations (Truth in Savings). This document extends the compliance date for nonautomated credit unions that have assets of $2 million or less as of December 31, 1993. The extension gives the smaller, nonautomated credit unions more time to come into compliance with part 707.

DATES: *Effective Date:* This document is effective January 1, 1995.

Compliance Date: The compliance date of part 707 is extended to January 1, 1996, for credit unions of an asset size of $2 million or less as of December 31, 1993, that are not automated.

FOR FURTHER INFORMATION CONTACT: Richard Schulman, Associate General Counsel, or Martin Conrey, Staff Attorney, Office of General Counsel, telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

(1) Background.

Prior Extensions

NCUA previously extended the compliance date for part 707, Truth in Savings, for certain small, nonautomated credit unions. (Final rule, 59 FR 13435, March 22, 1994). At that time, the compliance date of part 707 was extended to March 31, 1995, for credit unions of an asset size between $500,000 and $1 million as of December 31, 1993, that are not automated. Similarly, the compliance date of part 707 was extended to June 30, 1995, for credit unions of an asset size of less than $500,000 as of December 31, 1993, that are not automated. The compliance date remained January 1, 1995, for all other credit unions.

Importance of Small Credit Unions

The NCUA Board is very concerned with the continued viability of small credit unions. As Norman E. D'Amours, NCUA Chairman, explained recently:

> Small credit unions are very important to the continuing growth of the movement. Like the tender shoots on a large tree, they represent the promise of continuing life and health. They serve people who badly need their services, and they know their members very well. Such a credit union is more likely to take a risk on the reputation and character of a member unable to find credit elsewhere.

NCUA Letter to Credit Unions No. 153 (April 1994)

Ten years ago, credit unions under $2 million in size made up about two-thirds (10,564) of all federally insured credit unions. Today, such credit unions number only 4,132, about one-third of federally insured credit unions. In addition, the assets of today's 4,132 smallest credit unions are 1.2 percent of total assets in all credit unions, while credit unions of $2 million or less accounted for 7.7 percent of total assets ten years ago. The average credit union today has $22.5 million in assets, compared to $5 million ten years ago.

However, over two-thirds of these small credit unions are already automated or have data processing capabilities. Since these credit unions are in a position to begin Truth in Savings compliance on January 1, 1995, the Board believes that to grant these credit unions a further compliance extension would be contrary to the intent of Congress in enacting TISA, and contrary to the interests of their credit union members.

Small credit unions that are not automated present a different picture entirely. Because of the many dividend rate, annual percentage yield, and annual percentage yield earned calculations required by TISA, and the prohibition of the prevalent rollback method of calculating dividends, nonautomated credit unions are much more needful of adequate resources and time to accomplish meaningful Truth in Savings compliance. To this end, the NCUA Board adopted a program to place retired NCUA computers with nonautomated credit unions with $2 million or less in assets. Due to the length of the federal procurement process for obtaining new NCUA computers, however, no computers will be available to distribute until sometime in 1995. The Board understands that many nonautomated credit unions with assets of $2 million or less have relied upon previous estimates of earlier delivery dates of retired NCUA computers. Therefore, the Board has decided to expand the extension for all credit unions eligible for retired NCUA computers until January 1, 1996.

Only a small number of credit unions are affected by this extension. NCUA has determined that there are 1,248 credit unions under $2 million in assets that have no or grossly inadequate computers or data processing capability. Of these credit unions, approximately 1,096 have less than $1 million in assets and approximately 152 have between $1–2 million in assets.

The compliance date remains January 1, 1995, for all other credit unions (automated credit unions under $2 million in assets and all credit unions having over $2 million or more in assets). NCUA encourages early Truth in Savings compliance by all credit unions as soon as they are able in order to meet the Congressional intent of universal Truth in Savings coverage of consumer held accounts in financial institutions. Each credit union receiving this extension is encouraged to begin to comply with TISA and part 707 as soon as its board of directors believes the credit union is ready.

The NCUA Board is well aware that most credit unions start small, and historically, the fostering of small credit unions has strengthened the entire credit union movement. The Board has supported and instituted several small credit union initiatives to continue the development of small credit unions. For instance, in NCUA's Region V, a "big brother" partnership program has teamed smaller credit unions with larger credit unions, proving that the smallest credit unions can be preserved if examiners, other credit unions, and trade associations work together cooperatively in the spirit of the credit union movement to help those in need. Over 331 small credit unions are benefiting from participation in various Region V small credit union programs. NCUA has implemented the "big brother" program in all other NCUA Regions.

The NCUA Board recently established an Office of Community Development

Credit Unions to help implement NCUA's commitment to small, low-income, and community credit unions. In addition, the Board recently adopted new chartering and field of membership policies designed to encourage the creation of new credit unions, and facilitate credit union services in financially depressed communities (Final Interpretive Ruling and Policy Statement No. 94–1, 59 FR 29066, June 3, 1994). Moreover, the agency has liberalized its rules governing receipt of nonmember deposits by low-income credit unions (Final Rule, 59 FR 26101, May 19, 1994), and has previously extended the Truth in Savings compliance deadline for small credit unions (Final Rule, 59 FR 13435, March 22, 1994). A commitment has been made by the Board to provide some nonautomated, small credit unions access to laptop computers used by credit union examiners as this equipment is replaced with newer technology. Credit unions that are not automated and under $2 million in assets, and that have not already done so, should contact either their appropriate state credit union supervisor or NCUA Regional Director no later than October 1, 1994, if interested in participating in the laptop computer program.

By these, and other, initiatives and programs, the Board seeks to assure all credit unions that the NCUA Board values small credit unions and will work to preserve them. Larger credit unions and the trade groups are urged to assist their colleagues in the smallest credit unions. The Board believes that such selfless giving lies at the heart of the cooperative philosophy and history of the credit union movement. Healthy, small credit unions are an absolutely essential part of a bright future for all credit unions. With this background, when the Board discovered that the extensions previously granted to small, nonautomated credit unions would not be sufficient to accomplish all of the Board's objectives, the Board decided to grant an additional extension.

It has been shown to the satisfaction of the NCUA Board that small, nonautomated credit unions need more time to comply with the complex, technical requirements of Truth in Savings than other, larger, more automated credit unions. An extended compliance date for affected credit unions will enable NCUA and other interested parties to complete the extensive training and preparation that is necessary to ensure that these credit unions comply with part 707 by the extended compliance dates. This action is taken to preserve, educate, and possibly automate (by providing retired NCUA computers and by fostering the provision of minimal cost computer hardware, software and services by other parties) many of these small credit unions; ensure compliance with Truth in Savings at the earliest possible date; assist administrative convenience; reduce the risk of potential losses to the National Credit Union Share Insurance Fund; and to allow time for coordination of this effort among NCUA, affected credit unions, data processors and other interested parties.

As stated previously, NCUA intends to use the December 31, 1993, NCUA Form 5300 report to determine the requisite nonautomation status and asset size for those credit unions filing Form 5300 reports that are eligible for the extensions in required compliance. Credit unions which do not file Form 5300 reports will be permitted to prove nonautomation status and asset size by other means. NCUA will consider verified self-certifications, certifications by appropriate state supervisory authorities, and other equivalent forms of proof as sufficient for eligibility for the extension by non-federally insured credit unions. Indeed, with the assistance of the affected credit unions, trade groups, and the NCUA regional and central office staffs, NCUA is well on its way to having identified credit unions in need of Truth in Savings compliance assistance, and in providing various educational and other assistance to the affected small, nonautomated credit unions.

Administrative Procedure Act

The extension made to this part is not subject to the notice and comment provisions of the Administrative Procedure Act (the "APA"), 5 U.S.C. 551 *et seq.* The extension relates to a few credit unions that need more time and assistance in complying with part 707. No major changes are contemplated, or made, by this extension. Therefore, the NCUA Board has determined that, in this case, the APA notice and comment procedures for this extension is impracticable, unnecessary, and contrary to the public interest. 5 U.S.C. 553(b)(3)(B).

By the National Credit Union Administration Board on July 26, 1994.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–18718 Filed 8–2–94; 8:45 am]

BILLING CODE 7535–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Procedural Regulations Governing Size Protests

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is amending its procedural regulations governing size protests for purposes of clarification. The amendment makes clear that size protests filed by any person, including the contracting officer, will be considered premature and will be dismissed if filed before bids have been opened or the identity of the prospective awardee has been established.

EFFECTIVE DATE: This rule is effective on August 3, 1994.

FOR FURTHER INFORMATION CONTACT: David R. Kohler, Associate General Counsel for General Law, Office of the General Counsel, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, (202) 205–6645.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) is amending § 121.1603(a)(4) of its procedural regulations governing size protests in order to make clear that size protests filed by contracting officers, like all other protests, will be dismissed if prematurely filed, *i.e.*, if filed prior to bid opening (in the case of sealed bids) or prior to identification of the apparent successful offeror (in the case of negotiated procurements).

Section 121.1603(a)(4) presently states that "(a)t any time after bid opening a contracting officer may question the size of any offeror for the purpose of a particular procurement or sale by filing a protest with the SBA Regional Office * * *" Although SBA had intended that this regulation preclude contracting officers from filing premature protests with respect to both sealed bid and negotiated procurements, the language employed does not reflect this intention and has resulted in a recent decision by SBA's Office of Hearings and Appeals holding that a contracting officer's protest filed after the date for submitting initial offers but before the submission of best and final offers or identification of the apparent successful offeror was not premature and necessitated a decision on the merits.

In order to effect its original intentions with respect to premature protests, SBA is amending paragraph (a)(4) by adding clarifying language to emphasize that contracting officers (like all other protestors) are precluded from

filing premature protests in negotiated procurements as well as in procurements conducted using sealed bid procedures. This expressed intention accords with paragraph (b)(5) of § 121.1603, which clearly states that "(p)rotests filed by any person before bid opening or notification of intended award shall be considered premature and shall be dismissed." It in no way conflicts with the statement in paragraph (b)(2) of § 121.1603 that "(a) protest by a contracting officer shall be timely for the purpose of the procurement or sale in question whether filed before or after award." Paragraph (b)(2) of § 121.1603 addresses the issue of lateness. Paragraphs (a)(4) and (b)(5) address the issue of prematurity.

SBA's distinction between lateness and prematurity with respect to protests filed by contracting officers is based upon the realities of the procurement process and the need to establish procedures for adjudicating size status that are fair as well as administratively efficient. A contracting officer, unlike any other potential protestor, has the authority to terminate a contract awarded as a small business set aside should it be determined that the awardee is not a small business. Thus it is prudent to permit a contracting officer to file a late protest whenever size ineligibility is suspected in order to preserve the integrity of the set-aside program by resolving any questions on size status in an expeditious manner. The prohibition against premature protests, however, has historically been applied to contracting officers and other protestors alike, because in neither case is it prudent either to impose the burdens of a size investigation on a concern unnecessarily or to expend SBA's limited resources by making formal size determinations where it is unclear that the protested concern is the potential awardee of the contract.

Under § 121.1603(a)(4), a protest is considered premature until identification of the prospective awardee. Traditionally, this identification occurs at bid opening or, in the case of a negotiated procurement, at the point the contracting officer notifies other offerors of the intended award and names the prospective awardee. SBA believes that the concept of notification applicable to protests filed by other offerors is not appropriate with respect to contracting officers, since it is the contracting officer who does the notification. Thus § 121.1603(a)(4) will merely require that a contracting officer wait until he or she has identified the apparent successful offeror before filing a protest concerning that firm's size status. Such a restriction will ensure that SBA does not impose the burdens of an unnecessary size investigation on other offerors or expend its limited resources rendering size determinations that are unlikely to have any practical significance for the procurement in question.

This clarification of SBA's procedural regulations governing premature protests applies to all pending protests as well as all size determinations for which a final decision has not yet been rendered by the Office of Hearings and Appeals.

Compliance With Executive Orders 12866, 12612 and 12778; the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.; and the Paperwork Reduction Act, 44 U.S.C. CH 35

For purposes of Executive Order 12866, SBA certifies that this rule will not have an economic effect in excess of $100 million, result in a major increase in costs for individuals or governments, or have a significant adverse effect on competition and, therefore, will not constitute a major or significant rule. SBA has made this determination because the rule is purely procedural in nature and will impose no additional filing or other requirements and, as such, does not represent a significant regulatory event.

For purposes of Executive Order 12612, SBA certifies that this rule will not have Federalism implications warranting the preparation of a Federalism assessment.

For purposes of Executive Order 12778, SBA certifies that the rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

For purposes of the Regulatory Flexibility Act, SBA certifies that the rule will not have a significant economic effect on a substantial number of small entities, for the same reason that it will not be a major or significant rule.

For purposes of the Paperwork Reduction Act, SBA certifies that the rule will not impose a new recordkeeping or reporting requirement.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure; Government procurement; Small business.

For the reasons set forth above, part 121 of title 13, Code of Federal Regulations, is amended as follows:

PART 121—[AMENDED]

1. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c) and Pub. L. 102–486, 106 Stat. 2776, 3133.

§ 121.1603 [Amended]

2. Section 121.1603 is amended in paragraph (a)(4) by inserting the phrase "or identification of the apparent successful offeror" between the words "opening" and ",a."

Dated: July 20, 1994.

Erskine B. Bowles,

Administrator.

[FR Doc. 94–18835 Filed 8–2–94; 8:45 am]

BILLING CODE 8025–01

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–98; Special Conditions No. 25–ANM–87]

Special Conditions: Canadair Model CL–215–6B11 (CL–415 Variant), High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Canadair Model CL–215–6B11 (CL–415 variant) airplanes manufactured by Canadair Inc. of Montreal, Canada. These airplanes are equipped with digital electronic flight instrument systems (EFIS) and an integrated instrument display system with active matrix liquid crystal displays (LCD's) that perform critical functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of the EFIS and the LCD's from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to ensure that the critical functions performed by these systems are maintained when the airplane is exposed to HIRF.

DATES: The effective date of these special conditions is July 14, 1994; Comments must be received on or before September 19, 1994.

ADDRESSES: Comments on these final special conditions; request for comments, may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn.: Rules Docket (ANM–7), Docket No. NM–98, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of

the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM–98." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Lium, FAA, Standardization Branch, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1112.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance, however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–98." The postcard will be date stamped and returned to the commenter.

Background

On December 17, 1993, Canadair, Inc. of Montreal, Canada, applied for an amendment to Type Certificate A14EA to incorporate the model CL–215–6B11 (CL–415 variant) water bomber aircraft. This aircraft is similar to the Model CL–215–6B11, approved March 30, 1993, as a retrofit conversion of the reciprocating engine-powered CL–215–1A10. It differs, however, in that it is a production model featuring the same turboprop engines, but incorporating certain product improvements. The design of the CL–215–6B11 includes the installation of digital avionics consisting of an electronic flight instrument system (EFIS) and an integrated instrument display system with active matrix liquid crystal displays that are potentially vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Supplemental Type Certification Basis

Under the provisions of § 21.101 of the Federal Aviation Regulations (FAR), Canadair Inc. must show that the Model CL–215–6B11 (CL–415 variant) meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A14EA, or the applicable regulations in effect on the date of application for the Model CL–215–6B11. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A14EA for the Model CL–215–6B11 are part 25 of the Federal Aviation Regulations (FAR), as amended by Amendment 25–61, except for certain requirements found inappropriate for the intended special purpose. Those exceptions, which are not relevant to the special conditions proposed herein, are listed in Report RAO–215–100, Supplement 1, Part 2.1, pages 47 through 117, dated September 19, 1991. These special conditions will form an additional part of the certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the CL–215–6B11 (CL–415 variant) because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

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

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the CL–215–6B11 (CL–415 variant) that would require the EFIS and LCD's be designed and installed to preclude component damage and interruption of function due to the effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

Frequency	Peak (V/M)	Average (V/M)
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

As discussed above, these special conditions are applicable to CL–215–6B11 (CL–415 variant) airplanes manufactured by Canadair, Inc., of Montreal, Canada. Should Canadair apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well, under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on CL–215–6B11 (CL–415 variant) airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the **Canadair Model CL–215–6B11 (CL–415 variant)** airplanes:

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

2. The following definition applies with respect to this special condition: *Critical Function.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on July 14, 1994.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–18831 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 39

[Docket No. 93–NM–212–AD; Amendment 39–8988; AD 94–15–17]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires inspections to detect cracking of certain fuselage longitudinal lap joints, repair of any cracking found, and replacement of the countersunk fasteners in those lap joints with protruding head fasteners. This amendment is prompted by a structural reassessment of Model 747 series airplanes. The actions specified by this 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: Effective September 2, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 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: 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: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on March 4, 1994 (59 FR 10338). That action proposed to require repetitive external high frequency eddy current inspections to detect cracking of the skin around the fasteners in the upper row of the longitudinal lap joints of Stringer (S)–12L and S–12R from station 520 to station 741.1, repair of any cracking found, and replacement of the countersunk fasteners in those lap joints with protruding head fasteners.

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.

One commenter requests that the compliance time specified in proposed paragraph (b) for accomplishing the replacement of the countersunk fasteners be reduced from the proposed "20,000 total flight cycles or within 4 years after the effective date of the AD, whichever occurs later," to "20,000 total flight cycles or within 2 years after the effective date of the AD, whichever occurs later." The commenter states that this suggested shorter compliance time would make the compliance time requirements of the proposed AD commensurate with the compliance time of AD 94–12–09, amendment 39–8937 (59 FR 30285, June 13, 1994), which requires modification of certain skin panel lap joints in this same area.

The FAA does not concur. After consideration of all the available information, the FAA cannot conclude that a reduction of the proposed compliance time, without prior notice and opportunity for public comment, is warranted. In developing an appropriate compliance time, the FAA considered

the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of replacement of the fasteners. Further, the proposed compliance time was arrived at with operator, manufacturer, and FAA concurrence. In consideration of all of these factors, the FAA determined that the compliance time, as proposed, represents an appropriate interval in which replacement of the fasteners can be accomplished in a timely manner within the fleet and still maintain an adequate level of safety. Operators are always permitted to accomplish the requirements of an AD at a time earlier than that specified as the compliance time; therefore, if an operator elects to accomplish the fastener replacement prior to the accumulation of 20,000 total flight cycles or 2 years after the effective date of this AD, whichever is later (in order to accomplish the replacement concurrently with an action required by another AD), it is that operator's prerogative to do so. If additional data are presented that would justify a shorter compliance time, the FAA may consider further rulemaking on this issue.

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 as proposed.

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 will be affected by this AD, that it will take approximately 17 work hours per airplane to accomplish the required inspections, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the required inspections on U.S. operators is estimated to be $11,220, or $935 per airplane.

The FAA estimates that it will take approximately 302 work hours per airplane to accomplish the requirement to replace fasteners, and that the average labor rate is $55 per work hour. Required parts will be nominal in cost. Based on these figures, the total cost impact of the 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 required 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 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 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 requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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:

94–15–17 Boeing: Amendment 39–8988. 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 Sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 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 Boeing Service Bulletin 747–53–2366, including the "ADDENDUM," dated August 6, 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 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 September 2, 1994.

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

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–18453 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 91–CE–76–AD; Amendment 39–8992; AD 91–20–14 R1]

Airworthiness Directives: Beech Aircraft Corporation Models B300 and B300C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises AD 91–20–14, which currently requires incorporating revised takeoff and climb performance charts into the FAA Approved Airplane Flight Manual and Pilot's Operating Handbook (AFM/POH) on Beech Aircraft Corporation (Beech) Models B300 and B300C airplanes. Beech has started incorporating these takeoff and climb requirements into the AFM/POH of airplanes manufactured since issuance of AD 91–20–14. This action limits the applicability to only those airplanes without these takeoff and climb requirements incorporated into the AFM/POH at production. The actions specified by this AD are intended to ensure that the affected airplanes achieve required minimum takeoff and climb performance for each approved combination of takeoff configuration, weight, pressure altitude, and temperature.

DATES: Effective September 12, 1994.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of February 20, 1992.

ADDRESSES: Copies of the AFM/POH revision that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bennett L. Sorensen, Flight Test Pilot, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4165; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Beech Models B300 and B300C airplanes was published in the **Federal Register** on March 16, 1994 (59 FR 12205). The action proposed to revise AD 91–20–14 and continue to require incorporating revised takeoff and climb performance charts, B2 revision, part number 130–590031–1, dated September 1991, into the AFM/POH, but would exclude those airplanes incorporating the takeoff and climb requirements at manufacture.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 118 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the charts into the AFM/POH. Since an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.11 of the Federal Aviation Regulations (14 CFR 43.7 and 43.11) can accomplish this action, the only cost impact upon the public is the time it takes to incorporate these charts. In addition, this action requires the same thing as AD 91–20–14, which is replaced by this action.

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 copy of the final 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, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) 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.

Section 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91–20–14, Amendment 39–8168 (January 30, 1992, 57 FR 3516),

and by adding a new airworthiness directive to read as follows:

91-20-14R1 Beech Aircraft Corporation: Amendment 39-8992; Docket No. 91-CE-76-AD; Revises AD 91-20-14, Amendment 39-8168.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.
B300	FL-1 through FL-110
B300C	FM-1 through FM-8

Compliance: Required within 10 hours time-in-service after February 20, 1992 (the effective date of AD 91-20-14), unless already accomplished.

To ensure that the affected airplanes achieve required minimum takeoff and climb performance for each approved combination of takeoff configuration, weight, pressure altitude, and temperature, accomplish the following:

(a) Incorporate the takeoff and climb performance charts, B2 revision, part number (P/N) 130-590031-1, dated September 1991, into the Model B300 and B300C Pilot's Operating Handbook and FAA Approved Airplane Flight Manual (AFM/POH).

Note 1: The charts sent in the priority letter AD 91-20-14 package and B2 revision, P/N 130-590031-1, dated September 1991, are the same.

(b) Incorporating the climb and takeoff charts as required by this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by Section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with Section 43.11 of the Federal Aviation Regulations (14 CFR 43.11).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita ACO.

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

(e) The takeoff and climb performance limitations required by this AD shall be done in accordance with the Beech Pilot's Operating Handbook and FAA Approved Airplane Flight Manual, B2 revision, part number 130-590031-1, dated September 1991. This incorporation by reference was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of February 20, 1992. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-8992) revises AD 91-20-14, Amendment 39-8168.

(g) This amendment (39-8992) becomes effective on September 12, 1994.

Issued in Kansas City, Missouri, on July 27, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-18843 Filed 8-2-94; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 94-NM-106-AD; Amendment 39-8990; AD 94-16-01]

Airworthiness Directives; Airbus Industrie Model A340-211 and -311 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A340-211 and -311 series airplanes. This action requires modifying the bonding leads on the fuel quantity indicating (FQI) probes or the temperature sensor, on the fuel low pressure inlet pipe next to the compensator, and on the jet pump. This amendment is prompted by results of a quality survey, which revealed that there may be insufficient clearance between several bonding leads and certain FQI system probes or the temperature sensor, and between the bonding leads and the FQI probes and the compensator. The actions specified in this AD are intended to eliminate such insufficient clearance, which could lead to electrical arcing and a resultant fire in the event of a lightning strike.

DATES: Effective August 18, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 18, 1994.

Comments for inclusion in the Rules Docket must be received on or before October 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-106-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the 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.

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

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Industrie Model A340-211 and -311 series airplanes. The DGAC advises that results of a quality survey conducted by Airbus Industrie have revealed that there may be insufficient clearance between several bonding leads and certain fuel quantity indicating (FQI) system probes or the temperature sensor. Further, insufficient clearance also may exist between the bonding leads and the FQI probes in the inner collector cell and the compensator. Such insufficient clearance, if not corrected, could result in electrical arcing and a resultant fire in the event of a lightning strike.

Airbus Industrie has issued Service Bulletin A340-28-4008, dated July 9, 1993, which describes procedures for modifying the bonding leads on the FQI probes or the temperature sensor. This modification involves installing shorter bonding leads and/or rerouting certain bonding leads on the water drain pipe, the engine fuel feed pipe, the fuel recirculation pipe, the vent pipe, and the surge tank drain pipe. Accomplishment of this modification will maintain the correct clearance between the bonding leads and the FQI probes or the temperature sensor. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 93-120-002(B), dated August 4, 1993, in order to assure the continued airworthiness of these airplanes in France.

Airbus Industrie also has issued Service Bulletin A340-28-4012, dated November 8, 1993, which describes procedures for modifying the bonding leads on the fuel low pressure inlet pipe (next to the compensator) and on the jet

pump. This action involves installing a sleeve on the bonding lead on the fuel pipe at certain FQI probes in the inner collector cell and installing shorter bonding leads on the fuel pipe at the compensator. Accomplishment of this modification will maintain the correct clearance between the bonding leads and the FQI probes and compensator. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 93–206–003(B), dated December 8, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent electrical arcing and a resultant fire in the event of a lightning strike. This AD requires modifying the bonding leads on the FQI probes or the temperature sensor, on the fuel low pressure inlet pipe next to the compensator, and on the jet pump. The actions are required to be accomplished in accordance with the service bulletins described previously.

There currently are no Model A340–211 or –311 series airplanes on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 63 work hours to accomplish the required actions, at an average labor charge of $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of this AD would be $3,465 per airplane.

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–106–AD." The postcard will be date stamped and returned to the commenter.

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 part 39 of the Federal Aviation Regulations (14 CFR part 39) 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:

94–16–01 Airbus Industrie: Amendment 39–8990. Docket 94–NM–106–AD.

Applicability: Model A340–211 and –311 series airplanes on which Airbus Industrie Modifications 42337 and 42338 (reference Airbus Industrie Service Bulletin A340–28–4012) have not been installed; and on which Airbus Industrie Modification 42038 (reference Airbus Industrie Service Bulletin A340–28–4008) has not been installed; certificated in any category.

Compliance: Required within 100 landings after the effective date of this AD, sunless accomplished previously.

To prevent electrical arcing and a resultant fire in the event of a lightning strike, accomplish the following:

(a) Modify the bonding leads on the water drain pipe, engine fuel feed pipe, fuel recalculation pipe, vent pipe, and surge tank drain pipe in accordance with Airbus Industrie Service Bulletin A340–28–4008, dated July 9, 1993.

(b) Modify the bonding leads on the fuel low pressure inlet pipe (next to the compensator) and on the jet pump in accordance with Airbus Industrie Service

Bulletin A340–28–4012, dated November 8, 1993.

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

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

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modifications shall be done in accordance with Airbus Industrie Service Bulletin A340–28–4008, dated July 9, 1993, and Airbus Industrie Service Bulletin A340–28–4012, dated November 8, 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on August 18, 1994.

Issued in Renton, Washington, on July 27, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–18769 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 71

[Airspace Docket No. 94–ASO–8]

Establishment of Class E Airspace; Thomaston, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Thomaston, Georgia. A Non-Directional Beacon (NDB) Runway 30 Standard Instrument Approach Procedure (SIAP) for the Thomaston-Upson County Airport has recently been developed. Controlled airspace extending upward from 700 feet above ground level (AGL), is needed for instrument flight rules (IFR) operations when utilizing this SIAP. This action is intended to provide adequate Class E airspace for IFR operations at Thomaston, GA. The operating status of the airport will change from VFR operations to include IFR operations concurrent with publication of the SIAP.

EFFECTIVE DATE: 0901 U.T.C. October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Shipp, Jr., Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5591.

SUPPLEMENTARY INFORMATION:

History

On May 2, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Thomaston, Georgia, (59 FR 24990). The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the NDB Runway 30 SIAP serving the Thomaston-Upson County Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments relating to this Class E airspace proposal were received. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations extending upward from 700 feet or more above ground level are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order. The operating status of the airport will be changed from VFR operations to include IFR operations concurrent with publication of the SIAP.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Thomaston, GA, to accommodate a new NDB Runway 30 SIAP to Thomaston-Upson County Airport. Controlled airspace extending upward from 700 feet to 1200 feet AGL is needed for IFR operators executing the developed SIAP. The operating status of the airport will be changed from VFR operations to include IFR operations concurrent with publication of the SIAP.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

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

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

* * * * *

ASO GA E5 Thomaston, GA [New]

Thomaston-Upson County Airport, GA
(lat. 32°57'17" N, long. 84°11'14" W)
Yates NDB
(lat. 32°55'09" N, long. 84°11'14" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Thomaston-Upson County Airport and within 2.0 miles each side of the 124° bearing from the Yates NDB, extending from the 6.5-mile radius to 7 miles southeast of the NDB.

* * * * *

Issued in College Park, Georgia, on July 21, 1994.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–18810 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–15]

Modification of Class D Airspace; Oscoda, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Class D airspace for Oscoda, MI. Oscoda Wurtsmith Airport does not have an operating control tower, therefore, the Oscoda, MI controlled airspace designation was appropriately corrected to Class E2 in a previous docket action, and the reference to Class D is not required. The intended affect of this action is to provide the accurate description of controlled airspace for Oscoda, MI.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On May 24, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke Class D airspace at Oscoda, Michigan (59 FR 26766). Oscoda Wurtsmith Airport does not have an operating control tower, therefore, the Oscoda, MI controlled airspace designation was appropriately corrected to Class E2 in a previous docket action, and the reference to Class D is not required. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes Class D airspace at Oscoda, Michigan. Oscoda Wurtsmith Airport does not have an operating control tower, therefore, the Oscoda, MI controlled airspace designation was appropriately corrected to Class E2 in a previous docket action, and the reference to Class D is not required.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 General

* * * * *

AGL MI D Oscoda, MI [Removed]

* * * * *

Issued in Des Plaines, Illinois on July 19, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–18811 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 94–AGL–7]

Establishment of Class D and E Airspace; Kenosha, WI.; Revocation of Class E Airspace; Kenosha, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D and Class E4 airspace at Kenosha, WI. This action also revokes the Class E5 airspace at Kenosha, WI. An air traffic control tower has been commissioned at Kenosha Municipal Airport. The intended effect of this action is to provide adequate Class D airspace for instrument flight rules (IFR) operations and require two-way radio communication at Kenosha Municipal Airport, and to establish Class E airspace for instrument approach procedures in areas outside the Class D surface area.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Robert J. Woodford, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, April 4, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D and E4 Airspace at Kenosha Municipal Airport, Kenosha, WI (59 FR 15667). The proposal was to add controlled airspace extending upward from the surface designated as an extension to a Class D surface area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. Class D, Class E4 and Class E5 airspace designations are published respectively in Paragraphs 5000, 6004, and 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by

reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and E4 airspace designations listed in this document will be published subsequently in the Order. The Class E5 airspace designation listed in this document will be subsequently removed.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class D airspace with Class E arrival extensions at Kenosha Municipal Airport. An air traffic control tower was commissioned at Kenosha Municipal Airport. Controlled airspace at an airport with an operating control tower is designated as Class D airspace. The intended effect of this action is to provide adequate Class D airspace for IFR operations and require two-way radio communications at Kenosha Municipal Airport.

The Class D surface area does not completely contain six instrument approach procedures. This Class E4 airspace will contain the instrument approach procedures in controlled airspace without imposing a requirement on aircraft operating under visual flight rules within the Class E4 area to communicate with the Kenosha Municipal Airport air traffic control tower.

The Class E5 airspace at Kenosha Municipal Airport is revoked due to the commissioning of the air traffic control tower.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D airspace.

* * * * *

AGL WI D Kenosha, WI [New]

Kenosha Municipal Airport, WI
(lat. 42°35'45" N., long. 87°55'40" W.)

That airspace extending upward from the surface to and including 3,200 feet within a 4.1 mile radius of the Kenosha Municipal Airport.

Paragraph 6004 Class E airspace.

* * * * *

AGL WI E4 Kenosha, WI [New]

Kenosha Municipal Airport, WI
(lat. 42°35'45" N., long. 87°55'40" W.)
Kenosha VOR
(lat. 42°35'57" N., long. 87°55'54" W.)

That airspace extending upward from the surface within 2.4 miles each side of the Kenosha VOR 077° radial extending from the 4.1 mile radius of the Kenosha Municipal Airport to 7 miles northeast of the Kenosha Airport.

* * * * *

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

* * * * *

AGL WI E5 Kenosha, WI [Removed]

* * * * *

Issued in Des Plaines, Illinois on June 15, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94–18828 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 95

[Docket No. 27839; Amdt. No. 384]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: August 18, 1994.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice

and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on July 15, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, August 18, 1994:

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354, and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 384 Effective Date, August 18, 1994]

From	To	MEA
§ 95.1001 Direct Routes—U.S. 95.102 Amber Federal Airway 2, Is Amended To Read In Part		
Evansville, AK NDB *9100–MOCA	Browerville, AK NDB	*10000
§ 95.1001 Direct Routes—U.S. Is Amended To Read In Part		
Cuney, TX FIX *3000–MOCA	Nacogdoches, TX NDB	*4000
Lake Charles, LA VORTAC *1600–MOCA	Lufkin, TX VORTAC	*3000
		MAA–1700
Lufkin, TX VORTAC *2000–MOCA	Monroe, LA VORTAC COP 82 LFK	*8000
Lufkin, TX VORTAC *2100–MOCA	Palestine, TX NDB COP 53 LFK	*3200
Lufkin, TX VORTAC *2300–MOCA	Scurry, TX VORTAC COP 60 LFK	*4000
Scurry, TX Vortac *2200–MOCA	Nacogdoches, TX NDB COP 67 SCY	*4000
Is Amended To Delete		
Appin, TX FIX *1800–MOCA	Covex, LA FIX	*8000
Daisetta, TX VORTAC *1700–MOCA	Cocos, LA FIX	*8000
Daisetta, TX VORTAC *1700–MOCA	Espoe, LA	*8000
Honee, TX FIX *1600–MOCA	Giddy, TX FIX	*2200
Puerto Rico Routes		
Route 5 Is Amended To Read In Part		
Borinquen, PR VORTAC *5000–MRA **1800–MOCA	Roble, PR FIX	**3000
Roble, PR FIX *1300–MOCA	Pling, PR FIX	*6000
Route 6		
Coqui, PR FIX *5000–MRA **1300–MOCA	*Roble, PR FIX	**5000
Roble, PR FIX *1300–MOCA	Idaho, PR FIX	*16000
§ 95.6091 VOR Federal Airway 91 Is Amended To Read In Part		
Sardi, NY FIX *1800–MOCA	Calverton, NY VORTAC	*2500
§ 95.6126 VOR Federal Airway 126 Is Amended To Read In Part		
Bearz, IN FIX	Halie, IN FIX	3000
§ 95.6128 VOR Federal Airway 128 Is Amended To Read In Part		
Decee, IN FIX	Cincinnati, KY VORTAC	2800
§ 95.6212 VOR Federal Airway 212 Is Amended To Read In Part		
Oscer, TX FIX *1900–MOCA	Lufkin, TX VORTAC	*4000
§ 95.6306 VOR Federal Airway 306 Is Amended To Read In Part		
Navasota, TX VORTAC	Zmskl, TX FIX	2000
Zmskl, TX FIX *2300–MOCA	Cleep, TX FIX	*5000
Cleep, TX FIX	Daisetta, TX VORTAC	2000
§ 95.6340 VOR Federal Airway 340 Is Amended To Read In Part		
Bearz, IN FIX	Knox, IN VORTAC	3000
§ 95.6407 VOR Federal Airway 407 Is Amended To Read In Part		
Lufkin, TX VORTAC *1900–MOCA	Flimm, TX FIX	*5500
Flimm, TX FIX *1700–MOCA	Linen, LA FIX	*3000
§ 95.6422 VOR Federal Airway 422 Is Amended To Read In Part		
Chicago Heights, IL VORTAC	Knox, IN VORTAC	2800
§ 95.6477 VOR Federal Airway 477 Is Amended To Read In Part		
Humble, TX VORTAC *2000–MOCA	Leona, TX VORTAC	*3000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 384 Effective Date, August 18, 1994]

From	To	MEA
§ 95.6493 VOR Federal Airway 493 Is Amended To Read In Part		
Waterville, OH VOR/DME *2100–MOCA	Carleton, MI VORTAC	*3000
§ 95.6565 VOR Federal Airway 565 Is Amended To Read In Part		
College Station, TX VORTAC *1900–MOCA	Lufkin, TX VORTAC	*4000
§ 95.6569 VOR Federal Airway 569 Is Amended To Read In Part		
Silbe, TX FIX	Lufkin, TX VORTAC	2500

§ 95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

Airway segment		Changeover points	
From	To	Distance	From
V–2 Is Amended To Read In Part			
Rochester, NY VORTAC	Syracuse, NY VORTAC	13	Rochester

[FR Doc. 94–18829 Filed 8–2–94; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Chlortetracycline Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by the American Cyanamid Co. The supplemental NADA's provide for the safe and effective use of chlortetracycline hydrochloride (CTC HCl) soluble powder in both the drinking water of chickens and turkeys for control of certain bacterial diseases susceptible to CTC, and the drinking water of swine and cattle for control and treatment of certain bacterial diseases susceptible to CTC. The approvals reflect compliance with results of the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group's (DESI) evaluation of the drugs' effectiveness and FDA's conclusions concerning that evaluation.

EFFECTIVE DATE: August 3, 1994.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, submitted a supplement to its approved NADA 65–071 for Aureomycin® (chlortetracycline hydrochloride (CTC HCl)) Soluble Powder (available in 181 gram (g) (6.4 ounce (oz) packets and 2.3 kilogram (kg) (5 pound (lb) bags, with a concentration of 25 g CTC HCl/lb) and NADA 65–440 for Aureomycin® (CTC HCl) Soluble Powder Concentrate (available in 181 g (6.4 oz) and 726 g (25.6 oz) packets, with a concentration of 64 g CTC HCl/lb). The drug products are used to medicate drinking water to be administered to chickens, turkeys, swine, calves, beef cattle, and nonlactating dairy cattle in accordance with § 520.445b(d)(4) (21 CFR 520.445b(d)(4)). Both NADA's were originally approved on June 23, 1953, as antibiotic Form 6 applications.

The drugs were the subject of a NAS/NRC DESI evaluation of effectiveness (DESI 0113NV). The findings were published in the **Federal Register** of July 21, 1970 (35 FR 11646). NAS/NRC evaluated the drugs as probably effective for growth promotion and feed efficiency and for the treatment of animal diseases caused by pathogens sensitive to chlortetracycline. NAS/NRC stated:

(1) Claims made regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of";

(2) claims for growth promotion or stimulation are disallowed and claims for faster gains and/or feed efficiency should be stated as "may result in faster gains and/or improved feed efficiency under appropriate conditions";

(3) each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)"; if the disease cannot be so qualified the claim must be dropped;

(4) claims pertaining to egg production and hatchability should be changed to "May aid maintaining egg production and hatchability, under appropriate conditions, by controlling pathogenic microorganisms";

(5) the labels should warn that treated animals must actually be consuming enough medicated water or medicated feed to provide a therapeutic dosage under the conditions that prevail and, as a precaution, state the desired oral dose per unit of animal weight per day for each species as a guide to effective usage of the preparation in drinking water or feed; and

(6) effective blood levels are required for each recommended dosage.

FDA concurred with the NAS/NRC findings.

The NAS/NRC evaluation is concerned only with the drugs' effectiveness and safety to the treated animal. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites in food products derived from treated animals.

The American Cyanamid Co. filed supplemental NADA's which revised the labeling of its products to comply with the results of the NAS/NRC DESI review and FDA's conclusions. The supplemental NADA's are approved as of June 15, 1994, and the regulations are amended by revising § 520.445b (21 CFR 520.445b) to reflect the approvals.

Additionally, § 520.445b(b) is amended to reflect sponsor approvals as a result of this latest DESI finalization:

1. Drug sponsor no. 053389 (Pennfield Oil Co.) is currently codified for the uses

provided in § 520.445b(d)(3) and (d)(4). Actually, the approval is limited to the uses provided only in § 520.445b(d)(2)(i)(D) and (d)(3)(i)(A).

2. Drug sponsor no. 010042 (American Cyanamid Co.) is currently codified for the uses provided in § 520.445b(d)(1) and (d)(2). However, approval of its applications is now limited to the uses listed in § 520.445b(d)(4).

3. Drug sponsor no. 054273 (Fermenta Animal Health Co.) is codified for all of the current uses in § 520.445b(d)(4), which is being amended because the sponsor does not hold an approval for the claim added in paragraph (d)(4)(i)(C) of § 520.445b.

4. Drug sponsor no. 017274 (Feed Specialties Co., Inc.) is currently codified for the uses provided in § 520.445b(d)(4)(i) through (d)(4)(iii). However, this is being amended because the sponsor does not hold an approval for the claim added in paragraph (d)(4)(i)(C).

As a result of the DESI finalization, § 520.445b(d)(1) and (d)(2) are being removed (for claims no longer acceptable) and new paragraph (d)(4)(i)(C) is being added to reflect a claim for control of mortality due to fowl cholera caused by *Pasteurella multocida*.

Section 520.445b is further amended in paragraphs (d)(4)(iii)(B) and (d)(4)(iv)(B) to change the name of one of the causative agents, *Hemophilus*, to *Actinobacillus pleuropneumoniae*, the current scientific name.

Finally, § 520.445b is amended in paragraph (d)(4)(iv)(C) to add warning statements now required on the labeling.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals for food producing animals do not qualify for marketing exclusivity because the supplemental applications do not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) and new human food safety studies (other than bioequivalence or residue studies) essential to the approvals and conducted or sponsored by the applicant.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 520.445b is amended in paragraph (a) by adding ", 64," after "25.6" and ", 141," after "56.4"; by revising paragraphs (b), (d)(1), (d)(2), (d)(4)(iii)(B), (d)(4)(iii)(C), (d)(4)(iv)(B), and (d)(4)(iv)(C); by removing and reserving paragraph (d)(3); and by adding new paragraph (d)(4)(i)(C) to read as follows:

§ 520.445b Chlortetracycline powder (chlortetracycline hydrochloride or chlortetracycline bisulfate).

* * * * *

(b) *Sponsors.* See No. 053389 in § 510.600(c) of this chapter for conditions of use as in paragraphs (d)(1)(i)(A) and (d)(2)(i)(A) of this section; No. 010042 for conditions of use as in paragraph (d)(4) of this section: No. 054273 for conditions of use as in paragraphs (d)(4)(i)(A) and (B) and (d)(4)(ii) through (iv) of this section: No 017274 for conditions of use as in paragraphs (d)(4)(i)(A) and (B) and (d)(4)(ii) and (iii) of this section

* * * * *

(d) *Conditions of use.* (1) Use as chlortetracycline hydrochloride in drinking water as follows:

(i) *Swine.* (A) *Amount.* Ten milligrams per pound of body weight daily in divided doses.

(1) Indications for use. Control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia associated with *Pasteurella* spp., *Actinobacillus pleuropneumoniae* (*Hemophilus* spp.), and *Klebsiella* spp

(2) Limitations. Prepare a fresh solution twice daily; as sole source of chlortetracycline; administer for not more than 5 days; do not slaughter animals for food within 5 days of treatment.

(B) [Reserved]

(ii) [Reserved]

(2) Use as chlortetracycline hydrochloride in a drench or drinking water as follows:

(i) *Calves.* (A) *Amount.* Ten milligrams per pound of body weight daily in divided doses.

(1) Control and treatment of bacterial enteritis (scours) caused by *E. coli* and bacterial pneumonia (shipping fever) associated with *Pasteurella* spp., *A. pleuropneumoniae* (*Hemophilus* spp.), and *Klebsiella* spp.

(2) Limitations. Prepare fresh solution daily; as sole source of chlortetracycline; administer for not more than 5 days; do not slaughter animals for food within 24 hours of treatment; do not administer this product with milk or milk replacers; administer 1 hour before or 2 hours after feeding milk or milk replacers; a withdrawal period has not been established in preruminating calves; do not use in calves to be processed for veal.

(B) [Reserved]

(ii) [Reserved]

(3) [Reserved]

(4) * * *

(i) * * *

(C) *Amount.* One thousand milligrams per gallon.

(1) Indications for use. Control of mortality due to fowl cholera caused by *Pasteurella multocida* susceptible to chlortetracycline.

(2) Limitations. See paragraph (d)(4)(i)(A)(*2*) of this section.

* * * * *

(iii) * * *

(B) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *E. coli* and *Salmonella* spp. and bacterial pneumonia associated with *Pasteurella* spp., *Actinobacillus pleuropneumoniae* (*Hemophilus* spp.), and *Klebsiella* spp.

(C) *Limitations.* Prepare fresh solution daily; as sole source of chlortetracycline; do not use for more than 5 days; for 017274, 053389, and 054273 do not slaughter animals for food within 5 days of treatment; for 010042 do not slaughter animals for food within 24 hours of treatment.

(iv) * * *

(B) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *E. coli* and *Salmonella* spp. and bacterial pneumonia (shipping fever complex) associated with *Pasteurella* spp., *A. pleuropneumoniae* (*Hemophilus* spp.), and *Klebsiella* spp

(C) *Limitations.* Prepare fresh solution daily, use as a drench, as sole source of

chlortetracycline; do not use for more than 5 days; do not slaughter animals for food within 24 hours of treatment; do not use in lactating cattle; do not administer this product with milk or milk replacers; administer 1 hour before or 2 hours after feeding milk or milk replacers; a withdrawal period has not been established in preruminating calves; do not use in calves to be processed for veal.

Dated: July 27, 1994.

Robert C. Livingston,

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

[FR Doc. 94–18926 Filed 8–2–94; 8:45 am]

BILLING CODE 4160–01–F

UNITED STATES INFORMATION AGENCY

22 CFR Part 518

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

AGENCY: United States Information Agency.

ACTION: Interim Final Rule; request for comments.

SUMMARY: This interim final rule is in response to the Office of Management and Budget (OMB) publishing a final revised OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, in the **Federal Register** (58 FR 62992) on November 29, 1993. The revised Circular was developed by an interagency task force for governmentwide use in a common rule format to facilitate regulatory adoption by executive departments and agencies. In the published revised Circular, OMB specified as "required action" that, Federal agencies responsible for awarding and administering grants and other agreements to recipients described therein, shall adopt the language in the Circular unless other provisions are required by Federal statute or exceptions or deviations are approved by OMB. This interim final rule adopts the provisions of the revised Circular word-for-word.

DATES: This regulation is effective August 3, 1994. Written and signed comments must be received on or before October 3, 1994. This regulation will have a policy review three years from August 3, 1994.

ADDRESSES: Interested persons should submit written and signed comments to U.S. Information Agency, Office of Contracts, Grants Division, 330 C Street SW., Room 1611, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Maggie Ahern or Connie Stinson, U.S. Information Agency, Office of Contracts, Grants Division, 330 C Street SW., Room 1611, Washington, DC. 20547, (202) 205–5477.

SUPPLEMENTARY INFORMATION:

Background

This interim final rule incorporates and reflects the provisions of the Office of Management and Budget (OMB) issuance of revised OMB Circular A–110 at 58 FR 62992 into a new 22 CFR Part 518 of the USIA regulatory requirements for financial assistance. OMB Circular A–110 was originally issued by OMB in 1976 with minor revisions made in 1987. The standards it contained were structured into 15 attachments lettered A–O. An interagency task force also reviewed the circular in 1987 and recommended it be combined with OMB Circular A–102, Uniform Requirements for Grants and Agreements with State and Local Governments, as a consolidated "common rule". In November 1988, a proposed consolidated "common rule" was published in the **Federal Register** (53 FR 44716) but, due to adverse concerns by some university groups and Federal agencies it was not finalized and issued by OMB. In November 1990, another interagency task force was convened to review Circular A–110 and a revision in a "common rule" format was proposed and developed. This revision was published for comment in the **Federal Register** (57 FR 39018) in August 1992 and over 200 comments were received from all sources. All comments were considered in a final revision of Circular A–110 which was issued for governmentwide application in the **Federal Register** on November 29, 1993. Consequently, this rule is published as an interim final rule because of the previous request-for-comment process used in the development of the Circular, the large number of comments already received and considered by OMB and the Federal agencies, and the limited flexibility to revise the rule provided by OMB.

Authority: This interim final rule is issued under the authority of 31 U.S.C. 503 (the Chief Financial Officers Act), 31 U.S.C. 1111, 41 U.S.C. 405 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and E.O. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

Justification to Issue Interim Final Rule

Under the Administrative Procedures Act, to issue a final rule without notice of proposed rulemaking (NPRM), it is necessary to make a finding that issuing an NPRM would be impractical, unnecessary, or contrary to the public interest. As stated above, this rule is based on the revised OMB Circular A–110, that was developed by an interagency task force and received extensive public comment. The revised Circular specifies that Federal agencies responsible for awarding and administering grants and other agreements to recipients described therein, shall adopt the language in the Circular unless other provisions are required by Federal statute or exceptions or deviations are approved by OMB. This interim final rule adopts the provisions of the Circular word-for-word. Therefore, an NPRM would not allow the public to make comments that could have a significant impact on the content of the rule. This would make such an effort unnecessary.

List of Subjects in 22 CFR Part 518

Grants administration.

Dated: July 26, 1994.

Philip Rogers,

Director, USIA, Office of Contracts.

Title 22 of the Code of Federal Regulations is amended by adding part 518 to read as set forth below.

PART 518—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

Subpart A—General

Sec.

518.1 Purpose.
518.2 Definitions.
518.3 Effect on other issuances.
518.4 Deviations.
518.5 Subawards.

Subpart B—Pre-Award Requirements

518.10 Purpose.
518.11 Pre-award policies.
518.12 Forms for applying for Federal assistance.
518.13 Debarment and suspension.
518.14 Special award conditions.
518.15 Metric system of measurement.
518.16 Resource Conservation and Recovery Act.
518.17 Certifications and representations.

Subpart C—Post-Award Requirements

Financial and Program Management

518.20 Purpose of financial and program management.
518.21 Standards for financial management systems.
518.22 Payment.
518.23 Cost sharing or matching.
518.24 Program income.
518.25 Revision of budget and program plans.
518.26 Non-Federal audits.
518.27 Allowable costs.
518.28 Period of availability of funds

Property Standards

518.30 Purpose of property standards.
518.31 Insurance coverage.
518.32 Real property.
518.33 Federally-owned and exempt property.
518.34 Equipment.
518.35 Supplies and other expendable property.
518.36 Intangible property.
518.37 Property trust relationship.

Procurement Standards

518.40 Purpose of procurement standards.
518.41 Recipient responsibilities.
518.42 Codes of conduct.
518.43 Competition.
518.44 Procurement procedures.
518.45 Cost and price analysis.
518.46 Procurement records.
518.47 Contract administration.
518.48 Contract provisions.

Reports and Records

518.50 Purpose of reports and records.
518.51 Monitoring and reporting program performance.
518.52 Financial reporting.
518.53 Retention and access requirements for records.

Termination and Enforcement

518.60 Purpose of termination and enforcement.
518.61 Termination.
518.62 Enforcement.

Subpart D—After-the-Award Requirements

518.70 Purpose.
518.71 Closeout procedures.
518.72 Subsequent adjustments and continuing responsibilities.
518.73 Collection of amounts due.

Appendix A to Part 518—Contract Provisions

Subpart A—General

§518.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in §§ 518.4 and 518.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§518.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers; and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life or more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution or higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that

percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §§ 518.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in paragraph (e) of this section.

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.'s 12549 and 12689, "Debarment and Suspension."

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash

contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 518.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 518.4.

§ 518.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

§ 518.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 53 FR 9034 (3/11/88).

Subpart B—Pre-Award Requirements

§ 518.10 Purpose.

Sections 518.11 through 518.17 prescribes forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 518.11 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

§ 518.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the *Catalog of Federal Domestic Assistance* The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 518.13 Debarment and suspension.

Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension rule, implementing E.O.'s 12549 and 12689, "Debarment and Suspension." This rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 518.14 Special award conditions.

(a) Federal awarding agencies may impose additional requirements as needed, if an applicant or recipient:

(1) Has a history of poor performance,

(2) Is not financially stable,

(3) Has a management system that does not meet the standards prescribed in this part,

(4) Has not conformed to the terms and conditions of a previous award, or

(5) Is not otherwise responsible.

(b) Additional requirements may only be imposed provided that such applicant or recipient is notified in writing as to:

(1) The nature of the additional requirements,

(2) The reason why the additional requirements are being imposed,

(3) The nature of the corrective action needed,

(4) The time allowed for completing the corrective actions, and

(5) The method for requesting reconsideration of the additional requirements imposed.

§ 518.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205), declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

§ 518.16 Resource Conservation and Recovery Act.

Under the Act, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR Parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 518.17 Certification and representations.

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

Financial and Program Management

§ 518.20 Purpose of financial and program management.

Sections 518.21 through 518.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

§ 518.21 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 19.52. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 518.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b)(1) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(i) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(ii) Financial management systems that meet the standards for fund control and accountability as established in section § 518.21.

(2) Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or

project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless the conditions in paragraphs (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, "Managing Federal Credit Programs." Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in paragraph (i)(2) of this section, Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless the conditions in paragraphs (k)(1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. In keeping with Electric Funds Transfer rules, (31 CFR part 206), interest should be remitted to the HHS Payment Management System through an electric medium such as the FEDWIRE Deposit system. Recipients which do not have this capability should use a check. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

§ 518.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such

contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c) (1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if the conditions in paragraphs (g)(1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

§ 518.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 518.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income

may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§ 518.30 through 518.37).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

§ 518.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, "Cost Principles for Institutions of Higher Education," OMB Circular A–122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this part and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whether the conditions in paragraphs (h) (1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 518.27

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional

funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

§ 518.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) which implements OMB Circular A–128, "Audits of State and Local Governments."

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipients as incorporated into the award document.

§ 518.27 Allowable costs.

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 518.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

Property Standards

§ 518.30 Purpose of property standards.

(a) Sections 518.31 through 518.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 518.31 through 518.37.

§ 518.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 518.32 Real property.

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agencies.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

§ 518.33 Federally-owned and exempt property.

(a) Federally-owned property. (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) Exempt property. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is "exempt property." Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

§ 518.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order or priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property-management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5,000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of

the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

§ 518.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either cases, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

§ 518.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) Unless waived by the Federal awarding agency, the Federal Government has the right to the following:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of paragraph § 19.34(g).

§ 518.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

§ 518.40 Purpose of procurement standards.

Sections 518.41 through 518.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 518.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 518.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an

unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 518.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 518.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that the conditions in paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms or functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipient to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange timeframes for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use of services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms, and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by the implementation of E.O.'s 12549 and 12689, "Debarment and Suspension."

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

§ 518.45 Cost and price analysis.

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

§ 518.46 Procurement records.

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection,

(b) Justification for lack of competition when competitive bids or offers are not obtained, and

(c) Basis for award cost or price.

§ 518.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to

ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions, and specifications of the contract.

§ 518.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

Reports and Records

§ 518.50 Purpose of reports and records.

Sections 518.51 through 518.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 518.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 518.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 518.51(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 518.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be

required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in § 518.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 518.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph § 518.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g)(1)

and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

§ 518.60 Purpose of termination and enforcement.

Sections 518.61 and 518.62 set forth uniform suspension, termination and enforcement procedures.

§ 518.61 Termination.

(a) Awards may be terminated in whole or in part only if the conditions in paragraphs (a)(1), (2) or (3) of this section apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 518.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

§ 518.62 Enforcement.

(a) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 518.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Without further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if the conditions in paragraphs (c) (1) or (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see § 518.13).

Subpart D—After-the-Award Requirements

§ 518.70 Purpose.

Sections 518.71 through 518.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

§ 518.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§ 518.31 through 518.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowing costs resulting from the final audit.

§ 518.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 518.26.

(4) Property management requirements in §§ 518.31 through 518.37.

(5) Records retention as required in § 518.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 518.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

§ 518.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by the provisions of paragraphs (a) (1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking over action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR chapter II, "Federal Claims Collection Standards."

Appendix A to Part 518—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the right of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension" and 49 CFR part 29. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

[FR Doc. 94–18678 Filed 8–2–94; 8:45 am]

BILLING CODE 6230–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–94–016]

Special Local Regulations for Marine Events; 16th Annual Wilmington Family YMCA—Physicians Health Plan Triathlon, Wrightsville Channel, Wrightsville Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.513 for the 16th Annual Wilmington Family YMCA—Physicians Health Plan Triathlon. The swim portion of the event will be held in Wrightsville Channel between daybeacon 18 (LLNR 28050) and daybeacon 23 (LLNR 28065). These regulations restrict vessel traffic within the regulated area during the event. These Special Local Regulations are considered necessary to control vessel traffic and to provide for the safety of the participants in the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.513 are effective from 6 a.m. to 9:45 a.m., September 11, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Fort Macon (919) 247–4548.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR Bill Shelton, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Wilmington Family YMCA submitted an application to hold the swim portion of the 16th Annual Wilmington Family YMCA—Physicians Health Plan Triathlon at Wrightsville Beach, North Carolina. The swim portion of the triathlon will consist of approximately 700 swimmers racing in a section of the Wrightsville Channel. The regulations in 33 CFR 100.513 govern the activities of the swim portion of the triathlon in Wrightsville Channel between Wrightsville Channel Daybeacon 18 (LLNR 28050) and Wrightsville Channel Daybeacon 23 (LLNR 28065). Because the swim portion of the triathlon is an event of the type contemplated by these regulations, the safety of the participants will be enhanced by the implementation of the special local regulations. The waterway will be closed during the event. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted.

Dated: July 8, 1994.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District by Direction of the Commandant.

[FR Doc. 94–18794 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 100

[CGD 05–94–054]

Special Local Regulations for Marine Events; Hampton Bay Days Festival; Hampton River, Hampton, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation.

SUMMARY: This notice implements 33 CFR 100.508 for the Hampton Bay Days Festival. The event will be held on the Hampton River. The special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATES: The regulations in 33 CFR 100.508 are effective from 7 a.m., September 9, 1994 until 7 p.m., September 11, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204 or Commander, Coast Guard Group Hampton Roads (804) 483–8567.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Monica Lombardi, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Hampton Bay Days, Inc. submitted an application to hold the Hampton Bay Days Festival on September 9, 10, and 11, 1994. The marine portion of the festival will consist of a parade of boats, water ski shows, and assorted boat races. There will also be a fireworks display launched from within the regulated area. The regulations in 33 CFR 100.508 govern the activities of the Hampton Bay Days Festival held on the Hampton River, in and around downtown Hampton, Virginia. Implementation of 33 CFR 100.508 also implements as special anchorage areas the spectator anchorages designated in that section for use by vessels during the event. Vessels less than 20 meters long may anchor in these areas without displaying the anchor lights and shapes required by Inland Navigation Rule 30 (33 USC 2030(g)). These regulations were specifically established to enhance the safety of the participants in and spectators of the marine portions of the Hampton Bay Days Festival and the regulations are hereby implemented.

Date: July 7, 1994.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District by direction of the Commandant.

[FR Doc. 94–18795 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Parts 100 and 165

[CGD–94–057]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between April 1, 1994 and June 30, 1994, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between April 1, 1994 and June 30, 1994, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander, Thomas R. Cahill, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to assure the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period April 1, 1994 and June 30, 1994, unless otherwise indicated.

Thomas R. Cahill,

Lieutenant Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

Docket No.	Quarterly report location	Type	Effective date
Baltimore 94–002	Potomac River, MD	Safety Zone	5/21/94
Baltimore 94–010	Annapolis, MD	Safety Zone	5/21/94
Baltimore 94–012	Annapolis, MD	Security Zone	5/25/94
Baltimore 94–016	Baltimore, MD	Safety Zone	6/14/94
Baltimore 94–017	Alexandria, VA	Safety Zone	6/10/94
Baltimore 94–018	Cambridge, MD	Safety Zone	6/25/94
Charleston 94–047	Cooper River, Charleston, SC	Safety Zone	4/8/94
Charleston 94–053	Cooper River, Charleston, SC	Safety Zone	4/20/94
Charleston 94–063	Charleston, SC	Safety Zone	6/2/94
Charleston 94–068	Charleston, SC	Safety Zone	6/5/94
Corpus Christi 94–009	Brownsville Ship Channel, TX	Safety Zone	3/22/94
Corpus Christi 94–011	Brownsville Ship Channel, TX	Safety Zone	3/31/94
Hampton Roads 94–006	North Landing River	Safety Zone	6/2/94
Houston 94–001	Houston Ship Channel	Safety Zone	2/18/94
Houston 94–002	Houston Ship Channel	Safety Zone	2/21/94
Huntington 94–002	Ohio River, M. 188.0 to M. 190.0	Safety Zone	5/27/94
Jacksonville 94–041	St. Johns River, Jacksonville, FL	Safety Zone	4/10/94
Jacksonville 94–042	St. Johns River, Jacksonville, FL	Safety Zone	4/9/94
Jacksonville 94–057	Jacksonville, FL	Safety Zone	5/13/94
Jacksonville 94–061	Jacksonville, FL	Safety Zone	5/7/94
Jacksonville 94–065	Jacksonville, FL	Safety Zone	5/28/94
Jacksonville 94–066	Jacksonville, FL	Safety Zone	6/4/94
LA/Long Beach 94–001	T/V Sunny Lady Los Angeles/Long Beach, CA	Safety Zone	3/30/94
LA/Long Beach 94–002	T/V Sunny Lady Los Angeles/Long Beach, CA	Safety Zone	5/2/94
Memphis 94–001	Mississippi River, M. 735.0 to M. 735.4	Safety Zone	5/21/94
Miami 94–044	Pompano Beach, FL	Safety Zone	4/23/94
Miami 94–058	Miami, FL	Security Zone	4/21/94
Miami 94–059	Miami, FL	Security Zone	4/22/94
Morgan City 94–002	Morgan City/Port Allen, LA	Safety Zone	3/26/94
New Orleans 94–010	Mississippi River, M. 94.0 to M. 97.0	Safety Zone	3/18/94
New Orleans 94–011	Mississippi River, M. 94.0 to M. 97.0	Safety Zone	3/20/94
New Orleans 94–012	Mississippi River, M. 94.0 to M. 97.0	Safety Zone	3/24/94
Port Arthur 94–007	USNS Antares, Gulf of Mexico	Safety Zone	4/24/94
Port Arthur 94–008	Port of Beaumont, TX	Safety Zone	4/23/94
San Francisco Bay 94–007	San Francisco Bay, CA	Safety Zone	5/21/94
San Francisco Bay 94–008	San Francisco Bay, CA	Safety Zone	6/30/94
San Juan 94–062	St. Thomas, U.S. Virgin Islands	Safety Zone	6/16/94
San Juan 94–067	San Juan, PR	Safety Zone	5/29/94
St. Louis 94–007	Mississippi River, M. 179.0 to M. 184.0	Safety Zone	4/13/94
St. Louis 94–011	Mississippi River, M. 747.0 to M. 749.0	Safety Zone	6/17/94
Wilmington 94–003	Camp Lejeune, NC	Safety Zone	5/2/94
01–94–002	Port of NY & NJ	Safety Zone	6/2/94
01–94–008	Port of NY & NJ	Safety Zone	5/2/94
01–94–012	F/V Lady Lynn, New London, CT	Safety Zone	2/27/94
01–94–021	Hudson River, NY	Safety Zone	6/11/94
01–94–027	Plymouth, MA	Safety Zone	5/22/94
01–94–029	Providence River, RI	Safety Zone	5/15/94
01–94–031	Narragansett Bay, East Passage, RI	Safety Zone	6/17/94

Docket No.	Quarterly report location	Type	Effective date
01-94-033	Niantic, CT	Safety Zone	5/7/94
01-94-040	New York Bay, Liberty Island, NY & NJ	Safety Zone	5/1/94
01-94-041	Boston, MA	Safety Zone	6/19/94
01-94-053	Upper NY Bay, NY and NJ	Safety Zone	5/26/94
01-94-054	New York Bay, Ellis Island, NY & NJ	Safety Zone	6/12/94
01-94-055	East River, NY	Security Zone	5/9/94
01-94-056	East River, NY	Safety Zone	5/10/94
01-94-075	New London, CT	Safety Zone	6/10/94
01-94-082	Lower New York Bay, Sandy Hook, NJ	Safety Zone	6/16/94
01-94-083	East River, NY	Safety Zone	6/18/94
01-94-088	Jamaica Bay and Connecting Waterways, NY	Drawbridge	6/17/94
01-94-099	East River, NY	Security Zone	7/27/94
02-94-019	Mississippi River, M. 736.0 to M. 736.5	Special Local	5/29/94
02-94-025	Allegheny River, M. 0.5 to M. 0.8	Special Local	5/14/94
02-94-030	Ohio River, M. 943.5 to M. 944.5	Special Local	6/11/94
02-94-032	Ohio River, M. 461.0 to M. 462.0	Reg Nav Area	6/14/94
02-94-033	Ohio River, M. 220.0 to M. 221.0	Special Local	6/11/94
02-94-034	Ohio River, M. 603.1 to M. 604.5	Special Local	6/19/94
02-94-039	Tennessee River, M. 465.0 to M. 466.0	Special Local	6/26/94
05-94-028	New Bern, NC	Special Local	5/21/94
07-94-048	Ft. Lauderdale, FL	Special Local	5/21/94
07-94-069	Augusta, GA	Special Local	6/10/94
08-94-007	Lake Charles, LA	Special Local	5/7/94
09-94-009	Lake Erie, Geneva-on-the-Lake, OH	Special Local	5/29/94
09-94-014	Toledo, OH	Safety Zone	5/25/94
09-94-017	Burnham Park Harbor, Lake Michigan	Security Zone	6/16/94
09-94-021	Detroit, MI	Safety Zone	6/22/94
09-94-023	Saginaw River, Bay City, MI	Safety Zone	6/26/94

[FR Doc. 94-18793 Filed 8-2-94; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 160

[CGD 94-027]

RIN 2115-AE82

Notice of Hazardous Conditions

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is amending the rule that requires notice of hazardous conditions. The amended rule will clarify the conditions requiring notice and the parties responsible for providing notice; it will eliminate any confusion that might exist in determining whether a particular incident is reportable and, if so, by whom. It should forestall another disaster such as the derailment of a passenger train near Mobile, Alabama, in September 1993.

DATES: This rule is effective on August 3, 1994. Comments must be received on or before December 1, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA, 3406) [CGD 94-027], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant John P. Sifling, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MPS-3), (202) 267-0491, 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 94-027] and the specific section of this interim rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule 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 the 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 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 Lieutenant John P. Sifling, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Patrick J. Murray, Project Counsel, Office of the Chief Counsel.

Regulatory Information

This rule is being published as an interim rule and is being made effective on the date of publication. The Coast Guard has determined that it would be contrary to the public interest to delay publication of this amendment, which clarifies existing law, imposes no new regulatory requirements, and involves no significant change in policy. For these good reasons, the Coast Guard finds, under 5 U.S.C. 553 (b)(3) and

(d)(3), that both notice and public hearing on the notice, before the effective date of this rule, are unnecessary and that this rule should be made effective less than 30 days after publication.

Background and Purpose

The derailment of the Amtrak Sunset Limited, a passenger train, on September 22, 1993, with extensive injury and loss of life, resulted in a study by the Coast Guard entitled *Review of Marine Safety Issues Related to Uninspected Towing Vessels*. This study, conducted jointly by the Office of Navigation Safety and Waterway Services (G–N) and the Office of Marine Safety, Security, and Environmental Protection (G–M), provided the Commandant of the Coast Guard with a number of recommendations to enhance safety in the towboat industry. (Persons may review this study at the office of the Marine Safety Council at the address under "ADDRESSES.") One of these recommendations called for "a regulatory project to amend 33 CFR 160.215 to clearly indicate that the required notice of a hazardous condition includes a hazardous condition caused by a vessel or its operation even when the hazardous condition is not on board the vessel." The Commandant concurred, and directed the Division of Port Safety and Security (G–MPS), Office of Marine Safety, Security, and Environmental Protection, to initiate the recommended regulatory project. On March 2, 1994, the Coast Guard announced [59 FR 10031] a public meeting to help guide the project. On April 4, 1994, the meeting occurred.

Discussion of Rule

This interim rule amends the existing rule in one editorial and three substantive ways. First, it revises 33 CFR 160.203, Definitions, to redefine "hazardous condition." Second, it revises 33 CFR 160.215, Notice of hazardous conditions, by including among reporting-criteria for hazardous conditions, along with any such condition actually aboard a vessel, any caused by the operation of a vessel. Although current § 160.203 defines such a condition as any "that could adversely affect the safety of any vessel, bridge, structure, or shore area * * *", the Coast Guard suspects potential for confusion regarding the responsibility for giving notice under certain circumstances. This confusion might arise from current § 160.215 itself, which prescribes notice only "whenever there is a hazardous condition on board a vessel [emphasis added]." The Coast Guard is concerned that owners, masters, agents, or persons in charge (or, from now on [see below], operators) might misinterpret this to cover such a condition aboard a vessel and yet not one that adversely affects, as the definition specifies, the safety of other vessels, bridges, structures, or shore areas, or the environmental quality of ports, harbors, and navigable waters of the United States. Third, this rule adds the term "operator" to the list of those responsible for giving notice. Often, a vessel is owned by one company but operated by another. An operator must bear responsibility for the action of its employees—particularly with regard to foreign vessels, where the master and crew are not licensed in the United States. Making "operator" explicit will clarify the operator's responsibility for giving notice of hazardous conditions. Fourth, this rule supplies a parenthetical cross-reference to the requirement of a less-urgent but more-detailed written report whenever the hazardous conditions involves a "marine casualty" within the meaning of 46 CFR part 4.

Regulatory Evaluation

This interim rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding rests on the determination that this rule clarifies an existing requirement and does not place any new requirement on the public.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard has reviewed this interim rule for potential impact on small entities. Because this rule does not place any new requirements on the public, the Coast Guard has determined that it will have no economic impact on small entities. If you nonetheless think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see "ADDRESSES") explaining why you think it qualifies and to what degree this rule will economically affect it.

Collection of Information

This interim rule contains no new collection-of-information requirements under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

Federalism

The Coast Guard has analyzed this interim rule under the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this interim rule and concluded that, under § 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule is an administrative matter within the meaning of sub-§ 2.B.2.1. of that Instruction that clearly has no environmental impact. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 160 as follows:

TITLE 33 [AMENDED]

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

1. The citation of authority for part 160 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. The definition of *Hazardous condition* in § 160.203 is revised to read as follows:

§ 160.203 Definitions.

* * * * *

Hazardous condition means any condition that may adversely affect (1) the safety of any vessel, bridge, structure, or shore area or (2) the

environmental quality of any port, harbor, or navigable waterway of the United States. It may—but need not—involve collision, allision, fire, explosion, grounding, leaking, damage injury or illness of a person aboard, or manning-shortage.

* * * * *

§§ 160.207, 160.211, 160.213 [Amended]

3. Sections 160.207, 160.211, and 160.213 are amended by replacing the words "owner, master, agent or person in charge" wherever they appear with the words "owner, agent, master, operator, or person in charge".

4. Section 160.215 is revised to read as follows:

§ 160.215 Notice of hazardous conditions.

Whenever there is a hazardous condition either aboard a vessel or caused by a vessel or its operation, the owner, agent, master, operator, or person in charge shall immediately notify the nearest Coast Guard Marine Safety office or Group office. (Compliance with this section does not by itself discharge the duty of compliance with 46 CFR 4.05–10.)

Dated: July 15, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–18792 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 165

[COTP Baltimore 94–024]

RIN 2115–AA97

Safety Zone Regulation; Kent Narrows Hydroplane Races, Kirwan Creek, Hog Island, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Coast Guard Marine Safety Office Baltimore is establishing a safety zone for the Kent Narrows Hydroplane Races. This safety zone is necessary to control spectator craft and to provide for the safety of life and property on U.S. navigable waters during the event. Entry into this zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation will be effective from 12 p.m. until 6 p.m. on August 6, 1994 and again on August 7, 1994 encompassing the same times.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Timothy P. Ryan, U.S. Coast Guard Marine Safety Office Baltimore, Custom House, 40 South Gay Street, Baltimore, Maryland 21202–4022, (410) 962–2651.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. The application to hold this event was not submitted until June 1, 1994 to Coast Guard Group Baltimore and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Background and Purpose

The Kent Narrows Racing Association filed an application with Coast Guard Group Baltimore requesting Coast Guard assistance to control spectator craft during the Kent Narrows Hydroplane Races. Due to the possible hazards associated with this event, the Coast Guard has determined that a safety zone is necessary to ensure the safety of spectators and participants.

Discussion of Regulations

The Coast Guard Marine Safety Office Baltimore is establishing a safety zone on Kirwan Creek just off of Hog Island for the Kent Narrows Hydroplane Races. The Kent Narrows Hydroplane Races will feature groups of high performance hydroplane's racing around a set course near the mouth of Kirwan Creek at speeds in excess of 130 miles per hour. This safety zone will encompass all waters of Kirwan Creek that lie 200 yards on all sides of a line that connects the following points: 38 degrees 57 minutes 56 seconds north, 076 degrees 14 minutes 58 seconds west to 38 degrees 57 minutes 36 seconds north, 076 degrees 15 minutes 24 seconds west.

Since the mouth of Kirwan Creek will not be completely closed down during this event, vessel traffic should not be severely disrupted.

Spectator vessels that wish to watch the race may anchor outside of the safety zone, but they may not anchor in or block a navigable channel.

Drafting Information

The drafters of this regulation are Chief Warrant Officer Timothy P. Ryan, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Commander Christoper A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Do to the location of this safety zone the Coast Guard expects the impact of this rule to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.C. of Commandant Instruction M16475.1B, and actions to protect public safety have been determined to be categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule will not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. In part 165 a temporary section 165.T05–067 is added to read as follows:

§ 165.T05–067 Safety Zone: Kent Narrows Hydroplane Races, Kirwan Creek, Hog Island, MD.

(a) *Location.* The following area is a safety zone: All waters of Kirwan Creek that lie 200 yards either side of a line that connects the following points:

Latitude	*Longitude*
38°57'56" N.	076°14'58" W.,
	thence to
38°57'36" N.	076°15'24" W.

(b) *Definitions.* The *designated representative of the Captain of the Port* means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(c) *General information.* The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962–5100. The Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF–FM channels 13 and 16.

(d) *Regulations.* (1) Entry into this safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel which enters into or operates in this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(e) *Effective date.* This section is effective from 12 p.m. until 6 p.m. on August 6, 1994 and again on August 7, 1994 encompassing the same times.

Dated: July 26, 1994.

G.S. Cope,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 94–18839 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD01–94–114]

RIN 2115–AA97

Safety Zone; Yachts for All Seasons, Inc. Fireworks, Upper New York Bay, NY and NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a fireworks program located in Federal Anchorage 20C in the Upper New York Bay. This event will take place on August 3, 1994, from 10 p.m. until 11:30 p.m. and will temporarily close all waters of Federal Anchorage 20C in the Upper New York Bay, within a 300 yard radius from the center point of two fireworks barges anchored together approximately 300 yards east of Liberty Island, New York. This safety zone will preclude all vessels from transiting this portion of the Upper New York Bay and is needed to protect the boating public from the hazards associated with fireworks exploding in the area.

DATES: This rule is effective from 10 p.m. until 11:30 p.m. on August 3, 1994, unless terminated sooner by the Captain of the Port, New York.

FOR FURTHER INFORMATION CONTACT: LT R. Trabocchi, Project Manager, Captain of the Port, New York (212) 668–7933.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are LT R. Trabocchi, Project Manager, Captain of the Port, New York and CDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for not publishing an NPRM as well as making it effective less than 30 days after **Federal Register** publication. Due to the date this application was received, there was insufficient time to draft and publish a notice of proposed rulemaking that allows for a reasonable comment period prior to the event. There was also insufficient time for publication of this temporary final rule 30 days prior to the event. The delay encountered if normal rulemaking procedures were followed would effectively cancel this event. Cancellation of this event is contrary to public interest.

Background and Purpose

Fireworks by Grucci submitted an application to hold a fireworks program in the waters of the Upper New York Bay, off of Liberty Island, New York. This regulation establishes a temporary safety zone in the waters of Federal Anchorage 20C in the Upper New York Bay within a 300 yard radius from the center point of two fireworks barges anchored together approximately 300 yards east of Liberty Island at or near 40°41'17" N latitude, 74°02'25" W longitude. This safety zone will preclude all vessels from transiting this portion of the Upper New York Bay and is needed to protect boaters from the hazards associated with fireworks exploding in the area.

Regulatory Evaluation

This regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This safety zone will close a portion of the Upper New York Bay to all vessel traffic between 10:00 p.m. and 11:30 p.m. on August 3, 1994, unless terminated sooner by the Captain of the Port, New York. Although this regulation will prevent traffic from transiting this area, the effect of this regulation will not be significant for several reasons. Due to the fact that this safety zone will not impact any navigable channel; that Federal Anchorage 20C is minimally used so no vessel is expected to be displaced by this event; that the duration of the event is limited: that the event is at a late hour; and that extensive, advance advisories will be made to the maritime community, the impact of this regulation is expected to be minimal. In addition, there are sufficient alternate anchorage areas in the immediate vicinity for mariners to anchor if desired.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this regulation 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).

For the reasons given in the Regulatory Evaluation, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it is an action under the Coast Guard's statutory authority to promote maritime safety and protect the environment, and thus is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is included in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulations

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–114 is added to read as follows:

§ 165.T01–114 Yachts for all Seasons, Inc. Fireworks, Upper New York Bay, New York and New Jersey.

(a) *Location.* All waters of Federal Anchorage 20C in Upper New York Bay, within a 300 yard radius from the center point of two fireworks barges anchored together approximately 300 yards east of Liberty Island, New York, at or near 40°41'17" N latitude, 74°02'25" W longitude.

(b) *Effective period.* This section is effective from 10 p.m. until 11:30 p.m. on August 3, 1994, unless terminated sooner by the Captain of the Port, New York.

(c) *Regulations.* (1) The general regulations contained in 33 CFR section 165.23 apply to this safety zone.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: July 25, 1994.

T.H. Gilmour,

Captain, U.S. Coast Guard Captain of the Port, New York.

[FR Doc. 94–18838 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3724 /R2073; FRL–4904–2]

RIN 2070–AB78

Pesticide Tolerance for Tebuconazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodities peanuts and peanut hulls. Miles, Inc., petitioned EPA for this regulation to establish a maximum permissible level for residues of the fungicide.

EFFECTIVE DATE: This regulation becomes effective July 15, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 9F3724/R2073], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Steve Robbins, Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of March 23, 1989 (54 FR 12009), which announced that Miles, Inc., Agricultural Division (formerly Mobay Corp., Agricultural Chemicals Division), P.O. Box 4913, Kansas City, MO 64120-0013, had submitted pesticide petition (PP) 9F3724 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), propose to amend 40 CFR part 180 by establishing tolerances for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodities barley grain at 2.0 parts per million (ppm), barley grain forage at 5.0 ppm, barley straw at 5.0 ppm, grapes at 2.0 ppm, grass seed cleanings (including hulls) at 25.0 ppm, grass seed straw (including chaff) at 30.0 ppm, peanuts at 0.05 ppm, peanut hulls at 3.5 ppm, peanut hay at 50.0 ppm, raisins at 3.0 ppm, wheat grain at 0.40 ppm, wheat grain forage at 4.5 ppm and wheat straw at 19.0 ppm.

Miles, Inc., has amended the petition to propose amending 40 CFR part 180 by establishing a regulation to permit the residues of the fungicide tebuconazole in or on peanuts at 0.1 ppm and peanut hulls at 4.0 ppm. This was announced as a notice in the **Federal Register** of June 6, 1994 (59 FR 29291).

In previous amendments to the cited pesticide petition, requested by Miles,

Inc., all commodities other than peanuts and peanut hulls (peanut hay, barley grain, barley grain forage, barley straw, grapes, grass seed cleanings including hulls, grass seed straw including chaff, raisins, wheat grain, wheat grain forage, and wheat straw) were withdrawn.

Comments on the Amended Notice of Filing

Comments have been received in reponse to the June 6, 1994 notice of filing.

Comments were received asserting that tebuconazole concentrates in peanut oil, based on the previously proposed food additive petition (FAP) for tebuconazole in peanut oil and the assumption that tebuconazole therefore concentrates during processing in peanut oil. The commenter asked how EPA could proceed to grant the section 408 tolerances for peanuts without also addressing the section 409 food additive regulation for peanut oil.

EPA's response. Tebuconazole does in fact concentrate in peanut crude oil. However, EPA does not regulate peanut crude oil; instead, EPA regulates the peanut refined oil used in commerce and consumed by humans. Initial tebuconazole peanut processing studies and the resulting proposed food additive regulation in/on peanut oil indicated concentration of tebuconazole in both peanut crude and refined oil, but those studies did not represent commercial peanut oil refining procedures since they did not include oil bleaching and deodorization.

A subsequent peanut processing study did include oil bleaching and deodorization and these additional refining operations, which are used in commercial peanut oil refining, resulted in a 93-percent reduction in tebuconazole residues. Therefore, a section 409 food additive regulation for tebuconazole in/on peanut oil is not required.

Tebuconazole has been shown to concentrate in peanut soapstock. Based upon recently acquired information, EPA has found that peanut soapstock is no longer used as an animal feed. Therefore, an FAP for tebuconazole in peanut soapstock is not required.

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance include:

1. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 34.8 milligrams per kilogram of body weight per day (mg/kg bw/day) (400 ppm) and a lowest effect level (LEL) of 171.7 mg/kg bw/day (1600 ppm) in males, based on decreased body weight gains and histological changes in the adrenals. For females, the NOEL was 10.8 mg/kg bw/day (100 ppm) and the LEL was 46.5 mg/kg bw/day (400 ppm) based on decreased body weights, decreased body weight gains, and histological changes in the adrenals.

2. A 90-day dog feeding study with a NOEL of 200 ppm (73.7 mg/kg bw/day in males and 73.4 mg/kg bw/day in females) and a LEL of 1000 ppm (368.3 mg/kg bw/day in males and 351.8 mg/kg bw/day in females). The LEL was based on decreases in mean body weights, body weight gains, and food consumption, and an increase in liver *N*-demethylase activity.

3. A 1-year dog feeding study with a NOEL of 1 mg/kg bw/day (40 ppm) and a LEL of 5 mg/kg bw/day (200 ppm), based on lenticular and corneal opacity and hepatic toxicity in either sex (the current Reference Dose was determined based on this study). A subsequent 1-year dog feeding study, using lower doses to further define the NOEL for tebuconazole, defines a systemic LOEL of 150 ppm (based on adrenal effects in both sexes) and a systemic NOEL of 100 ppm.

4. A 2-year rat chronic feeding study defined, a NOEL of 7.4 mg/kg bw/day (100 ppm) and a LEL of 22.8 mg/kg bw/day (300 ppm) based on body weight depression, decreased hemoglobin, hematocrit, MCV and MCHC, and increased liver microsomal enzymes in females. Tebuconazole was not oncogenic at the dose levels tested (0, 100, 300, 1000 ppm).

5. A rat oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and a LEL of 60 mg/kg bw/day based on elevation of absolute and relative liver weights. For developmental toxicity, a NOEL of 30 mg/kg bw/day and a LEL of 60 mg/kg bw/day was determined, based on delayed ossification of thoracic, cervical and sacral vertebrae, sternum, fore and hind limbs and increase in supernumerary ribs.

6. A rabbit oral developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and a LEL of 100 mg/kg bw/day based on depression of body weight gains and food consumption. A developmental NOEL of 30 mg/kg bw/day and a LEL of 100 mg/kg bw/day were based on increased post-implantation losses, from both early and late resorptions

7. A mouse oral developmental toxicity study with a maternal NOEL of 10 mg/kg bw/day and a LEL of 20 mg/kg bw/day based on a supplementary study indicating reduction in hematocrit and histological changes in liver. A developmental NOEL of 10 mg/kg bw/day and a LEL of 30 mg/kg bw/day based on dose-dependent increases in runts/dam at 30 and 100 mg/kg bw/day.

8. A mouse dermal developmental toxicity study with a maternal NOEL of 30 mg/kg bw/day and a LEL of 60 mg/kg bw/day based on a supplementary study indicating increased liver microsomal enzymes and histological changes in liver. The NOEL for developmental toxicity in the dermal study in the mouse is 1000 mg/kg bw/day, the highest dose tested (HDT).

9. A two-generation rat reproduction study with a dietary maternal NOEL of 15 mg/kg bw/day (300 ppm) and a LEL of 50 mg/kg bw/day (1000 ppm) based on depressed body weights, increased spleen hemosiderosis and decreased liver and kidney weights. A reproductive NOEL of 15 mg/kg bw/day (300 ppm) and a LEL of 50 mg/kg bw/day (1000 ppm) were based on neonatal birth weight depression.

10. An Ames mutagenesis study in Salmonella that showed no mutagenicity with or without metabolic activation.

11. A micronucleus mutagenesis assay study in mice that showed no genotoxicity.

12. A sister chromatid exchange mutagenesis study using CHO cells that was negative at dose levels 4 to 30 µg/ml without activation or 15 to 120 µg/ml with activation.

13. An unscheduled DNA synthesis (UDS) study that was negative for UDS in rat hepatocytes.

Additionally, a mouse oncogenicity study at dietary levels of 0, 20, 60, and 80 ppm for 21 months did not reveal any oncogenic effect for tebuconazole at any dose tested. Because the Maximum Tolerated Dose (MTD) was not reached in this study, the study was classified as supplementary. A followup mouse study at higher doses (0, 500, 1500 ppm in the diet), with an MTD at 500 ppm, revealed statistically significant incidences of hepatocellular adenomas and carcinomas in males and carcinomas in females. The initial and follow-up studies, together with supplementary data submitted by Miles, Inc., were classified as core minimum.

The Office of Pesticide Programs' Health Effects Division's Carcinogenicity Peer Review Committee (CPRC) has classified tebuconazole as a Group C carcinogen (possible human carcinogen). This classification is based on the Agency's "Guidelines for Carcinogen Risk Assessment" published in the Federal Register of September 24, 1986 (51 FR 33992). The Agency has chosen to use the reference dose calculations to estimate human dietary risk from tebuconazole residues. EPA

believes any cancer risk to humans from consumption of tebuconazole residues to be negligible.

The Reference Dose (RfD) is established at 0.01 mg/kg of body weight (bwt)/day, based on a lower NOEL of 1 mg/kg bwt/day from the first of two 52-week feeding studies in dogs, and an uncertainty factor of 100. The Theoretical Maximum Residue Contribution (TMRC) from the current action is estimated at 0.000007 mg/kg bwt/day and utilizes 0.07 percent of the RfD for the general population of the 48 States. The TMRCs for the most highly exposed subgroups, children (1 to 6 years old) and children (7 to 12 years old) are 0.000024 mg/kg bwt/day (0.24% of the RfD) and 0.000017 mg/kg bwt/day (0.17 percent of the RfD), respectively.

The nature of the residue in peanuts is adequately understood. An adequate analytical method, high-pressure liquid chromatography, is available for enforcement purposes.

The enforcement methodology has been submitted to the Food and Drug Administration for publication in the Pesticide Analytical Manual, Vol. II (PAM II). Because of the long lead time for publication of the method in PAM II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703) 305-5232.

Miles has withdrawn proposed tebuconazole tolerances in animal tissues, milk and eggs. The Agency has determined that, with the label restriction against feeding peanut hay, there is no reasonable expectation that secondary residues will occur in milk, eggs or meat of livestock or poultry as a result of the proposed use on peanuts.

The pesticide is considered useful for the purpose for which the tolerances are sought.

Based on the information and data considered, the Agency has determined that the tolerances established by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed 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 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, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

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: July 15, 1994.

Penelope A. Fenner-Crisp,

Acting Deputy 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 adding new § 180.474, to read as follows:

§ 180.474 Tebuconazole (alpha-[2-(4-chlorophenyl)-ethyl]-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol); tolerances for residues.

Tolerances are established for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the following raw agricultural commodities:

Commodity	Parts per million
Peanuts	0.1
Peanut, hulls	4.0

[FR Doc. 94–18758 Filed 8–2–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300315A; FRL–4766–3]

RIN 2070–AB78

Alachlor; Revocation of Certain Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes certain tolerances for residues of the

herbicide alachlor and its metabolites in or on various raw agricultural commodities. EPA is initiating this action because registered uses of alachlor on certain food commodities have been canceled.

EFFECTIVE DATE: This regulation becomes effective on August 3, 1994.

ADDRESSES: Written objections and requests for a hearing, identified by the document control number, [OPP-300315A], 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: Melissa L. Chun, Registration Support Branch (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, (703)-308-8318.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 19, 1994 (59 FR 2799), EPA proposed to revoke tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the herbicide alachlor (2-chloro-2',6'-diethyl-*N*-(methoxymethyl)acetanilide) and its metabolites in or on the following raw agricultural commmodities listed in 40 CFR 180.249: Cotton forage, cottonseed, sunflower seed, pea forage, pea hay, peas with pods removed, and potatoes.

By March 1988, the product registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, for the pesticide products containing the herbicide alachlor were canceled for the above-mentioned raw agricultural commodities. Based on the fact that alachlor is no longer domestically registered for use on these food crops and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances listed in 40 CFR 180.249 for residues of alachlor in or on these commodities. Since the product registrations were canceled more than 5 years ago, residues should not appear in any legally treated, domestically produced or imported commodities. These tolerances were obtained in conjunction with the FIFRA registrations.

The Agency is not recommending the establishment of action levels in place of these tolerances because sufficient time has elapsed in order for the residues to dissipate, and EPA does not expect a residue problem due to environmental contamination.

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

The data 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 revocation will protect the public health. Therefore, the tolerance revocation 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: July 25, 1994.

Daniel M. Barolo,

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.

§ 180.249 [Amended]

2. Section 180.249 *Alachlor; tolerances for residues* is amended in the table therein by removing the entries for cotton, forage; cottonseed; peas, forage; peas, hay; peas, pods removed; potatoes; and sunflower seed.

[FR Doc. 94–18914 Filed 8–2–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[PP 6E3447/R2072; FRL–4900–6]

RIN 2070–AB78

Pesticide Tolerance for Cadusafos

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a permanent tolerance for residues of the insecticide/nematicide cadusafos, *O*-ethyl *S,S*-di-*sec*-butyl phosphorodithioate, in or on the raw agricultural commodity bananas. This regulation to establish a maximum permissible level for residues of the insecticide/nematicide in or on the commodity was requested in a petition submitted by the FMC Corp.

EFFECTIVE DATE: This regulation becomes effective on August 3, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 6E3447/R2072], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 219, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 10, 1994 (59 FR 24101), EPA issued a proposed rule that gave notice that the FMC Corp., Agricultural Chemicals Group, 200 Market St., Philadelphia, PA 19103, had submitted confirmatory usage data and had requested that EPA, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a permanent tolerance for residues of the nematicide/insecticide cadusafos in or on the RAC bananas 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 on 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 permanent 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 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: July 19, 1994.

Daniel M. Barolo,
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 revising § 180.461, to read as follows:

§ 180.461 Cadusafos; tolerances for residues.

A tolerance is established for the residues of the nematicide/insecticide cadusafos, *O*-ethyl *S,S*-di-*sec*-butyl phosphorodithioate, in or on the following raw agricultural commodity:

Commodity	Parts per million
Bananas	0.01

There are no U.S. registrations as of May 10, 1994, for the nematicide/insecticid cadusafos.

[FR Doc. 94–18912 Filed 8–2–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Parts 180 and 186

[OPP–300316A; FRL–4766–4]

RIN 2070–AB78

Demeton; Revocation of Tolerances and Feed Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes tolerance and feed additive regulations listed in 40 CFR 180.105 and 186.1600 for residues of the insecticide demeton in or on various raw agricultural commodities and in animal feeds. EPA is initiating this action because registered uses of demeton have been canceled.

EFFECTIVE DATE: This regulation becomes effective on August 3, 1994.

ADDRESSES: Written objections and requests for a hearing, identified by the document control number, [OPP-300316A], 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: Melissa L. Chun, Registration Support Branch (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, (703)-308-8318.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 19, 1994 (59 FR 2800), EPA proposed to revoke tolerances and feed addtive regulations established under sections 408 and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and 348, respectively, for residues of the insecticide demeton (a mixture of *O,O*-diethyl *O* (and *S*)-2-(ethylthio)ethylphosphorothioates) in or on raw agricultural commodities and animal feeds. EPA is initiating this action because all registered uses of this chemical on raw agricultural commodities have been canceled.

By mid-October 1989, all product registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, for the pesticide products containing the insecticide demeton were canceled. Based on the fact that demeton is no longer domestically registered for use on any food crops and a tolerance is generally not necessary for a pesticide chemical which is not registered for the particular food use, EPA now proposes to revoke the tolerances and feed additive regulations for residues of demeton as listed in 40 CFR 180.105 and 40 CFR 186.1600. Since the product registrations were canceled more than 3 years ago, residues should not appear in any legally treated, domestically produced or imported commodities. These tolerances were obtained in conjunction with the FIFRA registrations.

The Agency is not recommending the establishment of action levels in place of these tolerances and feed additive regulations because sufficient time has elapsed in order for the residues to dissipate, and EPA does not expect a residue problem due to environmental contamination.

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

The data 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 revocations will protect the public health. Therefore, the tolerance revocations are established as set forth below.

Any person adversely affected by these regulations 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 Parts 180 and 186

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

Dated: July 25, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

a. In part 180:

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

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

§ 180.105 [Removed]

2. By removing § 180.105 *Demeton; tolerances for residues.*

PART 186—[AMENDED]

2. In part 186:

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

Authority: 21 U.S.C. 348.

§ 180.1600 [Removed]

b. By removing § 186.1600 *Demeton.*

[FR Doc. 94-18913 Filed 8-2-94; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43-CFR Public Land Order 7071

(AK-932-4210-06; AA-2793)

Partial Revocation of Public Land Order No. 829; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects approximately 56 acres of National Forest System lands withdrawn for use by the Forest Service, Department of Agriculture, for the Seward-Anchorage Highway Recreation Area, South Summit Lake. The lands are no longer needed for the purpose for which they were withdrawn. This action also allows the conveyance of the lands to the State of Alaska, if such lands are otherwise available. Any lands described herein that are not conveyed to the State are opened and will be subject to the terms and conditions of the national forest reservation and any other withdrawal of record.

EFFECTIVE DATE: August 3, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 829, which withdrew National Forest System lands for recreational purposes, is hereby revoked insofar as it affects the following described lands:

Seward Meridian

Chugach National Forest

T 6 N., R. 2 W., partly unsurveyed,
Sec. 24, NE¼, N½SE¼, SE¼SW¼, those portions included within State Selection AA-57968.
The areas described aggregate approximately 56 acres.

2. The State of Alaska application for selection made under section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such lands are otherwise available. Lands not conveyed to the State are opened and will be subject to the terms and conditions of the Chugach National Forest reservation, and any other withdrawal of record.

Dated: July 18, 1994

Bob Armstrong,

Assistant Secretary of the Interior

[FR Doc. 94-18807 Filed 8-2-94; 8:45 am]

BILLING CODE 4310-JA-P

43 CFR Public Land Order 7072

(AK-932-4210-06; AA-65185)

Partial Revocation of Public Land Order No. 725; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects approximately 80 acres of the National Forest System land withdrawn for use by the Forest Service, Department of Agriculture, for the Granite Creek Roadside Zone. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of the national forest reservation and any other withdrawal of record.

EFFECTIVE DATE: August 3, 1994.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Public Land Order No. 725, which withdrew lands for use by the Forest Service as recreation areas and as administrative sites, is hereby revoked insofar as it affects the following described land:

Seward Meridian

Chugach National Forest

T 8 N., R. 2 E. (Unsurveyed),
The area lying north and west of Ingram Creek within sec. 6,
SW¼NE¼NE¼, W½NE¼, and NW¼NW¼SE¼.
The area described contains approximately 80 acres.

2. The State of Alaska application for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State is opened and will be subject to the terms and conditions of the Chugach National Forest reservation and any other withdrawal of record.

Dated: July 18, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–18809 Filed 8–2–94; 8:45 am]

BILLING CODE 4310–JA–P

43 CFR Public Land Order 7073

[MT–930–4210–06; MTM 41943]

Partial Revocation of Secretarial Order Dated September 4, 1908; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects a .487 acre parcel of National Forest System land withdrawn for use as the Beardance Administrative Site. The land is no longer needed for the purpose for which it was withdrawn. The revocation is needed to accommodate a land interchange (disposal through exchange) under the Small Tracts Act of January 12, 1983, 16 U.S.C. 521(c)–521(i) (1988). This action will open the land to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: September 2, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated September 4, 1908, which withdrew National Forest System land for the Beardance Administrative Site, is hereby revoked insofar as it affects the following described land:

Principal Meridian, Montana

Flathead National Forest

T. 25 N., R. 19 W.,
Sec. 5, portion of lot 3.
The area described contains .487 acre in Lake County.

2. At 9 a.m. on September 2, 1994, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 18, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–18808 Filed 8–2–94; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 4

[CGD 94–030]

RIN 2115–AE89

Immediate Reporting of Casualties

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is amending the rule that requires notice of marine casualties. The amended rule will clarify which marine casualties require immediate notice, the means of giving other notice, who shall give it, and to whom it shall be given, so that prompt corrective or investigative efforts can be initiated. The intent of this change is to provide a mechanism that will help prevent another disaster such as the derailment of a passenger train near Mobile, Alabama, in September, 1993.

DATES: This rule is effective on August 3, 1994. Comments must be received on or before November 1, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 94–030], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to Room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR P.A. Jensen or LTJG S. M. Atkinson, Marine Investigation Division, Office of Marine Safety, Security, and Environmental Protection (G–MMI–1), (202) 267–1430, 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 94–030] and the specific section of this interim rule to which each comment applies, and give a reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes. The Coast Guard will consider all comments received during the comment period. It may change this rule 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. It 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 LCDR P.A. Jensen and LTJG S.M. Atkinson, Project Managers, Office of Marine Safety, Security, and Environmental Protection, and Patrick J. Murray, Project Counsel, Office of Chief Counsel.

Regulatory Information

This rule is being published as an interim rule and is being made effective on the date of publication. The Coast Guard has determined that it would be contrary to the public interest to delay publication of this amendment, which clarifies existing law, imposes no new regulatory requirement, and

accomplishes no significant change in policy. For these good reasons, the Coast Guard finds, under 5 U.S.C. 553(b)(3) and (d)(3), that both notice and public hearing on the notice, before the effective date of this rule, are unnecessary and that this rule should be made effective less than 30 days after publication.

Background and Purpose

(a) The derailment of the Amtrak Sunset Limited, a passenger train, on September 22, 1993, with extensive injury and loss of life, resulted in a study by the Coast Guard entitled *Review of Marine Safety Issues Related to Uninspected Towing Vessels*. This study, conducted jointly by the Office of Navigation Safety and Waterway Services (G–N) and the Office of Marine Safety, Security, and Environmental Protection (G–M), provided the Commandant with a number of recommendations to enhance safety in the towing industry. (Persons may review this study at the office of the Marine Safety Council at the address under "ADDRESSES.") One of these recommendations called for a regulatory project to improve procedures whereby information concerning allisions is reported. The Commandant concurred, and directed the Marine Investigation Division (G–MMI), within G–M, to initiate the project. On March 2, 1994, the Coast Guard announced [59 FR 10031] a public meeting to help guide the project.

(b) The preliminary findings on the allision in September, 1993, of a tow with a railroad bridge near Mobile, Alabama (the AMTRAK accident), indicated that there is substantial potential for misunderstanding which incidents require immediate notice, the means of giving other notice, by whom, and to whom. Rulemaking is necessary to improve the giving of notice on allisions.

(c) A "town meeting" took place on April 4, 1994, at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. This open meeting, comprised mainly of representatives from the towing industry and the Coast Guard, solicited and elicited detailed comments concerning the recommendations of the Coast Guard and Department of Transportation (DOT) in the study of safety of towing vessels. The comments helped shape both the Work Plan and the new regulatory language.

Discussion of Rule

The net effect of this interim rule and of a similar one, going forward under docket number CGD 94–027 and concerning 33 CFR part 160, will be to rationalize the "division of labor" between that part and 46 CFR part 4. Part 160 will comprehend all urgent matters, including some that part 4 might have seemed either to embrace or to neglect. Conspicuous among these will be many allisions with bridges, prompt notice of which might prevent another such catastrophe as the AMTRAK accident.

This interim rule cross-refers to new 33 CFR §§ 160.203 and 160.215, which, respectively, redefine the term "hazardous condition" and elaborate the requirements for reporting hazardous conditions. § 160.215 now covers many allisions with bridges and every hazardous condition "caused by a vessel or its operation."

Like the interim rule on part 160, this interim rule on part 4 adds the term "operator" to the list of those responsible for giving notice. Often, a vessel is owned by one company but operated by another.

Making "operator" explicit in both parts will clarify the operator's responsibility for giving notice of hazardous conditions and marine casualties.

This interim rule breaks existing 46 CFR 4.05–1 into two paragraphs. Paragraph (a) will require specified marine casualties to be reported immediately after the resulting safety concerns have been addressed rather than "as soon as possible." This quoted phrase has allowed for considerable personal interpretation and has been removed. Paragraph (b) will eliminate dual reporting when a hazardous condition also involves a marine casualty, by allowing the notice given under 33 CFR 160.215 to suffice for the notice required in 46 CFR 4.05–1(b).

New paragraph (b) of 46 CFR 4.05–10 emphasizes the filing of the required written notice without delay. The timely submission of the written notice of marine casualties not involving hazardous conditions will fulfill the requirement of paragraph (a) of § 4.05–1. The substitution of written for spoken notice will lighten the burden both on mariners of giving, and on the Coast Guard of getting, spoken notice of marine casualties not involving hazardous conditions.

Regulatory Evaluation

This interim rule is not a significant regulatory action under § 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under § 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order.

It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11034 (February 26, 1979)]. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This finding rests on the determination that this interim rule clarifies an existing requirement and does not place any new requirement on the public.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard has reviewed this interim rule for potential impact on small entities. Because this rule does not place any new requirement on the public, the Coast Guard has determined that it will have no economic impact on small entities. If you nonetheless think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see "ADDRESSES") explaining why and to what degree this rule will economically affect it.

Collection of Information

Under the Paperwork Reduction Act [44 U.S.C. 3501 et seq.], the Office of Management and Budget (OMB) reviews each 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 rule will clarify the reporting of marine casualties to include unintentional strikes of bridges. However, when it has met the additional criteria found in 46 CFR 4.05–1, this type of casualty has always been included in the category of "other" casualties listed on the form. A CG–2692 (OMB No. 2115–0003) will still be the form used. 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 interim rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this interim rule and has concluded that, under § 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

This rule is an administrative matter within the meaning of sub-§ 2.B.2.1 of that instruction that clearly has no environmental impact. (It requires the reporting of marine casualties and the reporting of most strikes of bridges.) A "Determination of Categorical Exclusion" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 4

Administrative practice and procedure, Investigations, Marine safety, National Transportation Safety Board, Reporting and recordkeeping requirements, Safety, and Transportation.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR Part 4 as follows:

TITLE 46 [AMENDED]

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

1. The citation of authority for part 4 is revised to read as follows:

Authority: 33 U.S.C. 1231; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; 49 CFR 1.46. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); 49 CFR 1.46.

2. Section 4.05–1 is revised to read as follows:

§ 4.05–1 Notice of marine casualty.

(a) Immediately after the addressing of resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify the nearest Marine Safety Office, Marine Inspection Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting in—

(1) An unintended grounding, or an unintended strike of (allison with) a bridge;

(2) An intended grounding, or an intended strike of a bridge, that creates a hazard to navigation, the environment, or the safety of a vessel, or that meets any criterion of paragraphs (a) (3) through (7);

(3) A loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel;

(4) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure of or damage to fixed fire-extinguishing systems, lifesaving equipment, auxiliary power-generating equipment, or bilge-pumping systems;

(5) A loss of life;

(6) An injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel in commercial service, that renders the individual unfit to perform his or her routine duties; or

(7) An occurrence causing property-damage in excess of $25,000, this damage including the cost of labor and material to restore the property to its condition before the occurrence, but not including the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage.

(b) Notice given as required by 33 CFR 160.215 satisfies the requirement of this section if the marine casualty involves a hazardous condition as defined by 33 CFR 160.203.

3. Section 4.05–10 is revised to read as follows:

§ 4.05–10 Written report of marine casualty.

(a) The owner, agent, master, operator, or person in charge shall, within five days, file a written report of any marine casualty. This written report is in addition to the immediate notice required by § 4.05–1. This written report must be delivered to a Coast Guard Marine Safety Office or Marine Inspection Office. It must be provided on Form CG–2692 (Report of Marine Accident, Injury or Death), supplemented as necessary by appended Forms CG–2692A (Barge Addendum) and CG–2692B (Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident).

(b) If filed without delay after the occurrence of the marine casualty, the notice required by paragraph (a) of this section suffices as the notice required by § 4.05–1(a).

Dated: July 15, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–18791 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATION COMMISSION

47 CFR Part 18

[ET Docket No. 92–255; FCC 94–155]

Removal of Unnecessary Regulations Regarding Magnetic Resonance Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order removes unnecessary equipment authorization requirements for Magnetic Resonance (MR) Systems. This action is taken in response to a petition from the National Electrical Manufacturers Association. The intended effect of this action is to reduce the amount of time and money required to bring new non-consumer, medical magnetic resonance systems to market.

EFFECTIVE DATE: September 2, 1994.

FOR FURTHER INFORMATION CONTACT: Errol Chang, Office of Engineering and Technology (202) 653–7316.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in ET Docket No. 92–255, FCC 94–155, adopted on June 13, 1994 and released on July 13, 1994. The full text of this Decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Services at (202) 857–3800 or 2100 M Street, NW., Suite 140, Washington, DC 20037.

Paperwork Reduction

Public reporting burden for this collection of information is estimated to average 18 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project [3060–0329], Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project [3060–0329], Washington, DC 20503.

Summary of Report and Order

1. By this action, the Commission is amending Part 18 of its rules to remove regulations that unnecessarily increase the amount of time and money required to bring new non-consumer, medical magnetic resonance (MR) systems to market. These systems are used by medical professionals to study the molecular structure of a patient for diagnostic and monitoring purposes. This action is taken in response to a petition for rule making filed by the National Electrical Manufacturers Association on January 29, 1992.

2. 47 CFR Part 18 sets forth requirements designed to minimize the potential for interference to radio and TV services by industrial, scientific and medical (ISM) equipment. Such equipment generates radio frequency (RF) energy in order to perform a non-communications related function. Common examples of non-consumer ISM equipment include microwave ovens and RF lighting devices. Examples of non-consumer ISM equipment include industrial heaters, RF stabilized are welders and magnetic resonance (MR) equipment. Before ISM equipment can be marketed in the United States, it must comply with the technical standards and equipment authorization procedures specified in 47 CFR Part 18.

3. It appears that MR systems pose little risk of interference because of the way they are designed and installed by professionals. We note that there are under 1000 installations of MR systems. We further note that, in the event that measures need to be taken to correct interference, the locations of these installations are on file with Manufacturers due to U.S. Food and Drug Administration regulations. We also recognize that the authorization requirement is burdensome and costly for MR systems. Given the low volume production of MR systems, such requirements can significantly affect the unit cost of each system, contributing to the increasing costs of medical care.

4. The circumstances presented here are similar to those that led us earlier to exempt non-consumer medical ultrasonic equipment from 47 CFR Part 18 rules. We are unaware of any interference that resulted from the medical ultrasonic equipment exemption. On balance, we tentatively conclude that the costs of our technical standards and authorization requirements for MR systems are unwarranted given the low risk of interference. Accordingly, we are amending 47 CFR Part 18 to exempt MR systems from the technical standards and authorization requirements that now apply to them. We will continue to apply the requirements of 47 CFR Section 18.111(b), which require operators of MR systems to correct any harmful interference that may occur. The proposed rule changes are set forth below.

5. Accordingly, *it is ordered* that pursuant to the authority contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 CFR Part 18 is amended as set forth below. These Rules and Regulations are effective 30 days after publication in the **Federal Register**. It is further ordered *that* this proceeding *is terminated.*

6. For further information on this proceeding, contact Errol Chang, Technical Standards Branch, Office of Engineering and Technology, telephone 202–653–7316.

List of Subjects in 47 CFR Part 18

Medical devices, Hospitals, Radio, Reporting and recordkeeping requirements.

Part 18 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

1. The authority citation for Part 18 continues to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304, and 307.

2. Section 18.107 is revised by adding a new paragraph (j) to read as follows:

§ 18.107 Definitions.

* * * * *

(j) *Magnetic resonance equipment.* A category of ISM equipment in which RF energy is used to create images and data representing spatially resolved density of transient atomic resources within an object.

3. Section 18.121 is revised to read as follows:

§ 18.121 Exemptions.

Non-consumer ultrasonic equipment, and non-consumer magnetic resonance equipment, that is used for medical diagnostic and monitoring applications is subject to the provision of Sections 18.105, 18.109 through 18.119, 18.301 and 18.303.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–18799 Filed 8–2–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 91]

RIN 2127–AE48

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Standard No. 208, *Occupant Crash Protection*, to require that Type 2 safety belts installed for adjustable seats in vehicles with a gross vehicle weight rating of 10,000 pounds or less either be integrated with the vehicle seat or be equipped with a means of adjustability to improve the fit and increase the comfort of the belt for a variety of different sized occupants. NHTSA believes that some occupants who find their safety belts to be uncomfortable react to their discomfort either by wearing their safety belts incorrectly or by not wearing them at all. NHTSA believes that improving safety belt fit will encourage the correct use of safety belts and could increase the overall safety belt usage rate.

DATES: Effective Date: The amendments made in this rule are effective September 1, 1997.

Petition Date: Any petitions for reconsideration must be received by NHTSA no later than September 2, 1994.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Frontal Crash Protection Division, Office of Vehicle Safety Standards, NRM–12, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–4916.

SUPPLEMENTARY INFORMATION:

Background

Section 2503(4) of the "Intermodal Surface Transportation Efficiency Act of 1991" requires the NHTSA to address the matter of improved design for safety belts (Pub. L. 102–240). In response to this statutory mandate, NHTSA issued an advance notice of proposed rulemaking (ANPRM) on May 29, 1992, proposing to add safety belt "fit"

requirements to FMVSS No. 208, *Occupant Crash Protection* (57 FR 22687). The ANPRM listed three rulemaking options and posed ten questions. The options included:

A. Take no regulatory action at this time.
B. Adopt detailed regulatory requirements to ensure proper belt fit.
C. Adopt a general requirement that safety belts adjust to fit different sized occupants.

The ten questions asked for information on costs and benefits, and for comments on the test procedure. At the same time, NHTSA continued research, begun in March 1992, to investigate some of the issues associated with belt fit.

After considering the responses to the ANPRM, and the results of the research, NHTSA issued a notice of proposed rulemaking (NPRM) on April 26, 1994 (59 FR 21740). A detailed discussion of the responses to the ANPRM and of the research can be found in the NPRM. The NPRM proposed a general requirement that Type 2 safety belts either be integrated with the vehicle seat or be equipped with a means of adjustability to improve the fit and increase the comfort of the belt for a variety of different sized occupants (collectively referred to in the remainder of this notice as the adjustability requirement). As explained in the NPRM, NHTSA believes that some occupants who find their safety belts to be uncomfortable react to their discomfort either by wearing their safety belts incorrectly or by not wearing them at all. NHTSA believes that improving safety belt fit will encourage the correct use of safety belts and could increase the overall safety belt usage rate. A more detailed discussion of the anticipated safety benefits can be found in the ANPRM and the NPRM.

NHTSA received 30 comments in response to the NPRM. In general, vehicle manufacturers only marginally concurred with the proposal. Many vehicle manufacturers believe that there would be no benefit in adopting the requirement because market forces are increasingly inducing vehicle manufacturers to voluntarily provide improved adjustability in their belt designs. The vehicle manufacturers further believe that the requirement would stifle innovation in developing other, and perhaps better, designs to improve belt fit. If the agency were nevertheless to adopt an adjustability requirement, they wanted NHTSA to exclude belts for rear seats and belts in convertibles, and in vehicles with a gross vehicle weight rating (GVWR) of more than 10,000 pounds, and to broaden the definitions of the type of adjustability devices which may be used. Consumer advocates and some vehicle manufacturers wanted the agency to amend the standard to include a detailed performance requirement. Equipment and multistage vehicle manufacturers wanted more lead time. None of the commenters disputed that improving safety belt fit should increase safety belt usage; however, the commenters believed that this benefit could not be quantified. All of these comments were considered by the agency in formulating this final rule, and the most significant comments are addressed below.

General v. Detailed Performance Requirement

Eight commenters stated that a detailed performance requirement would be better than the proposed general requirement. One commenter, Transport Canada, stated that NHTSA should adopt a performance requirement based on the Belt-fit Test Device (BTD), a device developed in Canada. The Canadian government has proposed that the BTD be used to assess belt fit in Canadian vehicles.

As discussed in the NPRM, the agency decided not to propose the detailed test procedure discussed in the ANPRM because agency research indicated that the procedure would not provide an adequate means of identifying improper fit on the wide variety of sizes and shapes of vehicle occupants. In addition, commenters on the ANPRM raised a number of questions concerning the test procedure that the agency has been unable to resolve. Since no commenter submitted any information to remedy the inadequacies that the agency's research disclosed in the ANPRM test procedure, NHTSA still lacks a detailed test procedure whose adequacy has been sufficiently supported through agency testing.

NHTSA appreciates the information submitted by Transport Canada regarding the BTD. However, the NPRM did not provide adequate notice to permit the agency to adopt a rule based on the BTD. Further, NHTSA does not have sufficient experience with the device to consider even proposing such a rule at this time. However, the agency will continue its coordination with Transport Canada on this issue to attempt to harmonize regulatory requirements where possible.

Vehicle manufacturers stated that the proposed adjustability requirement was a design-based standard, and therefore, design restrictive. The agency disagrees. The language does not specify the use of any particular designs to meet the adjustability requirement. Instead, the requirement affords manufacturers broad flexibility in designing means of compliance. Manufacturers may comply by providing for the adjustability of the anchorage and have a broad choice regarding the means for doing so. In addition, the requirement allows them to choose other means of compliance. In lieu of anchorage adjustability, manufacturers may either integrate the belts with the seat or provide a means of automatically moving the webbing in relation to the anchorage.

Accordingly, the agency has decided to adopt the adjustability requirement, as proposed, for those seats that are required by this final rule to have adjustable belts.

Vehicle manufacturers also asked the agency to clarify whether certain devices would be allowed under the requirement, and, if not, to expand the requirement to allow these devices. In response, the agency has listed below the various devices mentioned in the comments and indicated whether each of those devices is permissible.

Adjustable Upper Anchorage: An AUA is a device which provides a means of adjusting the upper anchorage of the shoulder belt and which has at least two distinct positions. This device would comply with the adjustability requirement if switching from one adjustment position to the other moves the device or webbing at least 5 centimeters, measured linearly.

Floor-mounted Inboard Adjustable Anchorage: This is a device similar to an AUA, except that it is mounted on the floor on the inboard side of the seat. This device would comply if it has at least two distinct adjustment positions, and if switching from one adjustment position to the other moves the device or webbing at least 5 centimeters, measured linearly.

Integrated Safety Belt Assembly: This is a safety belt system anchored completely to the seat structure. For a movable seat, the anchorages must be located on a part of the seat above the seat adjuster. This system would comply with the adjustability requirement.

"Semi-integrated" Safety Belt Assembly: As described by Ford, this is a safety belt system which has the upper anchorage and the retractor for the upper torso portion of the Type 2 belt mounted to the moving portion of the seat structure. Other commenters mentioned similar "semi-integrated" designs, including: lower anchorages for the upper torso belt mounted on the movable portion of the seat; shoulder belt guides; and through-the-seat routing

of the safety belt webbing. These devices would be allowed if (1) the device is considered part of the anchorage and meets the requirements of Standard No. 210, *Seat Belt Anchorages*, and (2) if the movement of the device, measured linearly, is at least 5 centimeters. The agency believes that all "semi-integrated" safety belt assemblies which meet the first criterion would comply because the movement of the seat would move the anchorage component sufficiently to meet the second criterion.

Sling-Mounted D-Rings: This is a sling-mounted upper shoulder belt anchorage D-ring, used to relocate the D-ring closer to the occupant. The sling usually rotates freely around the anchorage bolt to permit D-ring movement. Sling-mounted D-rings designed in this manner do not have two distinct adjustment positions and would not comply with the adjustability requirement. NHTSA does not believe that a sling-mounted D-ring which does not have distinct adjustment positions should be allowed as the position of such a device could change due to vehicle vibration or occupant movement, resulting in reduced comfort for the occupant.

Ford's comment indicated that some sling-mounted D-rings are "fixed and rigid" and can "be adjusted to a variety of different positions that provide at least 5 centimeters of adjustment." Such a device would comply with the adjustability requirement.

Intentional Set Retractor: As described by General Motors, this is a safety belt retractor that would permit the introduction of slack in the upper torso portion of the safety belt. Such a device could not be used to comply with the requirement because the anchorage does not have a movable component which has at least two adjustment positions (S7.1.2), nor does the design move the webbing in relation to the anchorage (S7.1.2.1). Spooling of webbing off the retractor increases the amount of webbing in the belt system, but does not move the webbing in relation to the anchorage as specified in S7.1.2.1. An example of the type of design that would meet the requirements of S7.1.2.1 is the Volvo design in which the shoulder belt webbing is fed through a slot in the pillar at different angles and in different locations as increasing amounts of webbing are spooled off the conical spool of the retractor.

Adjustable Seat Height: Porsche described a system which adjusts the seat height relative to a fixed D-ring to be used to comply with the adjustability requirement. NHTSA is not amending the language to allow the use of this system as a means of compliance. The agency does not believe that, in practice, a seat with adjustable height would be functionally equivalent to an anchorage with two or more adjustment positions. NHTSA believes that occupants use seat adjustability primarily as a means of reaching controls and increasing visibility out of the vehicle. NHTSA has no evidence, nor did Porsche provide any evidence that such a system alone would also be used by motorists to provide a better safety belt fit. Moveover, even if motorists did use it this way, the optimum seat adjustment for seat belt comfort could conflict with optimum seat height for control access and visibility.

Rear Seats

Thirteen vehicle manufacturers and one association requested that belts for rear seats be excluded from the adjustability requirement. Some manufacturers stated that the agency's rationale for allowing seats with integrated belts as an alternative means of compliance (i.e., that integrated belts provide a good fit for a wide range of occupants because the upper and lower anchorages maintain a constant position relative to the seat) is equally applicable to belts for fixed rear seats. Other manufacturers stated that there are very difficult design problems involved in installing AUAs for rear seats. One commenter, Ford Motor Company, requested an exclusion for belts for all non-movable seats (both front and rear) and for seats which move fore-and-aft only to allow access to other areas.

In the NPRM, NHTSA explained that it was aware of very few means being used to provide adjustability in rear seats. NHTSA requested comment on designs that could be used to comply with the proposed requirements in the rear seats, the practicability of these designs, and the costs of these designs. In response to these questions, many comments indicated that there were greater design problems with designing rear seats to comply with the adjustability requirement, and that compliance was costlier for these seats with little benefit.

NHTSA agrees with the comments that the anchorages for belts installed at a fixed seat will retain a constant position in relation to the seat. Fixed seats, especially rear fixed seats, allow manufacturers greater flexibility to design the location of the upper anchorage to provide a good fit for a wide range of occupants because the anchorage does not need to be located out of the way of the seat movement. For those seats which have the anchorages on or very near the seat (e.g., an upper anchorage on the shelf near the top of a rear seat in a passenger car), the belt system should provide a range of fit comparable to that provided by an adjustable seat with integrated belts.

While NHTSA is aware that not all fixed seats have the upper anchorage on or near the seat, NHTSA notes that requiring adjustability of belts whose anchorages are not on or near fixed rear seats would not solve the belt fit problems of many of the occupants of those seats. The majority of fixed seats are rear seats, which are more commonly occupied by children than adults. As noted in the NPRM, NHTSA's research indicated a significantly lower percentage of both non-adjustable and adjustable belts were within the comfort zone for the six-year-old dummy than for the adult dummies. This suggests that this rulemaking cannot solve the belt fit problems of children and that other means, such as booster seats, must be used to provide comfortable belt fit for children. Further, one commenter, a child seat manufacturer, expressed concern that if belts were integrated with rear seats, those belts could not be used to secure a child seat.

For these reasons, NHTSA has decided to exclude fixed seats from the adjustability requirement. NHTSA also agrees with Ford Motor Company that this exclusion should also apply to a seat which can be adjusted to provide access to other areas, but is otherwise fixed. NHTSA has therefore drafted this exclusion accordingly.

Convertibles

Three vehicle manufacturers asked the agency to exclude convertibles from the adjustability requirement. These manufacturers stated that the requirement was impracticable for these vehicles, since convertibles do not have a B-pillar and therefore cannot accommodate AUAs. These manufacturers further argued that, while the proposal permits the use of other designs which could be used in convertibles to comply with the adjustability requirement, electing these options would greatly increase the cost of compliance.

Besides AUAs, other options for convertible seats include integrated safety belt assemblies, and "semi-integrated" seat belt assemblies. NHTSA estimates that providing an AUA costs $3.12 per seating position, while integrated belts cost $38.15 each, and "semi-integrated" belts cost $0.43 each

After reviewing these comments, NHTSA has decided not to exclude convertibles from the adjustability requirement. While NHTSA agrees that

manufacturers of convertibles may not be able to use AUAs, there are other options, some of which are less expensive than AUAs.

Voluntarily Installed Type 2 Belts

Heavy truck manufacturers, one of their belt suppliers, and motor home manufacturers expressed concern that the proposed regulatory language was broad enough to include Type 2 belts that had been voluntarily installed in vehicles with a GVWR of more than 10,000 pounds. Motor vehicle manufacturers were similarly concerned that the regulatory language included Type 2 belts voluntarily installed at seating positions in other types of vehicles (e.g., center seating positions).

NHTSA intended the adjustability requirement to apply to seating positions for which Standard No. 208 requires a Type 2 belt, but not to seating positions for which Standard No. 208 provides a choice of either a Type 1 or a Type 2 belt. Among the seating positions for which the Standard provides this choice are all seating positions in vehicles with a GVWR greater than 10,000 pounds, and center seating positions in vehicles with a GVWR of not more than 10,000 pounds. For all of these seating positions, the choice of a Type 2 belt is voluntary. Under this final rule, a Type 2 belt that is voluntarily installed in any vehicle need not comply with the adjustability requirement.

Owner's Manual

Three commenters addressed the issue of requiring information on the use of manual AUAs in the owner's manual. Two commenters supported an owner's manual insert. One manufacturer stated that clarification was needed on whether the information must be provided for belts mounted on the seat frame so that they move with the seat. The agency has clarified the informational requirement in S7.1.2 so that it more clearly applies only if the belt system includes the movable component required by that paragraph.

Effective Date

Every vehicle manufacturer requested additional leadtime to make the design changes required by this rule. Some manufacturers stated that an effective date of September 1, 1997 would better correspond to the date on which air bags will be mandatory. Other requests ranged from 2 years to a request for a four-year phase-in beginning at least 5 years after publication. The Recreation Vehicle Industry Association (RVIA) and Bornemann Products Incorporated (Bornemann) requested an additional two years leadtime after the effective date for vehicles manufactured in two or more stages.

After reviewing these comments, NHTSA has decided to extend the effective date to September 1, 1997. The agency believes it would be more practicable to closely parallel the schedule for vehicle redesign required for the implementation of manual belts and air bags. Manufacturers will then be able to avoid redesign of the anchorage systems for two safety belt-related rules. By this date, 100 percent of passenger cars and 80 percent of light trucks must be equipped with manual belts and air bags.

While NHTSA agrees that redesigning some vehicles will be difficult, many commenters stated that all or most of their vehicles will have an adjustment feature before this date. In addition, NHTSA notes that many of the requests for longer extensions were based on compliance difficulties for rear seats. Therefore, NHTSA has decided that longer extensions are not necessary.

NHTSA has also decided not to allow additional leadtime for vehicles manufactured in two or more stages. There are questions about the sufficiency of the agency's authority to grant relief to vehicles based on their method of production instead of their type; however, the agency need not address those questions in this final rule.

Bornemann and RVIA requested additional leadtime because there is no assurance that engineering information or prototype vehicles would be available in time for final stage manufacturers to comply with the adjustability requirement by the same date as single stage manufacturers. The commenters are concerned that, due to the lack of leadtime and lack of early information from vehicle manufacturers, they would be forced to install integrated seats to comply with the proposed adjustability requirement.

The agency believes these concerns are unwarranted for numerous reasons. First, as discussed above, the agency has provided an additional year leadtime beyond that proposed. Because NHTSA anticipates that many vehicles will comply before the effective date, this should allow first stage manufacturers additional time to divulge design information to final stage manufacturers. Second, the apparent trend in the industry is to provide AUAs in incomplete vehicles. Since the upper anchorage is not a component that is normally modified by final stage manufacturers, there would be no additional requirement or burden on the final stage manufacturers. Third, if neither of the previous reasons provide relief, final stage manufacturers have options other than integrated seats in designing vehicles to comply with the adjustability requirement. For example, a "semi-integrated" safety belt assembly in which the lower inboard anchorage is mounted on the moving portion of the seat can be provided by the seat manufacturer and is in the same magnitude of price as an AUA.

RVIA also stated that additional leadtime was necessary if the agency did not exclude motor homes and rear seats. This request is largely moot. As explained previously, the adjustability requirement does not apply to voluntarily installed Type 2 safety belts. The agency's decision to exclude voluntarily installed Type 2 safety belts makes it unnecessary to adopt RVIA's request to exclude motor homes. Many motor homes have a GVWR greater than 10,000 pounds. Thus, the Type 2 belts in those motor homes are all voluntarily installed belts. For motor homes with a GVWR of 10,000 pounds or less, the modifications made to the front seating positions are not different than other van conversions. Finally, the agency's decision to exclude fixed seats has effectively excluded rear seats.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures. NHTSA estimates that the annual economic impact of this final rule will be between $44 and $61 million. A Final Regulatory Evaluation has been prepared for this final rule and is available in the docket for this notice.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. By not including the rear seat of vehicles, the agency believes that the small businesses involved in altering vehicles, van conversions, and multi-stage manufacturing will have little difficulty meeting the standard. Most of the companies perform very few changes to the front of the vehicle. Van converters

may change the seats, but they typically use the anchorage points provided by the original manufacturer of the front seat. Those manufacturers that start with incomplete vehicles will have to add and certify anchorages. However, either seats with seat-frame mounted anchorages or adjustable upper anchorages will be on the market and these manufacturers should not have difficulty certifying compliance.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this final rule.

National Environmental Policy Act

NHTSA has also analyzed this final rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166, delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by redesignating existing S7.1.2 and S7.1.3, as S7.1.3 and S7.1.4, and adding new S7.1.2, S7.1.2.1, and S7.1.2.2, to read as follows:

§ 571.208 Standard No. 208, Occupant Crash Protection

* * * * *

S7.1.2 Except as provided in S7.1.2.1 and S7.1.2.2, for each Type 2 seat belt assembly which is required by Standard No. 208 (49 CFR 571.208), the upper anchorage, or the lower anchorage nearest the intersection of the torso belt and the lap belt, shall include a movable component which has a minimum of two adjustment positions. The distance between the geometric center of the movable component at the two extreme adjustment positions shall be not less than five centimeters, measured linearly. If the component required by this paragraph must be manually moved between adjustment positions, information shall be provided in the owner's manual to explain how to adjust the seat belt and warn that misadjustment could reduce the effectiveness of the safety belt in a crash.

S7.1.2.1 As an alternative to meeting the requirement of S7.1.2, a Type 2 seat belt assembly shall provide a means of automatically moving the webbing in relation to either the upper anchorage, or the lower anchorage nearest the intersection of the torso belt and the lap belt. The distance between the midpoint of the webbing at the contact point of the webbing and the anchorage at the extreme adjustment positions shall be not less than five centimeters, measured linearly.

S7.1.2.2 The requirements of S7.1.2 do not apply the anchorages of a Type 2 seat belt assembly installed:

(a) at a seat which is adjustable fore and aft while the vehicle is in motion and whose seat frame above the fore-and-aft adjuster is part of each of the assembly's seat belt anchorages, as defined in S3 of Standard No. 210 (49 CFR 571.210).

(b) at a seat that is not adjustable fore and aft while the vehicle is in motion.

* * * * *

Issued on July 28, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–18812 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 931235-4107, I.D. 072794A]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: July 24, 1994, through December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, telephone 907-586-7221; Gary Smith, telephone 206-526-6140; or Donald McCaughran, telephone 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State (59 FR 22522, May 2, 1994). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 12

Northwestern Area 4E to Close July 24

The IPHC estimates that the catch limit for the northwestern portion of Area 4E will be obtained by July 24, 1994. Therefore, that portion of Area 4E that is north of a line from 56°32′00″N., 168°00′00″W. to Cape Newenham (58°39′00″N., 162°10′25″W.) shall be closed to commercial fishing effective

12:00 Noon, Alaska Daylight Time on July 24. Since the southeastern portion of Area 4E had previously been closed on June 15, all of Area 4E will now be closed to commercial fishing for the remainder of 1994.

Dated: July 28, 1994.

Joe P. Clem,

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

[FR Doc. 94–18817 Filed 8–2–94; 8:45 am]

BILLING CODE 3510–22–F

50 CFR Part 301

[Docket No. 931235–4107; I.D. 072794B]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the U.S. Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATES: 8 a.m., Pacific Daylight Time (PDT), August 3, 1994, through 6 p.m., PDT, August 3, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, telephone 907–586–7221; Gary Smith, telephone 206–526–6140; or Donald McCaughran, telephone 206–634–1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State (59 FR 22522, May 2, 1994). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action:

1994 Halibut Landing Report No. 13 Area 2A to Reopen on August 3

The IPHC estimates that 25,000 lb (11.3 mt) were landed from Area 2A (Washington, Oregon, and California) during the July 19 fishing period, resulting in a total catch of 150,000 lb (68 mt). As the total catch is 29,000 lb (13.2 mt) less than the 178,750 lb (81 mt) catch limit, Area 2A will reopen on August 3 for 10 hours from 8 a.m. to 6 p.m. local time. Fishing period limits as indicated in the following table will be in effect for this opening. Note that the fishing period limits for the three smallest vessel classes have all been set at the same level.

Vessel length		Fishing period limit (pounds)*	
Length	Letter	Dressed, head on	Dressed, head off
0–25	A	225	200
26–30	B	225	200
31–35	C	225	200
36–40	D	395	350
41–45	E	425	375
46–50	F	510	450
51–55	G	570	500
56+	H	850	750

*Weights are after 2 percent has been deducted for ice and slime, if fish are not washed prior to weighing.

The fishing period limit is shown in terms of dressed, head-off weight as well as dressed, head-on weight. Fishermen should be aware that regulations require that all halibut from Area 2A be landed with their heads on. The fishing period limit applies to the vessel, not the individual fisherman, and any landings over the vessel limit will be subject to forfeiture and may result in a fine.

Dated: July 28, 1994.

Joe P. Clem,

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

[FR Doc. 94–18818 Filed 8–2–94; 8:45 am]

BILLING CODE 3510–22–W–P

50 CFR Part 672

[Docket No. 931199–4042; I.D. 072994A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the northern rockfish total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 29, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the northern rockfish TAC for the Western Regulatory Area was established by the final 1994 specifications (59 FR 7647, February 16, 1994) as 1,000 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), established in accordance with § 672.20(c)(2)(ii), a directed fishing allowance for northern rockfish of 900 mt, with consideration that 100 mt will be taken as incidental catch in directed fishing for other species in this area. The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area effective from 12 noon, A.l.t., July 29, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

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

Dated: July 29, 1994.

Richard B. Stone,

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

[FR Doc. 94–18892 Filed 7–29–94; 2:13 pm]

BILLING CODE 3510–22–F

50 CFR Part 672

[Docket No. 931199–4042; I.D. 072994B]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for the "other rockfish" species category in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the "other rockfish" species category total allowable catch (TAC) in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 30, 1994, through 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

In accordance with § 672.20(c)(1)(ii)(B), the "other rockfish" species category TAC for the Eastern Regulatory Area was established by the final 1994 specifications (59 FR 7647, February 16, 1994) as 1,048 metric tons (mt).

The Director, Alaska Region, NMFS (Regional Director), established in accordance with § 672.20(c)(2)(ii), a directed fishing allowance for the "other rockfish" species category of 948 mt, with consideration that 100 mt will be taken as incidental catch in directed fishing for other species in this area.

The Regional Director has determined that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the "other rockfish" species category in the Eastern Regulatory Area effective from 12 noon, A.l.t., July 30, 1994, until 12 midnight, A.l.t., December 31, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

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

Dated: July 29, 1994.

Richard B. Stone,

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

[FR Doc. 94–18891 Filed 7–29–94; 2:13 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 148
Wednesday, August 3, 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 947

[FV94–947–1PR]

Irish Potatoes Grown in Oregon and California; Establishment of Interest and Late Payment Charges on Overdue Assessment Payments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would allow the Oregon-California Potato Committee (committee) to impose interest and late payment charges on overdue assessments under the marketing order. Some handlers are frequently late paying their assessments, which tends to cause cash flow problems for the committee and is inequitable to handlers who pay assessments when due. Imposing interest and late payment charges on handlers would encourage such handlers to pay their assessment obligations in a timely manner and help the committee maintain sufficient funds to carry on normal operations.

DATES: Comments must be received by August 18, 1994.

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

FOR FURTHER INFORMATION CONTACT: Robert Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC, 20090–6456, telephone: (202) 690–0464; or Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1220 Southwest Third Avenue, Room 369, Portland, Oregon 97204; telephone: (503) 326–2724.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 114 and Marketing Order No. 947 [7 CFR part 947], as amended, regulating the handling of potatoes grown in Modoc and Siskiyou Counties in California, and all counties in Oregon, except Malheur County, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

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

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

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

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

There are approximately 40 handlers of Oregon-California potatoes who are subject to regulation under the order and approximately 450 producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of Oregon-California potatoes may be classified as small entities.

On May 25, 1994, a mail ballot was completed in accordance with § 947.26 during which the committee recommended, under the authority of § 947.41(a) of the order, that handlers who are delinquent in paying their assessments be subject to late payment and interest charges. Nine affirmative ballots were received, meeting the minimum number for a quorum for the fourteen-member committee.

The committee depends upon handler assessments for operating funds. Handlers are invoiced by the committee on a monthly basis. However, some handlers are continually late with their assessment payments and a few wait until the end of the season to remit to the committee what is owed. When assessments are not paid in a timely manner, the handlers paying assessments on time are placed in an unfair situation compared to the delinquent handlers.

As part of its collection efforts, the committee has requested delinquent handlers to promptly submit assessment payments. However, such requests have not substantially decreased the frequency of delinquent payments. To facilitate the collection of assessments needed for the maintenance and functioning of the committee, the committee recommended that a late payment charge of five (5) percent of the

unpaid assessment balance be applied to any handler account more than thirty days overdue, and an interest charge of one (1) percent per month be applied to any assessment balance, plus the late payment charge, remaining unpaid after sixty days. The interest charge added to the bill after 60 days would be compounded monthly until the delinquent handler's assessment plus late payment charge and unpaid interest charges have been paid in full. The committee believes these charges are high enough to encourage timely payment of assessments, and are within the interest range customarily charged by banks on commercial accounts.

This proposal is intended to encourage handlers to pay their assessments when due, thereby eliminating potential inequities. The committee believes that the recommended action is the only alternative available to ensure timely payments. The proposal is expected to reduce the need for Department involvement with compliance efforts and thereby reduce the costs for the government to administer the marketing order program.

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

In accordance with the Paperwork Reduction Act of 1988 [44 U.S.C. Chapter 35], the information collection requirements that are contained in this proposal have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0112.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because any changes to the regulations, if adopted, should be in effect as soon as possible to encourage timely payments. All comments timely received will be considered prior to finalization of this proposed rule.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 947 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 947 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 947—IRISH POTATOES GROWN IN MODOC AND SIKIYOU COUNTIES, CALIFORNIA, AND ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

2. A new § 947.141 is added to read as follows:

§ 947.141 Late payment and interest charges.

The committee shall impose a late payment charge on any handler who fails to pay his or her assessment within thirty (30) days of the billing date shown on the handler's assessment statement received from the committee. The late payment charge shall, after 30 days, be five percent of the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment amount, plus the late payment charge, within 60 days following the billing date, an additional one percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the committee office.

Dated: July 28, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–18876 Filed 8–2–94; 8:45 am]

BILLING CODE 3410–02–P

---

7 CFR Part 1205

[CN–94–001]

RIN 0581–AB14

Proposed Amendment to Regulations for Collecting Cotton Research and Promotion Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service is amending the Cotton Board Rules and Regulations by raising the value assigned to imported cotton for the purpose of calculating supplemental assessments collected for use by the Cotton Research and Promotion Program. The amended value reflects the 12-month average price received by U.S. farmers for Upland cotton for calendar year 1993.

DATES: Written comments concerning the proposed rule must be sent in triplicate and received no later than September 2, 1994.

ADDRESSES: Written comments should be sent to: Craig Shackelford, USDA, AMS, Cotton Division; PO Box 96456; Room 2641–S; Washington, DC 20090–6456. All comments will be made available for public inspection at that address between the hours of 8 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, (202) 720–2259.

SUPPLEMENTARY INFORMATION: This rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with the Secretary a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of the ruling.

The Administrator, Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

There are an estimated 10,000 importers who are presently subject to rules and regulations issued pursuant to the Cotton Research and Promotion Order. This proposed rule will affect importers of cotton and cotton-containing products. The majority of these importers are small businesses under the criteria established by the Small Business Administration. This proposed rule would raise the assessments paid by the importers under the Cotton Research and Promotion Order. Even though the assessment would be raised, the increase is small and would not

significantly affect small businesses. The AMS Administrator therefore has certified that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. 3501 *et seq.*) the information collection requirements contained in this proposed rule have been previously approved by OMB and were assigned control number 0581–0093.

The Cotton Research and Promotion Act Amendments of 1990 enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990, contained two provisions that authorized changes in the funding procedures for the Cotton Research and Promotion Program.

These provisions are: (1) The assessment of imported cotton and cotton products; and (2) termination of the right of producers to demand a refund of assessments.

An amended Cotton Research and Promotion Order was approved by producers and importers voting in a referendum held July 17–26, 1991. Proposed rules implementing the amended Order were published in the **Federal Register** on December 17, 1991, (56 FR 65450). The final implementing rules were published on July 1 and 2, 1992, (57 FR 29181) and (57 FR 29431), respectively.

This proposed rule would increase the value assigned to imported cotton in the Cotton Board Rules and Regulations 7 CFR 1205.510 (b)(2). This value is used to calculate supplemental assessments on imported cotton and the cotton content of imported products. Supplemental assessments are the second part of a two-part assessment. The first part of the assessment is levied on the weight of cotton produced or imported at a rate of $1 per bale of cotton which is equivalent to 500 pounds or $1 per 226.8 kilograms.

Supplemental assessments are levied at a rate of five tenths of one percent of the value of domestically produced cotton, imported cotton, and the cotton content of imported products. The agency adopted the use of the average price received by U.S. farmers for Upland cotton as a benchmark for the value of domestically produced cotton. The source for this statistic is "Agricultural Prices", a publication of the National Agricultural Statistics Service of the Department of Agriculture. Use of the average price figure in the calculation of supplemental assessments on imported cotton and the cotton content of imported products yields an assessment that approximates assessments paid on domestically produced cotton.

The current value of imported cotton as published in the **Federal Register** (57 FR 29431) for the purpose of calculating supplemental assessments on imported cotton is $1.160 per kilogram. Using the Average Price Received by U.S. farmers for Upland cotton for the calendar year 1993, which is $0.543 per pound, the new value of imported cotton would be $1.197 per kilogram.

An example of the assessment formula and how the various figures are obtained is as follows:

One bale is equal to 500 pounds.
One kilogram equals 2.2046 pounds.
One pound equals 0.453597 kilograms.

One dollar per bale assessment converted to kilograms

A 500 pound bale=226.8 kg.
(500×.453597)
$1 per bale assessment
=$0.002000 per pound (1÷500)
=$0.004409 per kg. (1÷226.8)

Supplemental assessment of 5/10 of one percent of the value of the cotton converted to kilograms

Average price received=$0.543 per pound
or average value=$1.197 per kg.
(0.543×2.2046)

5/10 of one percent of the average price in kg.=$0.005985 per kg.
(1.1970×.005)

Total assessment per kilogram

$1 per bale equivalent assessment=$0.004409 per kg.
Supplemental assessment+*$0.005985* per kg.
total assessment per kg.=$0.010394

Since the value of cotton is the basis of the supplemental assessment calculation and the figures shown in the right hand column of the Import Assessment Table 1205.510 (b)(3) are a result of such a calculation, these figures would be revised. These figures indicate the total assessment per kilogram due for each Harmonized Tariff Schedule (HTS) number subject to assessment.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for Part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In Section 1205.510 (b)(2) and (3) are revised and a new paragraph (b)(10) is added to read as follows:

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(2) The 12-month average of monthly average prices received by U.S. farmers will be calculated annually. Such average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.197 per kilogram.

(3) The following table contains the Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factors in the table. The right column indicates the total assessment per kilogram of the article assessed. Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein is less than $220.99 will not be subject to assessments as described in this section.

IMPORT ASSESSMENT TABLE

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5201001000	0.0000	1.0394
5201002000	0.0000	1.0394
5201002010	0.0000	1.0394
5201002020	0.0000	1.0394
5201002050	0.0000	1.0394
5204110000	1.1111	1.1549
5204200000	1.1111	1.1549
5205111000	1.1111	1.1549
5205112000	1.1111	1.1549
5205121000	1.1111	1.1549
5205122000	1.1111	1.1549
5205131000	1.1111	1.1549
5205132000	1.1111	1.1549
5205141000	1.1111	1.1549
5205210000	1.1111	1.1549
5205220000	1.1111	1.1549
5205230000	1.1111	1.1549
5205240000	1.1111	1.1549
5205250000	1.1111	1.1549

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5205310000	1.1111	1.1549
5205320000	1.1111	1.1549
5205330000	1.1111	1.1549
5205340000	1.1111	1.1549
5205410000	1.1111	1.1549
5205420000	1.1111	1.1549
5205440000	1.1111	1.1549
5205450000	1.1111	1.1549
5206120000	0.5556	0.5775
5206130000	0.5556	0.5775
5206140000	0.5556	0.5775
5206220000	0.5556	0.5775
5206230000	0.5556	0.5775
5206240000	0.5556	0.5775
5206310000	0.5556	0.5775
5207100000	1.1111	1.1549
5207900000	0.5556	0.5775
5208112020	1.1455	1.1906
5208112040	1.1455	1.1906
5208112090	1.1455	1.1906
5208114020	1.1455	1.1906
5208114060	1.1455	1.1906
5208114090	1.1455	1.1906
5208118090	1.1455	1.1906
5208124020	1.1455	1.1906
5208124040	1.1455	1.1906
5208124090	1.1455	1.1906
5208126020	1.1455	1.1906
5208126040	1.1455	1.1906
5208126060	1.1455	1.1906
5208126090	1.1455	1.1906
5208128020	1.1455	1.1906
5208128090	1.1455	1.1906
5208130000	1.1455	1.1906
5208192020	1.1455	1.1906
5208192090	1.1455	1.1906
5208194020	1.1455	1.1906
5208194090	1.1455	1.1906
5208196020	1.1455	1.1906
5208196090	1.1455	1.1906
5208224040	1.1455	1.1906
5208224090	1.1455	1.1906
5208226020	1.1455	1.1906
5208226060	1.1455	1.1906
5208228020	1.1455	1.1906
5208230000	1.1455	1.1906
5208292020	1.1455	1.1906
5208292090	1.1455	1.1906
5208294090	1.1455	1.1906
5208296090	1.1455	1.1906
5208298020	1.1455	1.1906
5208312000	1.1455	1.1906
5208321000	1.1455	1.1906
5208323020	1.1455	1.1906
5208323040	1.1455	1.1906
5208323090	1.1455	1.1906
5208324020	1.1455	1.1906
5208324040	1.1455	1.1906
5208325020	1.1455	1.1906
5208330000	1.1455	1.1906
5208392020	1.1455	1.1906
5208392090	1.1455	1.1906
5208394090	1.1455	1.1906
5208396090	1.1455	1.1906
5208398020	1.1455	1.1906
5208412000	1.1455	1.1906
5208416000	1.1455	1.1906
5208418000	1.1455	1.1906
5208421000	1.1455	1.1906

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5208423000	1.1455	1.1906
5208424000	1.1455	1.1906
5208425000	1.1455	1.1906
5208430000	1.1455	1.1906
5208492000	1.1455	1.1906
5208494020	1.1455	1.1906
5208494090	1.1455	1.1906
5208496010	1.1455	1.1906
5208496090	1.1455	1.1906
5208498090	1.1455	1.1906
5208512000	1.1455	1.1906
5208516060	1.1455	1.1906
5208518090	1.1455	1.1906
5208523020	1.1455	1.1906
5208523040	1.1455	1.1906
5208523090	1.1455	1.1906
5208524020	1.1455	1.1906
5208524040	1.1455	1.1906
5208524060	1.1455	1.1906
5208525020	1.1455	1.1906
5208530000	1.1455	1.1906
5208592020	1.1455	1.1906
5208592090	1.1455	1.1906
5208594090	1.1455	1.1906
5208596090	1.1455	1.1906
5209110020	1.1455	1.1906
5209110030	1.1455	1.1906
5209110090	1.1455	1.1906
5209120020	1.1455	1.1906
5209120040	1.1455	1.1906
5209190020	1.1455	1.1906
5209190040	1.1455	1.1906
5209190060	1.1455	1.1906
5209190090	1.1455	1.1906
5209210090	1.1455	1.1906
5209220020	1.1455	1.1906
5209220040	1.1455	1.1906
5209290040	1.1455	1.1906
5209290090	1.1455	1.1906
5209313000	1.1455	1.1906
5209316020	1.1455	1.1906
5209316030	1.1455	1.1906
5209316050	1.1455	1.1906
5209316090	1.1455	1.1906
5209320020	1.1455	1.1906
5209320040	1.1455	1.1906
5209390020	1.1455	1.1906
5209390040	1.1455	1.1906
5209390060	1.1455	1.1906
5209390080	1.1455	1.1906
5209390090	1.1455	1.1906
5209413000	1.1455	1.1906
5209416020	1.1455	1.1906
5209416040	1.1455	1.1906
5209420020	1.0309	1.0715
5209420040	1.0309	1.0715
5209430020	1.1455	1.1906
5209430040	1.1455	1.1906
5209490020	1.1455	1.1906
5209490090	1.1455	1.1906
5209516030	1.1455	1.1906
5209516050	1.1455	1.1906
5209520020	1.1455	1.1906
5209590020	1.1455	1.1906
5209590040	1.1455	1.1906
5209590090	1.1455	1.1906
5210114020	0.6873	0.7144
5210114040	0.6873	0.7144
5210116020	0.6873	0.7144

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5210116040	0.6873	0.7144
5210116060	0.6873	0.7144
5210118020	0.6873	0.7144
5210120000	0.6873	0.7144
5210192090	0.6873	0.7144
5210214040	0.6873	0.7144
5210216020	0.6873	0.7144
5210216060	0.6873	0.7144
5210218020	0.6873	0.7144
5210314020	0.6873	0.7144
5210314040	0.6873	0.7144
5210316020	0.6873	0.7144
5210318020	0.6873	0.7144
5210414000	0.6873	0.7144
5210416000	0.6873	0.7144
5210418000	0.6873	0.7144
5210498090	0.6873	0.7144
5210514040	0.6873	0.7144
5210516020	0.6873	0.7144
5210516040	0.6873	0.7144
5210516060	0.6873	0.7144
5211110090	0.6873	0.7144
5211120020	0.6873	0.7144
5211190020	0.6873	0.7144
5211190060	0.6873	0.7144
5211210030	0.4165	0.4329
5211210050	0.6873	0.7144
5211290090	0.6873	0.7144
5211320020	0.6873	0.7144
5211390040	0.6873	0.7144
5211390060	0.6873	0.7144
5211490020	0.6873	0.7144
5211490090	0.6873	0.7144
5211590020	0.6873	0.7144
5212146090	0.9164	0.9525
5212156020	0.9164	0.9525
5212216090	0.9164	0.9525
5309214010	0.2864	0.2977
5309214090	0.2864	0.2977
5309294010	0.2864	0.2977
5311004000	0.9164	0.9525
5407810010	0.5727	0.5953
5407810030	0.5727	0.5953
5407912020	0.4009	0.4167
5408312020	0.4009	0.4167
5408329020	0.4009	0.4167
5408349020	0.4009	0.4167
5408349090	0.4009	0.4167
5509530030	0.5556	0.5775
5509530060	0.5556	0.5775
5513110020	0.4009	0.4167
5513110040	0.4009	0.4167
5513110060	0.4009	0.4167
5513110090	0.4009	0.4167
5513120000	0.4009	0.4167
5513130020	0.4009	0.4167
5513210020	0.4009	0.4167
5513310000	0.4009	0.4167
5514120020	0.4009	0.4167
5516420060	0.4009	0.4167
5516910060	0.4009	0.4167
5516930090	0.4009	0.4167
5601210010	1.1455	1.1906
5601210090	1.1455	1.1906
5601300000	1.1455	1.1906
5602109090	0.5727	0.5953
5602290000	1.1455	1.1906
5602906000	0.5260	0.5467
5604900000	0.5556	0.5775

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
5607902000	0.8889	0.9239
5608901000	1.1111	1.1549
5608902300	1.1111	1.1549
5609001000	1.1111	1.1549
5609004000	0.5556	0.5775
5701102010	0.0556	0.0578
5701102090	0.1111	0.1155
5701901010	1.0444	1.0855
5702109020	1.1000	1.1433
5702312000	0.0778	0.0809
5702411000	0.0722	0.0750
5702412000	0.0778	0.0809
5702421000	0.0778	0.0809
5702422090	0.0778	0.0809
5702491010	1.0333	1.0740
5702491090	1.0333	1.0740
5702913000	0.0889	0.0924
5702991010	1.1111	1.1549
5702991090	1.1111	1.1549
5703900000	0.4489	0.4666
5801220000	1.1455	1.1906
5801230000	1.1455	1.1906
5801250010	1.1455	1.1906
5801250020	1.1455	1.1906
5801260020	1.1455	1.1906
5802190000	1.1455	1.1906
5802300030	0.5727	0.5953
5804290020	1.1455	1.1906
5806200000	0.3534	0.3673
5806310000	1.1455	1.1906
5806400000	0.4296	0.4465
5808103010	0.5727	0.5953
5808900010	0.5727	0.5953
5811002000	1.1455	1.1906
6001106000	1.1455	1.1906
6001210000	0.8591	0.8929
6001220000	0.2864	0.2977
6001910010	0.8591	0.8929
6001910020	0.8591	0.8929
6001920020	0.2864	0.2977
6001920030	0.2864	0.2977
6001920040	0.2864	0.2977
6002203000	0.8681	0.9023
6002206000	0.2894	0.3008
6002420000	0.8681	0.9023
6002430010	0.2894	0.3008
6002430080	0.2894	0.3008
6002920000	1.1574	1.2030
6002930040	0.1157	0.1203
6002930080	0.1157	0.1203
6101200010	1.0094	1.0492
6101200020	1.0094	1.0492
6102200010	1.0094	1.0492
6102200020	1.0094	1.0492
6103421020	0.8806	0.9153
6103421040	0.8806	0.9153
6103421050	0.8806	0.9153
6103421070	0.8806	0.9153
6103431520	0.2516	0.2615
6103431540	0.2516	0.2615
6103431550	0.2516	0.2615
6103431570	0.2516	0.2615
6104220040	0.9002	0.9357
6104220060	0.9002	0.9357
6104320000	0.9207	0.9570
6104420010	0.9002	0.9357
6104420020	0.9002	0.9357
6104520010	0.9312	0.9679
6104520020	0.9312	0.9679

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6104622010	0.8806	0.9153
6104622015	0.8806	0.9153
6104622025	0.8806	0.9153
6104622030	0.8806	0.9153
6104622060	0.8806	0.9153
6104632010	0.3774	0.3923
6104632025	0.3774	0.3923
6104632030	0.3774	0.3923
6104632060	0.3774	0.3923
6104692030	0.3858	0.4010
6105100010	0.9850	1.0238
6105100020	0.9850	1.0238
6105100030	0.9850	1.0238
6105202010	0.3078	0.3199
6105202030	0.3078	0.3199
6106100010	0.9850	1.0238
6106100020	0.9850	1.0238
6106100030	0.9850	1.0238
6106202010	0.3078	0.3199
6106202030	0.3078	0.3199
6107110010	1.1322	1.1768
6107110020	1.1322	1.1768
6107120010	0.5032	0.5230
6107210010	0.8806	0.9153
6107220015	0.3774	0.3923
6107220025	0.3774	0.3923
6107910040	1.2581	1.3077
6108210010	1.2445	1.2935
6108210020	1.2445	1.2935
6108310010	1.1201	1.1642
6108310020	1.1201	1.1642
6108320010	0.2489	0.2587
6108320015	0.2489	0.2587
6108320025	0.2489	0.2587
6108910005	1.2445	1.2935
6108910015	1.2445	1.2935
6108910025	1.2445	1.2935
6108910030	1.2445	1.2935
6108920030	0.2489	0.2587
6109100005	0.9956	1.0348
6109100007	0.9956	1.0348
6109100009	0.9956	1.0348
6109100012	0.9956	1.0348
6109100014	0.9956	1.0348
6109100018	0.9956	1.0348
6109100023	0.9956	1.0348
6109100027	0.9956	1.0348
6109100037	0.9956	1.0348
6109100040	0.9956	1.0348
6109100045	0.9956	1.0348
6109100060	0.9956	1.0348
6109100065	0.9956	1.0348
6109100070	0.9956	1.0348
6109901007	0.3111	0.3234
6109901009	0.3111	0.3234
6109901049	0.3111	0.3234
6109901050	0.3111	0.3234
6109901060	0.3111	0.3234
6109901065	0.3111	0.3234
6109901090	0.3111	0.3234
6110202005	1.1837	1.2303
6110202010	1.1837	1.2303
6110202015	1.1837	1.2303
6110202020	1.1837	1.2303
6110202025	1.1837	1.2303
6110202030	1.1837	1.2303
6110202035	1.1837	1.2303
6110202040	1.1574	1.2030
6110202045	1.1574	1.2030

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6110202065	1.1574	1.2030
6110202075	1.1574	1.2030
6110900022	0.2630	0.2734
6110900024	0.2630	0.2734
6110900030	0.3946	0.4101
6110900040	0.2630	0.2734
6110900042	0.2630	0.2734
6111201000	1.2581	1.3077
6111202000	1.2581	1.3077
6111203000	1.0064	1.0461
6111205000	1.0064	1.0461
6111206010	1.0064	1.0461
6111206020	1.0064	1.0461
6111206030	1.0064	1.0461
6111206040	1.0064	1.0461
6111305020	0.2516	0.2615
6111305040	0.2516	0.2615
6112110050	0.7548	0.7845
6112120010	0.2516	0.2615
6112120030	0.2516	0.2615
6112120040	0.2516	0.2615
6112120050	0.2516	0.2615
6112120060	0.2516	0.2615
6112390010	1.1322	1.1768
6112490010	0.9435	0.9807
6114200005	0.9002	0.9357
6114200010	0.9002	0.9357
6114200015	0.9002	0.9357
6114200020	1.2860	1.3367
6114200040	0.9002	0.9357
6114200046	0.9002	0.9357
6114200052	0.9002	0.9357
6114200060	0.9002	0.9357
6114301010	0.2572	0.2673
6114301020	0.2572	0.2673
6114303030	0.2572	0.2673
6115190010	1.0417	1.0827
6115922000	1.0417	1.0827
6115932020	0.2315	0.2406
6116101300	0.3655	0.3799
6116101720	0.8528	0.8864
6116926020	1.0965	1.1397
6116926030	1.2183	1.2663
6116926040	1.0965	1.1397
6116926420	1.0965	1.1397
6116926430	1.2183	1.2663
6116926440	1.0965	1.1397
6116928800	1.0965	1.1397
6116929000	1.0965	1.1397
6116939010	0.1218	0.1266
6117800010	0.9747	1.0131
6117800035	0.3655	0.3799
6201121000	0.9480	0.9854
6201122010	0.8953	0.9306
6201122050	0.6847	0.7117
6201122060	0.6847	0.7117
6201134030	0.2633	0.2737
6201921000	0.9267	0.9632
6201921500	1.1583	1.2039
6201922010	1.0296	1.0702
6201922021	1.2871	1.3378
6201922031	1.2871	1.3378
6201922041	1.2871	1.3378
6201922051	1.0296	1.0702
6201922061	1.0296	1.0702
6201931000	0.3089	0.3211
6201933511	0.2574	0.2675
6201933521	0.2574	0.2675
6201990061	0.2574	0.2675

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6202121000	0.9372	0.9741
6202122010	1.1064	1.1500
6202122025	1.3017	1.3530
6202122050	0.8461	0.8794
6202122060	0.8461	0.8794
6202134005	0.2664	0.2769
6202134020	0.3330	0.3461
6202921000	1.0413	1.0823
6202921500	1.0413	1.0823
6202922026	1.3017	1.3530
6202922061	1.0413	1.0823
6202922071	1.0413	1.0823
6202931000	0.3124	0.3247
6202935011	0.2603	0.2706
6202935021	0.2603	0.2706
6203122010	0.1302	0.1353
6203221000	1.3017	1.3530
6203322010	1.2366	1.2853
6203322040	1.2366	1.2853
6203332010	0.1302	0.1353
6203392010	1.1715	1.2177
6203394060	0.2603	0.2706
6203422010	0.9961	1.0353
6203422025	0.9961	1.0353
6203422050	0.9961	1.0353
6203422090	0.9961	1.0353
6203424005	1.2451	1.2942
6203424010	1.2451	1.2942
6203424015	0.9961	1.0353
6203424020	1.2451	1.2942
6203424025	1.2451	1.2942
6203424030	1.2451	1.2942
6203424035	1.2451	1.2942
6203424040	0.9961	1.0353
6203424045	0.9961	1.0353
6203424050	0.9238	0.9602
6203424055	0.9238	0.9602
6203424060	0.9238	0.9602
6203431500	0.1245	0.1294
6203434010	0.1232	0.1281
6203434020	0.1232	0.1281
6203434030	0.1232	0.1281
6203434040	0.1232	0.1281
6203492010	0.1245	0.1294
6203493045	0.2490	0.2588
6204132010	0.1302	0.1353
6204192000	0.1302	0.1353
6204193090	0.2603	0.2706
6204221000	1.3017	1.3530
6204223030	1.0413	1.0823
6204223040	1.0413	1.0823
6204223050	1.0413	1.0823
6204223060	1.0413	1.0823
6204223065	1.0413	1.0823
6204292040	0.3254	0.3382
6204322010	1.2366	1.2853
6204322030	1.0413	1.0823
6204322040	1.0413	1.0823
6204423010	1.2728	1.3229
6204423030	0.9546	0.9922
6204423040	0.9546	0.9922
6204423050	0.9546	0.9922
6204423060	0.9546	0.9922
6204522010	1.2654	1.3153
6204522030	1.2654	1.3153
6204522040	1.2654	1.3153
6204522070	1.0656	1.1076
6204522080	1.0656	1.1076
6204533010	0.2664	0.2769

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6204594060	0.2664	0.2769
6204622010	0.9961	1.0353
6204622025	0.9961	1.0353
6204622050	0.9961	1.0353
6204624005	1.2451	1.2942
6204624010	1.2451	1.2942
6204624020	0.9961	1.0353
6204624025	1.2451	1.2942
6204624030	1.2451	1.2942
6204624035	1.2451	1.2942
6204624040	1.2451	1.2942
6204624045	0.9961	1.0353
6204624050	0.9961	1.0353
6204624055	0.9854	1.0242
6204624060	0.9854	1.0242
6204624065	0.9854	1.0242
6204633510	0.2546	0.2646
6204633530	0.2546	0.2646
6204633532	0.2437	0.2533
6204633540	0.2437	0.2533
6204692510	0.2490	0.2588
6204692540	0.2437	0.2533
6204699044	0.2490	0.2588
6204699046	0.2490	0.2588
6204699050	0.2490	0.2588
6205202015	0.9961	1.0353
6205202020	0.9961	1.0353
6205202025	0.9961	1.0353
6205202030	0.9961	1.0353
6205202035	1.1206	1.1648
6205202046	0.9961	1.0353
6205202050	0.9961	1.0353
6205202060	0.9961	1.0353
6205202065	0.9961	1.0353
6205202070	0.9961	1.0353
6205202075	0.9961	1.0353
6205302010	0.3113	0.3236
6205302030	0.3113	0.3236
6205302040	0.3113	0.3236
6205302050	0.3113	0.3236
6205302070	0.3113	0.3236
6205302080	0.3113	0.3236
6205902040	0.1245	0.1294
6206100040	0.1245	0.1294
6206303010	0.9961	1.0353
6206303020	0.9961	1.0353
6206303030	0.9961	1.0353
6206303040	0.9961	1.0353
6206303050	0.9961	1.0353
6206303060	0.9961	1.0353
6206403010	0.3113	0.3236
6206403030	0.3113	0.3236
6206900040	0.2490	0.2588
6207110000	1.0852	1.1280
6207190010	0.3617	0.3760
6207210010	1.1085	1.1522
6207210030	1.1085	1.1522
6207220000	0.3695	0.3841
6207911000	1.1455	1.1906
6207913010	1.1455	1.1906
6207913020	1.1455	1.1906
6208210010	1.0583	1.1000
6208210020	1.0583	1.1000
6208220000	0.1245	0.1294
6208911010	1.1455	1.1906
6208911020	1.1455	1.1906
6208913010	1.1455	1.1906
6208920010	0.1273	0.1323
6208920030	0.1273	0.1323

IMPORT ASSESSMENT TABLE—Continued
[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6209201000	1.1577	1.2033
6209203000	0.9749	1.0133
6209205030	0.9749	1.0133
6209205035	0.9749	1.0133
6209205040	1.2186	1.2666
6209205045	0.9749	1.0133
6209205050	0.9749	1.0133
6209303020	0.2463	0.2560
6209303040	0.2463	0.2560
6210104015	0.2291	0.2381
6210401010	0.0391	0.0406
6210401020	0.4556	0.4736
6211111010	0.1273	0.1323
6211111020	0.1273	0.1323
6211112010	1.1455	1.1906
6211112020	1.1455	1.1906
6211320007	0.8461	0.8794
6211320010	1.0413	1.0823
6211320015	1.0413	1.0823
6211320030	0.9763	1.0148
6211320060	0.9763	1.0148
6211320070	0.9763	1.0148
6211320080	0.9763	1.0148
6211330010	0.3254	0.3382
6211330030	0.3905	0.4059
6211330035	0.3905	0.4059
6211330040	0.3905	0.4059
6211420010	1.0413	1.0823
6211420020	1.0413	1.0823
6211420025	1.1715	1.2177
6211420050	1.1715	1.2177
6211420060	1.0413	1.0823
6211420070	1.1715	1.2177
6211420080	1.1715	1.2177
6211430010	0.2603	0.2706
6211430030	0.2603	0.2706
6211430040	0.2603	0.2706
6211430050	0.2603	0.2706
6211430060	0.2603	0.2706
6211430066	0.2603	0.2706
6211430090	0.2603	0.2706
6212101020	0.2412	0.2507
6212102010	0.9646	1.0026
6212102020	0.2412	0.2507
6212200020	0.3014	0.3133
6212900030	0.1929	0.2005
6213201000	1.1809	1.2274
6213202000	1.0628	1.1047
6213901000	0.4724	0.4910
6214900010	0.9043	0.9399
6216000800	0.2351	0.2444
6216001220	0.6752	0.7018
6216001720	0.6752	0.7018
6216003800	1.2058	1.2533
6216003910	1.2058	1.2533
6216003920	1.2058	1.2533
6216004100	1.2058	1.2533
6217100010	1.0182	1.0583
6217100030	0.2546	0.2646
6301300010	0.8766	0.9111
6301300020	0.8766	0.9111
6302100010	1.1689	1.2150
6302211020	0.8182	0.8504
6302211040	0.8182	0.8504
6302212010	1.1689	1.2150
6302212020	0.8182	0.8504
6302212030	1.1689	1.2150
6302212040	0.8182	0.8504
6302212090	0.8182	0.8504

IMPORT ASSESSMENT TABLE—Continued

[Raw Cotton Fiber]

HTS classification	Conversion factor	Cents/kg.
6302222010	0.4091	0.4252
6302222020	0.4091	0.4252
6302311020	0.8182	0.8504
6302311090	0.8182	0.8504
6302312010	1.1689	1.2150
6302312020	0.8182	0.8504
6302312030	1.1689	1.2150
6302312040	0.8182	0.8504
6302312055	0.8182	0.8504
6302312090	0.8182	0.8504
6302322020	0.4091	0.4252
6302322040	0.4091	0.4252
6302402010	0.9935	1.0326
6302511000	0.5844	0.6074
6302512000	0.8766	0.9111
6302513000	0.5844	0.6074
6302514000	0.8182	0.8504
6302600010	1.1689	1.2150
6302600020	1.0520	1.0934
6302600030	1.0520	1.0934
6302910005	1.0520	1.0934
6302910015	1.1689	1.2150
6302910025	1.0520	1.0934
6302910035	1.0520	1.0934
6302910045	1.0520	1.0934
6302910050	1.0520	1.0934
6302910060	1.0520	1.0934
6303110000	0.9448	0.9820
6303910000	0.6429	0.6682
6303920000	0.2922	0.3037
6304111000	1.0629	1.1048
6304190500	1.0520	1.0934
6304191000	1.1689	1.2150
6304191500	0.4091	0.4252
6304192000	0.4091	0.4252
6304910020	0.9351	0.9719
6304920000	0.9351	0.9719
6505901540	1.1810	1.2275
6505902060	0.9935	1.0326
6505902545	0.5844	0.6074

Dated: July 28, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94-18879 Filed 8-2-94; 8:45 am]

BILLING CODE 3410-02-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

RIN 3150-AE88

Land Ownership Requirements for Low-Level Waste Sites

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations to allow private ownership of Low-Level Radioactive Waste facility sites as an alternative to the current requirement for Federal or State ownership. Information to twelve questions is requested to assist in determining if such a change could be made without adversely impacting public health and safety.

DATES: The comment period expires October 3, 1994. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Haisfield, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-6196.

SUPPLEMENTARY INFORMATION:

Background

The NRC regulations for licensing land disposal of radioactive waste require that the land must be owned by the Federal or State government (§ 61.59(a)). This requirement was issued to assure control of the disposal site after closure, and thereby reduce the potential for inadvertent intrusion, better ensure integrity of the site, and facilitate monitoring of site performance.

However, on June 28, 1993, the NRC found acceptable an exemption to the above land ownership requirement that was granted to Envirocare of Utah, Inc. (Envirocare) by the State of Utah (an Agreement State [1]). The State of Utah, using the exemption provision in its regulations, issued an exemption to the land ownership requirement when it issued a license to Envirocare on March 21, 1991, for the land disposal of low-level radioactive waste (LLW). Under the exemption, Envirocare will remain the property owner and remain responsible for the site under the license through the 100 year post-closure period (referred to as the active institutional control period).

The Commission initially reviewed the State of Utah's exemption in April 1992, and determined that the State of Utah had not provided sufficient rationale for issuing the exemption to the land ownership requirement. Subsequently, the NRC proposed, and the State of Utah and Envirocare agreed to, additional provisions imposed by the State of Utah upon Envirocare.

The restrictions on the land imposed by the State of Utah were zoning the property for industrial waste and writing a restrictive covenant which was added as an annotation to the land record. The covenant adds additional restrictions regarding future activities and uses of the land to ensure its integrity, and remains in effect indefinitely.

To provide assurance of financial surety, the State of Utah required Envirocare to establish a trust account under the control of the State. The disbursement of the funds from the account must be approved by the State.

The Commission staff, in response to a 2.206 petition from US Ecology, is reviewing whether the State of Utah is controlling Envirocare's LLW site in a manner that provides a substantially equivalent level of protection of the public health and safety as is provided by Federal or State site ownership. The Envirocare site may present a special case for private ownership. On the other hand, it is possible that land use controls could be used at other LLW sites without requiring government ownership; therefore, the Commission is considering amending 10 CFR Part 61 to provide a generic basis for allowing the use of such controls as an alternative to government ownership.

Specific Proposal

The Commission is considering amending § 61.59 to allow private ownership of a LLW disposal site under provisions similar to those used for Envirocare by the State of Utah as discussed above. Specifically, § 61.59(a) would be modified to permit private ownership of a LLW disposal site, provided that the integrity of the disposal site is ensured after closure.

Specific Considerations

Advice and recommendations on a proposed rule reflecting the foregoing and on any other points considered pertinent are invited from all interested persons. Comments and supporting reasons are particularly requested on the following questions:

[1] Pursuant to the Atomic Energy Act of 1954, as amended, the Commission has the authority to relinquish part of its regulatory authority to a State, contingent upon making a determination that the State's regulatory program is compatible with the Commission's and adequate to protect the public health and safety. Twenty nine States, under formal agreements with the Commission, have assumed this regulatory responsibility. Negotiations with other States are underway.

1. The Commission considers that an amendment to 10 CFR Part 61 as described in this ANPRM could facilitate the objectives of the Low-Level Radioactive Waste Policy Act of 1985, as amended, by allowing States additional flexibility in developing new low-level radioactive waste disposal facilities. Would this change be useful for other LLW disposal sites or is it likely that the Utah exemption was one of a kind? The NRC would specifically request Compacts and Agreement States to inform us if private ownership for any potential site in their region is possible or is precluded by State laws or other provisions.

2. Would this change facilitate or hinder future licensing of LLW facilities?

3. Would this change have any adverse impacts on public health and safety and protection of the environment?

4. Would the responsible regulatory agency lose any control over the disposal site if it is not owned by the Federal or State government?

5. Are there valid reasons why land ownership requirements for NRC-regulated disposal sites should be more restrictive than EPA-regulated hazardous waste, municipal waste, and Superfund facilities, where government ownership is not usually a requirement?

6. How would private ownership affect liability for a disposal site?

7. Would States' concerns about assuming liability for a disposal site be alleviated by this proposal?

8. Would deletion of the State or Federal ownership requirement eliminate governmental liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) for releases from the site and, if so, does this change have any adverse impacts on public health and safety and protection of the environment, including after the active institutional control period?

9. Should the NRC consider allowing a site owner to be only the licensee, or broaden the proposal to allow other private ownership?

10. Should there be a time period after which the licensee can request termination of the license, even though the land might remain in private ownership?

11. If the NRC were to implement this proposal, are the surety requirements contained in 10 CFR Part 61, Subpart E, sufficient?

12. Under § 61.80(e), all records are to be transferred to Federal and/or State agencies at the time of license termination. If the license remains in effect during the active institutional control period (licensee is site owner), would there be a need for this records transfer?

List of Subjects in 10 CFR Part 61

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

The authority citation for this document is: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

Dated at Rockville, Maryland, this 15th day of July, 1994.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–18735 Filed 8–2–94; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Proposed rule; official staff interpretation.

SUMMARY: The NCUA Board is publishing for comment a proposed official staff commentary to Part 707 of the NCUA Rules and Regulations (Truth in Savings). The commentary applies and interprets the requirements of Part 707 and is a substitute for individual staff interpretations. The proposed commentary incorporates much of the guidance provided when the regulation was adopted, and addresses additional questions that have been raised about the application of its requirements.

DATES: Comments must be postmarked or posted on the NCUA electronic bulletin board by September 19, 1994.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

FOR FURTHER INFORMATION CONTACT: Martin S. Conrey, Staff Attorney, Office of General Counsel, telephone (703) 518–6540; William Ryan, Compliance Officer, Division of Supervision, Office of Examination and Insurance, telephone (703) 518–6360; or Annette Moore, Senior Analyst, Division of Supervision, Region V, telephone (512) 482–4500. For further information about the NCUA Electronic Bulletin Board, contact Carey D. Savage, Jr., System Operator, Office of Public and Congressional Affairs, telephone (703) 518–6335.

SUPPLEMENTARY INFORMATION:

(1) Background

The purpose of the Truth in Savings Act ("TISA") (12 U.S.C. 4301 et seq.) is to assist members in comparing share and deposit accounts offered by credit unions. TISA requires credit unions to disclose fees, the dividend or interest rate, the annual percentage yield, and other account terms whenever a member requests the information and before an account is opened. Fees and other information also must be provided on any periodic statement the credit union sends to the member. Rules are set forth for share and deposit account advertisements and advance notices to account holders of adverse changes in terms. TISA restricts how credit unions must determine the account balance on which dividends or interest are calculated. TISA is implemented by part 707 of the NCUA's Rules and Regulations ("part 707") (12 CFR part 707), which becomes effective on January 1, 1995, for most credit unions. TISA authorizes the issuance of official staff interpretations of the regulation.

The Board is publishing a proposed commentary to Part 707. The proposal is designed to provide guidance to credit unions in applying the regulation to specific transactions and is a substitute for, and a supplement to, individual staff interpretations. The Board contemplates updating the commentary periodically to address significant questions that arise. It is expected that this commentary will be adopted in final form in the fall of 1994, with an effective date of the compliance date of Part 707. Due to the special needs of small, nonautomated credit unions, and for the reasons explained by the Board in the Final Rule adopted at the July Board meeting, the Board has decided to extend the compliance date of part 707 until January 1, 1996 for credit unions that are not automated and are under $2 million in assets as of December 31, 1993.

(2) Proposed Commentary

The **Federal Register** notices containing the regulation that implemented TISA and notices for subsequent amendments set forth a large amount of supplementary material interpreting the new regulation. (See final rule published on September 27, 1993 (58 FR 50394), and final rule, corrections and correcting amendments,

published on March 22, 1994 (59 FR 13435).) In large measure, the proposed commentary incorporates the supplementary material from those rulemakings, and reflects the views expressed therein without substantive change. A number of issues that have arisen since the publication of the regulation have also been addressed.

On December 6, 1993, the Federal Reserve Board ("FRB") published a proposal to amend the regulation's rules for calculating the annual percentage yield for accounts that pay dividends or interest prior to maturity (58 FR 64190). (See also the notice extending the comment period published on January 13, 1994, 59 FR 1921.) This FRB proposed rule was withdrawn on May 11, 1994 (59 FR 24376). In its place, a new FRB proposed rule was published on May 11, 1994 (59 FR 24378), as amended on July 11, 1994 (59 FR 35271). The FRB amendments focus on two issues: a desire for the annual percentage yield to reflect the time value of money, and the concern of compliance costs and the impact on depository institutions if the proposed rules is adopted. The comment period on the May 11 and July 11 FRB proposed rules has been extended until September 6, 1994. Credit unions are encouraged to sent comments to the FRB. For further information on the FRB proposed amendments credit unions may contact Jane Ahrens, Senior Attorney, Kyung Cho or Kurt Schumacher, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412. The NCUA Board is delaying action regarding any adoption of similar amendments to part 707 until the completion of the FRB's rulemakings.

The NCUA proposed commentary is derived from the one proposed by the FRB and from information provided in the supplementary information to NCUA's final Truth in Savings rule, part 707 of the NCUA Rules and Regulations. The proposed commentary also reflects NCUA staff's understanding of the FRB's interpretations which have not been publicly published. The proposed commentary, for the most part, does not repeat information provided in part 707. We believe the proposed commentary is self-explanatory and not in need of further supplementary information. Due to the fact that most credit unions will not have to comply with part 707 until 1995, NCUA is in the unusual position of promulgating a commentary before experiencing the implementation of the rule which is explained in the commentary. However, the NCUA Board believes that it will be of assistance to credit union members and potential members, credit unions, credit union supervisors and regulators, the NCUA, and other interested parties to have a commentary finalized before the compliance date of part 707 to aid in compliance of this new, technical regulation required by Congress. Therefore, NCUA requests the assistance of all interested parties in ensuring that the commentary address the most generally asked questions and concerns that credit union members and potential members, credit unions, and other interested parties might have regarding Truth in Savings and part 707. To a great extent, the final commentary to be issued by NCUA will reflect the questions, concerns, and comments that are generated by this proposed commentary. NCUA solicits comments on any aspect of part 707 that may be addressed by a commentary which may provide assistance to credit unions in complying with TISA and part 707, providing an easily accessible, safe harbor for credit unions, while observing the letter, spirit and intent of TISA. In providing comments on this proposal, NCUA reminds commenters that TISA requires NCUA's regulation to be substantially similar to Regulation DD (12 CFR 230), the FRB's Truth in Savings regulation, except that NCUA may take into account the unique nature of credit unions and the limitations under which credit unions pay dividends. Commenters are asked to direct their comments not to the rule (12 CFR §§ 707.1–707.9) or Appendices A and B to part 707, but to how the rule and its appendices can best be implemented and complied with by credit unions.

List of Subjects in 12 CFR Part 707

Advertising, Credit unions, Consumer protection, Deposit accounts, Interest, Interest rates, Truth in savings.

For the reasons set forth in the preamble, the Board proposed to amend 12 CFR part 707 as follows:

PART 707—TRUTH IN SAVINGS

1. The authority citation for part 707 would continue to read as follows:

Authority: 12 U.S.C. 4311.

2. Part 707 would be amended by adding a new Appendix C to Part 707—Official Staff Interpretations to read as follows:

Appendix C—Official Staff Interpretations

Introduction

1. *Official status.* This commentary is the vehicle by which the staff of the Office of General Counsel of the National Credit Union Administration issues official staff interpretations of Part 707 of the NCUA Rules and Regulations. Good faith compliance with this commentary affords protection from liability under section 271(f) of the Truth in Savings Act ("TSIA"), 12 U.S.C. § 4311.

Section 707.1—Authority, purpose, coverage, and effect on state laws.

(c) Coverage

1. *Foreign applicability.* Part 707 applies to all credit unions, whether state or federally chartered, that offer share and deposit accounts to residents (including resident aliens) of any state as defined in § 707.2(v) and that offer accounts insurable by the National Credit Union Share Insurance Fund ("NCUSIF") whether or not such accounts are insured by the NCUSIF. Corporate credit unions designated as such by NCUA under 12 CFR § 704.2 (definition of "corporate credit union") are exempt from part 707.

2. *Persons who advertise accounts.* Persons who advertise accounts are subject to the advertising rules. This includes agent and agented accounts, such as a member who subdivides interests in a jumbo term share certificate account for sale to other parties or among members who form a certificate account investment club. For example, if a share broker places an advertisement that offers members a dividend in an account at a credit union, the advertising rules apply to the advertisement, whether the account is held by the broker or directly by the member.

3. *Preemption of state laws.* State laws are preempted to the extent they impose requirements that are inconsistent with TISA and part 707. If credit union officials or members are concerned as to whether state law requirements are preempted, they may write to NCUA's Office of General Counsel requesting a preemption determination. Written preemption requests should cite (or include a copy of) the allegedly inconsistent state law, demonstrate the inconsistency with TISA and part 707 and the burden on credit unions, and formally request a preemption determination.

Section 707.2—Definitions.

(a) Account

1. *Covered accounts.* Examples of accounts subject to the regulation are:

Dividend-bearing or interest-bearing accounts
Non-dividend-bearing or non-interest-bearing accounts
Accounts opened as a condition of obtaining a credit card
Escrow accounts with a consumer purpose, such as an account established by a member to escrow rental payments, pending resolution of a dispute with the member's landlord
Accounts held by a parent or custodian for a minor under a state's Uniform Gift to Minors Act (or Uniform Transfers to Minors Act)
Individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts

Examples of accounts *not* subject to the regulation are:

Mortgage escrow accounts for collecting taxes and property insurance premiums
Accounts established to make periodic disbursements on construction loans
Trust accounts other than individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts
Accounts opened by an executor in the name of a decedent's estate
Accounts of individuals operating businesses as sole proprietors
Certificates of indebtedness. Some credit unions borrow funds from their members through a certificate of indebtedness that sets forth the terms and conditions of the repayment of the borrowing, such as federal credit unions do through 12 CFR 701.38. Such an account does not represent shares in a credit union and is not covered by part 707.

2. *Other investments.* The term "account" does not apply to all products of a credit union. Examples of products not covered are:

Government securities
Mutual funds
Annuities
Securities or obligations of a credit union
Contractual arrangements such as repurchase agreements, interest rate swaps, and bankers acceptances
Purchases of U.S. Savings Bonds through a credit union
Services offered through a group purchasing plan or a credit union service organization (CUSO)

3. *Unincorporated nonbusiness association accounts.* An account held by or offered to an unincorporated association of natural persons is a consumer account if the account is primarily for a nonbusiness purpose. The following factors may be considered:

The credit union may rely on the declaration of the person representing the association as to whether the account is held for a business or nonbusiness purpose.
Whether the association has paid employees, which would indicate a business purpose for the account. For example, an account held by a religious organization that has payroll obligations is not covered by the regulation.

Examples of unincorporated nonbusiness associations are softball teams, bowling leagues, and church and school groups. Accounts of such organizations opened on or after the compliance date of part 707 are covered by part 707. Such accounts in existence prior to the compliance date of part 707 are not covered unless one of the association members notifies the credit union that it would like to receive applicable account disclosures. If the credit union is notified by such an organization, it must begin complying with the requirements of this rule for subsequent disclosures as applicable, such as periodic statements and change-in-terms notices, within a reasonable period of time after notification. A credit union would be required to comply with the provisions regarding notices to existing members, including full disclosures at the credit union's option, if the association notifies the credit union prior to the first periodic statement mailing after the compliance date of part 707.

4. *Options.* All accounts are either fixed-rate or variable-rate accounts.

(b) Advertisement

1. *Coverage.* Advertisements include commercial messages in visual, oral, or print media that invite, offer, or otherwise announce generally to members and potential members the availability of member accounts such as:

Telephone solicitations
Messages on automated teller machine (ATM) screens
Messages on a computer screen in a credit union's lobby (including any printout)
Messages in a newspaper, magazine, or promotional flyer or on radio or television
Messages promoting an account that provided along with information about the member's existing account at a credit union, such as on the periodic statement

Examples of messages that are not advertisements are:

Rate sheets published in newspapers, periodicals, or trade journals, provided the credit union (or share and deposit broker that offers accounts at the credit union) does not pay a fee to have the information included
Telephone conversations initiated by a member or potential member about an account
An in-person discussion with a member about the terms for a specific account
Information provided to members about their existing accounts, such as on IRA disbursements or notices for automatically renewable term share accounts sent before renewal

(c) Annual Percentage Yield.

1. *General.* The annual percentage yield (APY) is required for disclosures for new accounts, oral responses to inquiries about rates; disclosures provided upon request; disclosures for existing members (if the credit union chooses to provide full disclosures instead of the shorter periodic statement notice); notices prior to the maturity of a term share account, if known at the time the notice is sent, and in advertising. The annual percentage yield shows the total amount of dividends on an assumed principal amount as a percentage of the principal, based on the dividend rate and frequency of compounding for a 365 day period (for accounts such as share or share draft accounts) or for the term of the account for term share accounts. The annual percentage yield assumes the principal amount remains in the account for 365 days or for the term of the account.

2. *How Annual Percentage Yield differs from Annual Percentage Yield Earned.* The annual percentage yield (APY) differs from the annual percentage yield earned (APYE). The annual percentage yield earned is required for periodic statements only. The annual percentage yield earned shows the total amount of dividends earned for the dividend or statement period as a percent of the actual average daily balance in the member's account. Unlike the annual percentage yield, the annual percentage yield earned is affected by additions and withdrawals during the period. The annual percentage yield and the annual percentage yield earned must be calculated according to the formulas provided in Appendix A to this rule.

(d) Average Daily Balance Method.

1. *General.* One of the two required methods (the daily balance is the other) of determining the balance upon which dividends must be paid. The average daily balance method requires the application of a periodic rate to the average daily balance in the account for the average daily balance calculation period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) Board.

1. *General.* The NCUA Board.

(f) Bonus.

1. *General.* Bonuses include items of value offered as incentives to members, such as an offer to pay the final installment deposit for a holiday club account. Bonuses do not include the payment of dividends (including extraordinary dividends), the waiver of reduction of a fee, the absorption of expenses, non-dividend membership benefits, or other consideration aggregating $10 or less per year.

2. *Examples.* The following are examples of bonuses.

A credit union offers $25 to potential members for becoming a member and opening an account. The $25 could be provided by check, cash, or direct deposit.
A credit union offers $25 to a member with only a regular share account to open a share draft account. The $25 could be provided by check, cash, or direct deposit.
A credit union offers a portable radio with a value of $20 to members and potential members for opening a share draft account.

The following are examples of items that are *not* bonuses:

Discount coupons distributed by credit unions for use at restaurants or stores.
A credit union offers $25 to a parent or custodian if the parent or custodian opens an account for a minor. The $25 is not a bonus because the parent or custodian is not opening the account in his or her own name.
A credit union offers $20 to any member if the member is responsible for convincing a potential member to open an account. The $20 is not a bonus because the $20 is not paid to the individual opening the account. Any item, including cash, given or offered to a third party in exchange for a member or potential member opening (or a member renewing or adding to) an account is not a bonus.
A credit union offers $25 to a member if the member if the member can locate his name in the body of a newsletter.
Life savings benefits. Many credit unions offer life savings benefits to beneficiaries of deceased members. Because the benefit accrues to a third party, such life savings plans offered are not bonuses.

3. *De minimis rule.* Items with a *de minimis* value of $10 or less are not bonuses. Credit Unions may rely on the valuation

standard used by the Internal Revenue Service (IRS) to determine if the value of the item is *de minimus*. (See 26 CFR § 1.6049–5(a)(2), which discusses the fair market value of property received.) Items required to be reported by the credit union under IRS rules are bonuses under this regulation.

Examples of items that are not bonuses are:

Disability insurance premiums that are not connected to a loan account paid by the credit union in an amount $10 or less per year

Any insurance premiums paid by the credit union in connection with a loan account

Coffee mugs, T-shirts or other merchandise with a market value of $10 or less per year

4. *Aggregation.* Credit unions must aggregate per account per calendar year any items given to a member that are individually valued at $10 or less and must consider them to be a bonus if their aggregate value exceeds $10.

5. *Waiver or reduction of a fee or absorption of expenses.* Bonuses do not include value received by members through the waiver or reduction of fees for credit union-related services (even if the fees waived exceed $10), such as the following:

Waiving a safe deposit box rental fee for one year for members who open a new account

Waiving fees for travelers checks for members

Nondiscriminatorily waiving all fees for a particular class of members, such as seniors or minors

Discounts on interest rates charged for loans at the credit union

Rebates of loan interest already paid by a member

Discounts on application fees charged for loans at the credit union

6. *Non-dividend membership benefits.* Such benefits are not bonuses because they are sporadic in nature, often difficult to value, and providing non-dividend membership benefits is a long-standing unique credit union practice. (See commentary to § 707.2(r) for examples of such benefits.)

(g) Credit union.

1. *General.* Includes credit unions in the United States, Puerto Rico, Guam, U.S. Virgin Islands, and U.S. territories. Applies to credit unions whether or not the accounts in the credit union are federally, state, or privately insured, or uninsured.

(h) Daily balance method.

1. *General.* One of the two required methods (the average daily balance is the other) of determining the balance upon which dividends must be paid. The daily balance method requires the application of a daily periodic rate to the full amount of principal in the account each day.

(i) Dividend and dividends.

1. *General.* Member savings placed in share accounts are equity investments, and the returns earned on these accounts are dividends. Federal credit unions may only offer dividend-bearing and non-dividend-bearing share accounts. State-chartered credit unions may offer both share and deposit accounts if permitted by state law. Dividends exclude the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, and extraordinary dividends.

2. *Procedure.* Dividends may be viewed as a portion of the available current and undivided earnings of the credit union which is set apart, after required transfers to reserves, by valid act of the board of directors, for distribution among the members. As a matter of legal procedure, members are not entitled to dividends until the following steps are completed: (1) the board of the credit union develops a nondiscriminatory dividend policy, by establishing dividend periods, dividend credit determination dates, dividend distribution dates, any associated penalties (if applicable), and the method of dividend computation for each type of share account; (2) the provision for required transfers to reserves are made; (3) sufficient and available prior and/or current earnings are available at the end of the dividend period; (4) the board formally makes a dividend declaration in accordance with the credit union's dividend policy; and (5) dividends must be paid to members by a credit to the appropriate share account, payment by share draft or by a combination of the two methods.

3. *When available.* Legally, it is the declaration of the dividend itself which creates the dividend and the member has no right to receive a dividend until it is so declared. The decision of when to declare dividends lies within the official discretion of each credit union's board of directors and cannot be abrogated by contract. An agreement to pay dividends on a share account is interpreted not as an obligation to pay the stipulated dividends absolutely and unconditionally, but as an undertaking to pay them out of the earnings when sufficiently accumulated from which dividends in general are properly payable. "Prospective rates" are rates set in good faith in advance of the close of a dividend period, that may be altered if sufficient funds are not available, or in the event of a superseding event, such as a significant fluctuation in market rates, natural disaster or emergency that alters the assumptions under which the "prospective rates" were made. "Prospective rates" may also be referred to as "projected rates" or similar wording, but not as "estimated rates." (See commentary to § 707.3(b)(2), prohibiting use of estimates).

4. *Referencing.* Except where specifically stated otherwise, use of the term "share" in part 707, as in "share account," also refers to "deposit," as in "deposit account," where appropriate (for interest-bearing or non-interest-bearing deposit accounts at some state-chartered credit unions).

(j) Dividend declaration date.

1. *General.* One means of disclosing dividend rate information is to disclose the dividend rate earned on the account for the previous dividend period. The term "dividend declaration date" is used to define the date that the board of directors of a credit union declares a dividend for the preceding dividend period. Credit unions are cautioned that the "dividend declaration date" (the date dividends are legally declared and earned) and the "dividend distribution date" (the date dividends are credited to an account) may differ.

(k) Dividend period.

1. *General.* The dividend period is to be set by a credit union's board of director's for each account type, e.g., regular share, share draft, money market share, and term share. The most common dividend periods are weekly, monthly, quarterly, semiannually, and annually. Dividend periods need not agree with calendar months, e.g., a monthly dividend period could begin March 15 and end April 14.

(l) Dividend rate.

1. *General.* The dividend rate does not reflect compounding. Compounding is reflected in the "annual percentage yield" definition.

2. *Referencing.* Except where specifically stated otherwise, use of the term "dividend rate" in part 707 also refers to "interest rate," where appropriate (for interest-bearing and non-interest-bearing deposit accounts at some state-chartered credit unions).

(m) Extraordinary dividends.

1. *General.* Extraordinary dividends are commonly referred to among credit unions as "bonus dividends." The definition encompasses all irregularly scheduled and declared dividends, and as dividends, extraordinary dividends are exempt from the "bonus" disclosure requirements. Extraordinary dividends do not have to be disclosed on account disclosures, but the dollar amount of an extraordinary dividend credited to the account during the statement period does have to be separately disclosed on the periodic statement for the dividend period during which the extraordinary dividends are earned.

(n) Fixed-rate account.

1. *General.* Includes all accounts in which the credit union, by contract, gives at least 30 days advance written notice of decreases in the dividend rate or interest rate. Thus, credit unions can decrease rates only after providing advance written notice of rate decreases, e.g., a "change-in-terms notice."

(o) Grace period.

1. *General.* A period after maturity of an automatically renewing term share account during which the member may withdraw funds without being assessed a penalty. Use of a "grace period" is discretionary, not mandatory. This definition does not refer to the "grace period" account, which is a synonym for "federal rollback method" or "in by the 10th" accounts, which are prohibited by TISA and part 707.

(p) Interest.

1. *General.* Member savings placed in deposit accounts are debt investments, and the return earned on these accounts is interest. Federal credit unions are not authorized to offer any interest-bearing deposit accounts. State-chartered credit unions may offer both share and deposit accounts if permitted by state law. Interest

excludes the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, and extraordinary dividends.

2. *Differences between Dividends and Interest.* Dividends are returns on an equity investment (shares); interest is return on a debt investment (deposits). Dividends are not properly payable until declared at the close of a dividend period; interest is properly payable daily according to the deposit contract. Dividend rates are prospective until actually declared; interest rates are set according to contract in advance and are earned on that basis. Share accounts establish a member (owner)/credit union (cooperative) relationship; deposit accounts establish a depositor (creditor)/depositary (debtor) relationship.

3. *Referencing.* Except where specifically stated otherwise, use of the terms "dividend" or "dividends" in part 707 also refers to "interest" where appropriate (for interest-bearing and non-interest-bearing deposit accounts at some state-chartered credit unions).

(q) Member.

1. *Professional capacity.* Examples of accounts held by a natural person in a professional capacity for another are:

Attorney-client trust accounts
Trust, estate and court-ordered accounts
Landlord-tenant security accounts

2. *Nonprofessional capacity.* Examples of accounts *not* held in a professional capacity are:

Accounts held by parents for a child under the Uniform Gifts to Minors Act (or Uniform Transfers to Minors Act)
Accounts established by a tenant for apartment lease payments pending resolution of a landlord-tenant dispute

3. *Retirement plans.* Individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts are member accounts to the extent that funds are invested in accounts subject to the regulation. Keogh accounts, like sole proprietor accounts, are not subject to the regulation.

(r) Non-dividend membership benefits.

1. *General.* Term reflects unique credit union practices that are difficult to value, encourage community spirit, and are not granted in such quantity as to be includable as calculable dividends.

2. *Examples.* Examples include:

Food and refreshments at annual meetings, member functions, and branch openings
Travel club benefits
Prizes offered at annual meetings, such as U.S. Savings bonds, a deposit of funds into the winner's account, trips, and other gifts. Such prizes are not bonuses because they are offered as an incentive to increase attendance at the annual meeting, and not to entice members to open, maintain, or renew accounts or increase an account balance.
Life savings benefits

(s) Passbook account

1. *Relation to Regulation E.* Passbook accounts include accounts accessed by preauthorized electronic fund transfers to the account (as defined in 12 CFR § 205.2(j)), such as an account credited by direct share and deposit of social security payments. Accounts that permit access by other electronic means are not "passbook accounts," and any statements that are sent four or more times a year must comply with the requirements of § 707.6.

(t) Periodic statement

1. *General.* Passbook and term share accounts are exempt from periodic statement requirements.

2. *Examples.* Periodic statements do not include:

Additional statements provided solely upon request
Information provided by computer through home electronic credit union services
General service information such as a quarterly newsletter or other correspondence that describes available services and products

3. *Regulation E interplay.* Credit unions need not, but may treat any Regulation E statements as periodic statements for part 707 purposes. For credit unions that choose not to treat Regulation E activity statements as part 707 periodic statements, the quarterly periodic statement must reflect the annual percentage yield earned and dividends earned for the full quarter. However, credit unions choosing this option need not redisclose fees already disclosed on an interim Regulation E activity statement on the quarterly periodic statement. For credit unions that choose to treat Regulation E activity statements as part 707 periodic statements, the Regulation E statement must meet all part 707 requirements.

4. *Account status information.* Credit unions may provide the account number, the type of account, and balance information for an account on a periodic statement given for another account. This allows members to receive information on their accounts either not covered by the periodic statement disclosure requirements (passbook and term share accounts) or accounts on different statement cycles (e.g., "status information" could be provided on a share draft monthly periodic statement for a share money market account on a quarterly periodic statement cycle). However, providing information other than the balance in an account (such as dividend rate or annual percentage yield earned information) would require the credit union to give full disclosures for the "status information" account on the piggybacked statement. (See commentary to § 707.6(a)).

5. *Use of ledger and collected balance to calculate Annual Percentage Yield Earned.* Ledger balance means the record of the balance in a member's account, as per the credit union's records. (The ledger balance may reflect additions and deposits for which the credit union has not yet received final payment). Collected balance means the record of balance in a member's account reflecting collected funds, that is, cash or checks deposited in the credit union which have been presented for payment and for which payment has actually been received. (See Regulation CC, 12 CFR § 229.14). The method used by a credit union to accrue or pay dividends or interest on noncash deposits must be the same method used to determine the annual percentage yield earned. For example, a credit union using the collected balance method must use the collected balance method to determine the annual percentage yield earned.

(u) Potential member.

1. *General.* A potential member is a natural person eligible for membership in a credit union, who has not yet taken the steps necessary to make himself or herself a member. The term also includes natural person nonmembers eligible to hold accounts in a credit union pursuant to relevant federal or state law.

2. *Verification of eligibility.* All credit unions should have sound written procedures in place to identify those eligible for membership. If these procedures include verification measures, such as an application process, verification telephone call or letter to an employer or association within the field of membership, witnessing by an existing member, or similar procedure, then the credit union may first verify the membership eligibility of a potential member before sending account disclosures or other information to the potential member. This process of verifying a member's eligibility status, making a recommendation for membership, and providing account disclosures should be completed within 20 calendar days.

3. *Nonmembers.* Within its sole discretion, the board of directors of a credit union may provide TISA disclosures to nonmembers who are ineligible for membership or to hold an account at the credit union. If disclosures are made to such nonmembers, it is the position of the Board that no civil liability can accrue to the credit union for any errors in such disclosures. (See commentary to § 707.3(d)).

(v) State

1. *General.* Territories and possessions include American Samoa, Guam, the Mariana Islands, and the Marshall Islands.

(w) Stepped-rate account

1. *General.* Stepped-rate accounts are those accounts in which two or more dividend rates (known at the time the account is opened) will take effect in succeeding periods.

2. *Example.* An example of a stepped-rate account is a one-year term share certificate account in which a 5.00% dividend rate is paid for the first six months, and 5.50% for the second six months.

(x) Term share account

1. *Relation to Regulation D.* Regulation D permits, in limited circumstances, the withdrawal of funds without penalty during the first six days after a "time deposit" is opened. (See 12 CFR § 204.2(c)(1)(i).) Withdrawals without penalty from a term share account made in accordance with Regulation D do not disqualify the account from being a term share account for purposes of this regulation, such as withdrawals upon the death of the member, or within a "grace period" for automatically renewable term share accounts.

2. *Club accounts.* Club accounts, including Christmas club, holiday club, and vacation club accounts may be either term share or regular share accounts, depending on the terms of the account.

a. Term share club accounts.

i. *General.* A club account may be a term share account if it has the following characteristics:

It has a maturity of at least seven days, and
During the first six days a member either
May not make withdrawals, or
If the member is allowed to make early withdrawals during the first six days or there is an early withdrawal penalty equal to the loss of seven days' dividends.

A club account can be a term share account without a stated maturity date if members may not withdraw funds until a certain date or if withdrawal occurs, an early withdrawal penalty is incurred.

ii. *Examples.* The following are examples of term share club accounts:

An account for which the credit union will distribute the funds on a certain date and withdrawals prior to that date are either not permitted during the first six days after the account is opened or there is an early withdrawal penalty equal to the amount of dividends earned on the account during the first seven days (e.g., a credit union offers an account to which the member makes regular, periodic additions through October, with the funds distributed November 1. If the member withdraws funds before November 1, an early withdrawal penalty is incurred, making the account a term share account).

An account for which the credit union will distribute the funds on a certain date and withdrawals are permitted, but the funds withdrawn are transferred to another account and dividends on the amount withdrawn earn at the second account's rate, not the club account's rate (e.g., a credit union offers an account earning dividends at a 5.00% rate to which a member makes regular, periodic additions, funds in the account are distributed November 1. Prior to the November 1 distribution date, the member withdraws funds which are transferred to a regular share account earning dividends at a 3.00% rate. This rate decrease acts as a penalty, making the account a term share account).

b. Regular share club accounts. Accounts may be considered regular share accounts if such accounts do not have an early withdrawal penalty and permit withdrawals within the first seven days after the account is opened.

(y) Tiered-rate account

1. *General.* Tiered-rate accounts are those accounts in which two or more dividend rates are paid on the account and are determined by reference to a specified balance. Tiered-rate accounts are of two types: Tiering Method A and Tiering Method B. In Tiering Method A accounts, the credit union pays the applicable tiered dividends rate on the entire amount in the account. This method is also known as the "hybrid" or "plateau" tiered-rate account. In Tiering Method B accounts, the credit union does not pay the applicable tiered dividends rate on the entire amount in the account, but only on the portion of the share account balance that falls within each specified tier. This method is also known as the "pure" or "split-rate" tiered-rate account. (See commentary to Appendix A, § I, D.)

2. *Example.* An example of a tiered-rate account is one in which a credit union pays a 5.00% dividend rate on balances below $1,000, and 5.50% on balances $1,000 and above.

3. *Term share accounts.* Term share accounts that pay different rates based solely on the amount of the initial share and deposit are not tiered-rate accounts.

4. *Minimum balance accounts.* If dividends are not paid on amounts below a specified balance level, then the account has a minimum balance requirement (required to be disclosed under § 707.4(b)(3)(i)), but the account does not constitute a tiered-rate account. A zero rate (0%) cannot constitute a tier. Minimum balance accounts are single rate accounts with a minimum balance requirement.

(z) Variable-rate account

1. *General.* Includes all accounts in which the credit union does not contract to give at least 30 days advance written notice of decreases in the dividend rate. An account meets this definition whether the rate change is determined by reference to an index, by use of a formula, or merely at the discretion of the credit union's board of directors. A term share certificate of deposit that permits one or more rate adjustments prior to maturity at the member's option, such as a rate relock option, is a variable-rate account.

2. *Differences between fixed-rate and variable-rate accounts.* All accounts must either be fixed-rate or variable-rate accounts. Classifying an account as variable-rate affects credit unions three ways:

Additional account disclosures are required (§ 707.4(b)(1)(ii));
Rate decreases are exempted from change-in-terms requirements (§ 707.5(a)(2)(i)); and
Advertising notice required (§ 707.8(c)(1)).

Fixed-rate accounts require a contract term obligating the credit union to a 30-day advance, written notice to members before decreasing the dividend rate on the account. Term changes and rate decreases cannot take effect until 30 days after such fixed-rate change in terms notices are mailed or delivered to members (§ 707.5(a)).

Section 707.3—General disclosure requirements.

(a) Form

1. *General.* All required disclosures, e.g., account disclosures, change-in-terms notices, term share maturity notices, statement disclosures and advertising disclosures, must be made clearly and conspicuously, in a form the member may retain. Disclosures need be made only as applicable, e.g., disclosures for a non-dividend-bearing account would not include disclosure of annual percentage yield, dividend rate, or other disclosures pertaining to dividend calculations.

2. *Design requirements.* Disclosures must be presented in a format that allows members and potential members to readily understand the terms of their account. Disclosures may be made:

In any order
In combination with other disclosures or account terms
On more than one page and on the front and reverse sides
By using inserts to a document or filling in blanks
On more than one document, as long as the documents are provided at the same time.

3. *Multiple account disclosures.* Credit unions may prepare combined disclosures for all accounts offered, or prepare different documents for different types of accounts. If a credit union provides one document for several types of accounts, members must be able to understand clearly which disclosures apply to their account.

4. *Consistent terminology.* A credit union must use the same terminology to describe terms or features that are required to be disclosed. For example, if a credit union describes a monthly fee (regardless of account activity) as a "monthly service fee" in account opening disclosures, the same terminology must be used in its periodic statements and change-in-terms notices.

(b) General

1. *Terms and conditions.* Credit unions are required to have disclosures reflect the terms of the legal obligation between the credit union and a member at the time the member opens the account. This provision does not impose any contract terms or supersede state or other laws that define how the legal obligations between a credit union and its membership are determined.

2. *Specificity of legal obligation.* A credit union may use the term "monthly" to describe its compounding or crediting policy when dividends are compounded or paid at the end of each calendar month or for twelve periods during the year even if actual days in each period vary between 28 and 33 days. Use of estimates is prohibited in TISA disclosures.

3. *Foreign language.* Disclosures may be made in any foreign language, if desired by the board of directors of a credit union. However, disclosures must also be provided in English, upon request.

(c) Relation to Regulation E

1. *General rule.* Compliance with Regulation E (12 CFR part 205) is deemed to satisfy the disclosure requirements of this regulation, such as when:

A credit union changes a term that triggers a notice under Regulation E, and the timing and disclosure rules of Regulation E are used for sending change-in-terms notices.
A member adds an ATM access feature to an account, and the credit union provides disclosures pursuant to Regulation E, including disclosure of fees before the member receives ATM access. (See 12 CFR § 205.7.) If the credit union complies with the timing rules of Regulation E, fees related to electronic services (such as balance inquiry fees imposed if the inquiry is made at an ATM) that are required to be disclosed by this regulation, but not by

Regulation E, may also be provided at that time.

A credit union relies on Regulation E's disclosure rules regarding limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any limitation on the number of "intra-institutional transfers" from other accounts at the credit union during a given time period must be disclosed, even though those transfers are exempt from Regulation E.

(d) Multiple members

1. *General.* When an account has multiple natural person member accountholders, delivery of disclosures to any member accountholder or agent authorized by the accountholder satisfies the disclosure requirements of part 707. In the case of a joint account in a credit union, disclosures may be made to a nonmember holding a joint account with a member.

(e) Oral responses to inquiries

1. *Application of rule.* Credit unions need not provide rate information orally.

2. *Relation to advertising.* An oral response to a question about rates is not covered by the advertising rules.

3. *Disclosures.* For dividend-bearing accounts other than term share accounts, a credit union must state either the dividend rate and annual percentage yield as of the last dividend declaration date, or, if such rate might be inaccurate due to known or contemplated dividend rate changes, a prospective rate and annual percentage yield determined in good faith by the board of directors, or, both the past and prospective rates. For interest-bearing accounts and for dividends-bearing term share accounts, a credit union would specify the interest (dividend) rate and annual percentage yield offered during the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and give a number for members to call for current rate information. These rate disclosures are identical to rate disclosures made upon request (§ 707.4(a)(2)(ii)), in account disclosures (§ 707.4(b)(1)(i)), and in advertising disclosures (§ 707.8(c)(2)).

(f) Rounding and accuracy rules for rates and yields

(f)(1) Rounding

1. *General.* The annual percentage yield, annual percentage yield earned and dividend rate must be rounded to the nearest one-hundredth of one percentage point (.01%) when disclosed. For example, if a credit union calculated an annual percentage yield to be 5.644%, it would be rounded down and shown as 5.64%; 5.645% would be rounded up and disclosed as 5.65%.

(f)(2) Accuracy

1. *Annual percentage yield and annual percentage yield earned.* The tolerance for annual percentage yield and annual percentage yield earned calculations is designed to accommodate inadvertent errors. Credit unions may not purposely incorporate the one-twentieth of one percentage point (.05%) tolerance into their calculation of yields.

2. *Dividend rate.* There is no tolerance for an inaccuracy in the dividend rate.

Section 707.4—Account disclosures.

(a) Delivery of account disclosures

(a)(1) Account opening

1. *New accounts.* New account disclosures must be provided when:

A term share account that does not automatically rollover is renewed by a member

A member changes the term for a renewable term share account (from a one-year term share account to a six-month term share account, for instance)

Funds in a money market share account are transferred by a credit union to open a new account for the member, such as a share draft account, because the member exceeded transaction limitations on the money market share account.

A credit union accepts a share deposit from a member to an account the credit union previously deemed to be "closed" by the member.

New account disclosures are *not* required when:

A credit union acquires an account through an acquisition of or merger with another credit union (but see § 707.5(a) regarding advance notice requirements if terms are changed).

A member opens separate subaccounts (suffix designations) from a main (suffix) account, if the terms of the subaccounts are identical to that of the main account and disclosures for the main account have already been given to the member.

(a)(2) Requests

(a)(2)(i)

1. *Inquiries versus requests.* A response to an oral inquiry (by telephone or in person) about rates and yields or fees does not trigger the duty to provide account disclosures. However, when a member asks for written information about an account (whether by telephone, in person, or by other means), the credit union must provide disclosures.

2. *General requests.* When a member or potential member generally asks for information about a type of account (a share draft account, for example), a credit union that offers several variations may provide disclosures for any one of them. No disclosures need be made to nonmembers, though a credit union may provide disclosures to nonmembers within its sole discretion.

3. *Timing for response.* Twenty calendar days is a reasonable time for responding to a request for account information that a member does not make in person.

(a)(2)(ii)(B)

1. *Term.* Describing the maturity of a term share account as "1 year" or "6 months," for example, illustrates a response stating the maturity of a term share account as a term rather than a date (e.g., "June 1, 1995").

(b) Content of account disclosures

(b)(1) Rate information

(b)(1)(i) Annual percentage yield and dividend rate

1. *Rate disclosures.* In addition to the dividend rate and annual percentage yield, a periodic rate corresponding to the dividend rate may be disclosed. No other rate or yield (such as "tax effective yield") is permitted. If the annual percentage yield is the same as the dividend rate, credit unions may disclose a single figure but must use both terms.

2. *Fixed-rate accounts.* To disclose the period of time the dividend rate will be in effect, credit unions may state the maturity date for fixed-rate term share accounts that pay the opening rate until maturity. (See Appendix B, B–5—Sample Form.) For other fixed-rate accounts, credit unions may disclose a date (such as "This rate will be in effect through June 30, 1994") or a period (such as "This rate will be in effect for at least 30 days").

3. *Tiered-rate accounts.* Each dividend rate, along with the corresponding annual percentage yield for each specified balance level (or range of annual percentage yields, if appropriate), must be disclosed for tiered-rate accounts. (See Appendix a, Part I, Paragraph D.)

4. *Stepped-rate accounts.* A single annual percentage yield must be disclosed for stepped-rate accounts. (See Appendix A, Part I, Paragraph B.) However, the dividend rates and the period of time each will be in effect also must be provided. When the initial rate offered on a variable-rate account is higher or lower than the rate that would otherwise be paid on the account, the calculation of the annual percentage yield must be made as if for a stepped-rate account. (See Appendix A, Part I, Paragraph C.)

5. *Minimum-balance accounts.* If a credit union sets a minimum balance to earn dividends, the credit union need not state that the annual percentage yield is 0% for those days the balance in the account drops below the minimum balance level when using the daily balance method. Nor is a disclosure of 0% required for credit unions using the average daily balance method, if the member fails to meet the minimum balance required for the average daily balance period.

(b)(1)(ii) Variable rates

(b)(1)(ii)(B)

1. *Determining dividend rates.* To disclose how the dividend rate is determined, credit unions must:

Identify the index and specific margin, if the dividend rate is tied to an index

State that rate changes are solely within the credit union's discretion, if the credit union does not tie changes to an index

(b)(1)(ii)(C)

1. *Frequency of rate changes.* Credit unions that reserve the right to change rates at any time must state that fact.

(b)(1)(ii)(D)

1. *Limitations.* A floor or ceiling on rates or on the amount the rate may decrease or increase during any time period must be

disclosed. Credit unions need not disclose the absence of limitations on rate changes.

(b)(2) Compounding and crediting

(b)(2)(i) Frequency

1. *General.* Descriptions such as "quarterly" or "monthly" are sufficient. Irregular crediting and compounding periods, such as if a cycle is cut short at year end for tax reporting purposes, need not be disclosed.

2. *Dividend period.* For dividend-bearing share accounts, the dividend period must be disclosed. A specific example of frequency must be given. (See Appendix B, § B–1(c).)

(b)(2)(ii) Effect of closing an account

1. *Deeming an account closed.* If permissible under federal and state law, credit unions may provide in account contracts that certain actions by members will be treated as the member voluntarily closing the account which will result in the forfeiture of accrued but uncredited dividends, such as when a member withdraws all funds from the account prior to the date dividends are credited. Credit unions are cautioned that bylaw requirements may prevent a credit union from deeming a member's account closed until certain time periods are extinguished if funds remain in a member's account. *NCUA Standard FCU Bylaws*, Art. III, § 3 (members have at least 6 months to replenish membership share before membership terminates and account is deemed closed). Such bylaw requirements may not be overridden without proper agency approval.

(b)(3) Balance information

(b)(3)(i) Minimum balance requirements

1. *Par value.* Credit unions must disclose any minimum balance required to open the account, to avoid the imposition of a fee, or to obtain the annual percentage yield. Since members cannot generally maintain any accounts until the par value of the membership share is paid in full, this section requires that credit unions disclose the par value of a share necessary to become a member and maintain accounts at the credit union. The par value of a share and the minimum balance requirement do not have to be the same amount (e.g., a credit union may have a $5 par value for a membership share, in order for accounts to be opened and maintained, and a $100 minimum balance requirement, in order for the account to earn dividends).

2. *Disclosures.* The explanation of minimum balance computation methods may be combined with the balance computation method disclosures (§ 707.4(b)(3)(ii)) if they are the same. If a credit union uses different cycles for determining minimum balance requirements for purposes of assessing fees and for paying dividends, the credit union must disclose the specific cycle or time period used for each purpose (e.g., use of a midmonth statement cycle for determining dividends, and use of a calendar month cycle for determining fees). Credit unions may assess fees by using any method. If fees on one account are tied to the balance in another account, such provision must be explained (e.g., if share draft fees are tied to a minimum balance in the regular share account (or a combination of the share draft and regular share accounts), the share draft account must explain that fact and how the balance in the regular share account (or both accounts) is determined). The fee need not be disclosed in the account disclosures if the fee is not imposed on that account.

(b)(3)(ii) Balance computation method

1. *Methods and periods.* Credit unions may use different methods or periods to calculate minimum balances for purposes of imposing a fee (daily balance for a calendar month, for example) and accruing dividends (average daily balance for a statement period, for example). Each method and period must be disclosed.

(b)(3)(iii) When dividends begin to accrue

1. *Additional information.* Credit unions may disclose additional information such as the time of day after which share deposits are treated as having been received the following business day, and may use additional descriptive terms such as "ledger" or "collected" balances to disclose when dividends or interest begin to accrue. Under the ledger balance method, dividends begin to accrue on the day of deposit. Under the collected balance method, dividends begin to accrue when provisional credit is received for the item deposited. Credit unions must include a statement as to when dividends begin to accrue for noncash deposits.

(b)(4) Fees.

1. *Types of fees.* The following are types of fees that must be disclosed in connection with an account:

- Maintenance fees, such as monthly service fees
- Fees related to share deposits or withdrawals, such as fees for use of the credit union's ATMs or nonproprietary ATMs
- Fees for special services, such as stop payment fees, fees for balance inquiries or verification of share and deposits, and fees associated with checks returned unpaid
- Fees to open or to close accounts

Credit unions need not disclose fees such as the following:

- Fees assessed for services offered to members and nonmembers alike, such as fees for certain travelers checks, to process credit card cash advances, or to handle U.S. Savings Bond redemption
- Incidental fees, such as fees associated with state escheat laws, garnishment or attorneys fees, to change names on an account, to generate a midcycle periodic statement, to wrap loose coins, and fees for photocopying forms

2. *Amount of fees.* Credit unions must state the amount and conditions under which a fee may be imposed. Naming and describing the fee typically satisfies this requirement. Some examples are:

- "$4.00 monthly service fee"
- "$7.00 and up" or "fee depends on style of checks ordered" for check printing fees

3. *Tied-accounts.* Credit unions must state if fees that may be assessed against an account are tied to other accounts at the credit union. For example, if a credit union ties the fees payable on a share draft account to balances held in the share draft account and in a regular share account, the share draft account disclosures must state that fact and explain how the fee is determined.

4. *Regulation E statements.* Some fees are required to be disclosed under both Regulation E (12 CFR § 205.7) and part 707. If such fees, such as ATM transaction fees, are disclosed on a Regulation E statement, they need not be disclosed again on a periodic statement required under part 707.

(b)(5) Transaction limitations

1. *General rule.* Examples of limitations on the number or dollar amount of share deposits or withdrawals that credit unions must disclose are:

- Limits on the number of share drafts or checks that may be written on an account for a given time period
- Limits on withdrawals or share deposits during the term of a term share account
- Bylaw limitations (e.g., maximum amount of shares which may be held by any one member, *NCUA Standard FCU Bylaws*, Art. III, § 2, and limitations of withdrawals, *NCUA Standard FCU Bylaws*, Art. III, § 5(a))
- Limitations required by Regulation D, such as the number of withdrawals permitted from money market share accounts by check to third parties each month (but they need not disclose that the credit union reserves the right to require a seven-day notice for a withdrawal from an account).

(b)(6) Features of term share accounts

(b)(6)(i) Time requirements

1. *"Callable" term share accounts.* In addition to the maturity date, credit unions must state the date or the circumstances under which the credit union may redeem a term share account at the credit union's option (a "callable" term share account).

(b)(6)(ii) Early withdrawal penalties

1. *General.* The term "penalty" need not be used to describe the loss that may be incurred by members for early withdrawal of funds from term share accounts.

2. *Examples.* Examples of early withdrawal penalties are:

- Monetary penalties, such as "$10.00" or "seven days' dividends plus accrued but uncredited dividends"
- Adverse changes to terms such as the dividend rate, annual percentage yield, or compounding frequency for funds remaining in shares or on deposit
- Reclamation of bonuses

3. *Relation to rules for IRAs or similar plans.* Penalties imposed by the Internal Revenue Code for certain withdrawals from IRAs or similar pension or savings plans are not early withdrawal penalties.

(b)(6)(iv) Renewal policies

1. *Rollover term share accounts.* Credit unions are not required to provide a grace period, to pay dividends during the grace period, or to disclose whether or not dividends will be paid during the grace period. Credit unions offering a grace period must give the length of the grace period. Commentary, Appendix B, Model Clauses, § B–1(i)(iv).

2. *Nonrollover term share accounts.* Credit unions that pay dividends on funds following the maturity of term share accounts that do not renew automatically need not state the rate (or annual percentage yield)

that may be paid. Term share club accounts will generally have a specific maturity data and be nonrollover.

(b)(7) Bonuses

1. *General.* Credit unions are required to state the amount and type of bonus, and disclose any minimum balance or time requirement to obtain the bonus and when the bonus will be provided. If the minimum balance or time requirement is otherwise required to be disclosed, credit unions need not duplicate the disclosure for purposes of this paragraph.

(b)(8) Nature of dividends

1. *General.* Dividends are not payable until declared and unless sufficient current and undivided earnings are available after required transfers to reserves at the close of a dividend period. A disclosure explaining dividends educates members and protects credit unions in the event that a prospective dividend cannot be paid, or is not properly payable. This disclosure is required for all dividend-bearing share accounts except term share accounts.

2. *State-chartered credit unions with interest-bearing deposit accounts.* If a member of a state-chartered credit union is opening only an interest-bearing deposit account, or is requesting account disclosures only for an interest-bearing deposit account, the disclosures must generally include the following information on any dividend-bearing share portion of the account (e.g., membership share): the par value of a share; a statement that the portion of the deposit that represents the par value of the membership share will earn dividends and that dividends are paid from current income and available earnings after required transfers to reserves. Further additional disclosures, such as a separate dividend rate and annual percentage yield for the membership share, are not required (as they would agree with the remainder of the account, invested in an interest-bearing deposit).

(c) Notice to existing accountholders

1. *General.* Only members who receive periodic statements (provided regularly at least four times per year) and who hold accounts of the type offered by the credit union as of the compliance date of part 707 (generally January 1, 1995) must receive the notice. If following receipt of the notice members request disclosures, credit unions have twenty calendar days from receipt of the request to provide the disclosures. Rate and annual percentage yield information in such disclosures must conform to that required for disclosures upon request As an alternative to including the notice in or on the periodic statement, the final rule permits credit unions to send the account disclosures themselves, as long as they are sent at the same time as the periodic statement (the disclosures may be mailed either with the periodic statement or separately).

2. *Form of the notice.* The notice may be included on the periodic statement, in a member newsletter, or on a statement stuffer or other insert, if it is clear and conspicuous and it is sent with the first periodic statement after the compliance date of part 707. The notice cannot be sent in a separate mailing from the periodic statement.

3. *Timing.* The notice may accompany the first periodic statement after the compliance date for part 707, or the periodic statement for the first cycle beginning after that date. For example, a credit union's statement cycle is December 15, 1994—January 14, 1995. The statement is mailed on January 15. The next cycle is January 15, 1995 through February 14, 1995, and the statement for that cycle is mailed on February 15. The credit union may provide the notice either on or with the January 15 statement or on or with the February 15 statement, as it covers the first cycle after January 1, 1995.

4. *Early compliance.* Credit unions that provide the notice of existing members prior to the compliance date of part 707, must be prepared to provide accurate and timely disclosures when, following receipt of the notice, members ask for account disclosures. Such disclosures must be provided even if they are requested before the compliance date of part 707. Credit unions who provide early notice to existing members need to comply with all other aspects of part 707.

Section 707.5—Subsequent disclosures.

(a) Change in terms

(a)(1) Advance notice required

1. *Form of notice.* Credit unions may provide a change-in-term notice on or with a regular periodic statement or in another mailing. If a credit union provides notice through revised account disclosures, the changed term must be highlighted in some manner. For example, credit unions may state that a particular fee has been changed (also specifying the new amount) or use an accompanying letter that refers to the changed term.

2. *Effective date.* An example of a disclosure that complies is:

Effective as of May 11, 1995"

3. *Terms that change upon the occurrence of an event.* Credit unions that offer terms such as a fee waiver for employee account holders during their employment or for students enrolled at a local university need not send advance notice of a change resulting from termination of employment or enrollment if:

The account-opening disclosures given (to the employee, for example) describe the term and the event that would cause the term to change (such as the member's leaving the credit union's employment), and

Notices are sent when the term is changed for other account holders, even though the term remains unchanged for the member while employment or enrollment continues.

(a)(2) No notice required

(a)(2)(ii) Check printing fees

1. *Increase in fees.* A notice is not required even if an increase in check printing fees includes an amount added by the credit union to the price charged by a vendor.

(b) Notice before maturity for term share accounts longer than one month that renew automatically

1. *Maturity dates on nonbusiness days.* For determining the term, credit unions may ignore the fact that the disclosed maturity falls on a nonbusiness day and the term is extended beyond the disclosed number of days. For example, a holiday or weekend may cause a "one-year" term share account to extend beyond 365 days (or 366, in a leap year), or a "one-month" term share account to extend beyond 31 days.

2. *Disclosing when rates will be determined.* Disclosures that illustrate when the annual percentage yield will be available include:

A specific date, such as "October 28"

A date that is easily discernible, such as "the Tuesday prior to the maturity date stated on the notice" or "as of the maturity date stated on this notice"

Credit unions must indicate when the rate will be available if the date falls on a nonbusiness day.

3. *Alternative timing rule.* To illustrate the alternative timing rule: a credit union that offers a 10-day grace period must provide the disclosures at least 10 calendar days prior to the scheduled maturity date.

4. *Club accounts.* Club accounts that are term share accounts are covered by this paragraph, even though funds may be withdrawn at the end of the current club period. For example, if the member has agreed to the transfer of payments from another account to the term share account for the next club period, the credit union must comply with the requirements for automatically renewable term share accounts.

5. *Renewal of a term share account.* The following applies to a change in a term that becomes effective if a rollover term share account is subsequently renewed.

If the change is initiated by the credit union, the disclosure requirements of this paragraph. (Paragraph 5(a) applies if the change becomes effective prior to the maturity of the existing term share account.)

If initiated by the member, the account-opening disclosure requirements of § 707.4(b). (If the notice required by this paragraph has been provided, credit unions may give new account disclosures or disclosures that reflect the new term.)

For example, if a member who receives a prematurity notice on a one-year term share account requests a rollover to a six-month account, the credit union must provide either account-opening disclosures that reflect the new maturity date or, if all other terms previously disclosed in the prematurity notice remain the same, only the new maturity date.

(b)(1) Maturities of longer than one year

1. *Highlighting changed terms.* Credit unions need not highlight terms that have changed since the last account disclosures were provided.

(c) Notice for term share accounts one month or less that renew automatically

1. *Providing disclosures within a reasonable time.* Generally, 20 calendar days

after an account renews is a reasonable time for providing disclosures. For term share accounts shorter than 20 days, disclosures should be given prior to the next scheduled renewal date.

(d) Notice before maturity for term share accounts longer than one year that do not renew automatically

1. *Subsequent account.* When funds are transferred following maturity of a nonrollover term share account, credit unions need not provide account disclosures unless a new account is established.

Section 707.6—Periodic statement disclosures.

(a) Rule When Statement and Crediting Periods Vary

1. *General.* Credit unions are not required to provide periodic statements. If they provide periodic statements, disclosures need only be furnished to the extent applicable. For example, if no dividends are earned for a statement period, credit unions need not disclose "$0" dividends earned and "0%" annual percentage yield earned.

2. *Regulation E interim statements.* When a credit union provides regular quarterly statements, and in addition provides a monthly interim statement to comply with Regulation E, the interim statement need not comply with this section unless it states dividend or rate information. (See 12 CFR § 205.9.)

3. *Combined statements.* Credit unions may provide certain information about an account (such as a money market share account or regular share account) on the periodic statement for another account (such as a share draft account) without triggering the disclosures required by this section, as long as:

The information is limited to the account number, the type of account, or balance information, and

The credit union also provides members a periodic statement that complies with this section for the account (the money market share account or regular share account, in the example).

4. *Other information.* Credit unions may include additional information on or with a periodic statement, such as:

Dividend rates and periodic rates corresponding to the dividend rate applied to balances during the statement period.

The dollar amount of dividends earned year-to-date.

Bonuses paid (or any *de minimis* consideration of $10 or less).

Fees for other products, such as safe deposit boxes.

5. *When statement and crediting periods vary.* This rule permits credit union, on dividend—bearing share accounts, to report the annual percentage yield earned and the amount of dividends earned on a statement other than on each periodic statement when the dividend period does not agree with, varies from, or is different than, the statement period. For dividend-bearing share accounts, credit unions may disclose the required information either upon each periodic statement, or on the statement on which dividends are actually earned (credited or posted) to the member's account. In addition, for accounts using the average daily balance method of calculating dividends, when the average daily balance period and the statement periods do not agree, vary or are different, credit unions may also report annual percentage yield earned and the dollar amount of dividends earned on the periodic statement on which the dividends or interest is earned. For example, if a credit union has quarterly dividend periods, or uses a quarterly average daily balance on an account, the first two monthly statements may not state annual percentage yield earned and dividends earned figures; the third "monthly" statement will reflect the dividends earned and the annual percentage yield earned for the entire quarter. The fees imposed disclosure must be given on the periodic statement on which they are imposed.

6. *Length of the period.* Credit unions must disclose the length of both the dividend period (or average daily balance calculation period) and the statement period. For example, a statement could disclose a statement period of April 16 through May 15 and further state that "the dividends earned and the annual percentage yield earned are based on your dividend period (or average daily balance) for the period April 1 through April 30."

7. *Quarterly statements and monthly compounding.* Credit unions that use the average daily balance method to calculate dividends on a monthly basis, but send statements on a quarterly basis, may disclose a single dividend (and annual percentage yield earned) figure. Alternately, a credit union may disclose three dividends earned and three annual percentage earned figures, one for each month in the quarter, as long as the credit union states the number of days (or beginning and ending date) in each dividend period if it varies from the statement period.

8. *Additional voluntary disclosures.* For credit unions not disclosing the annual percentage yield earned and dividends earned on all periodic statements, credit unions may place a notice on statements without dividends and annual percentage yield earned figures, that the annual percentage yield earned and dollar amount of dividends earned will appear on the first statement at the close of the dividend (or average daily balance) period, or similar wording. Credit unions may also choose to include a telephone number to call for interim information, if desired by a member.

(b) Statement Disclosures

(b)(1) Annual percentage yield earned

1. *Ledger and collected balances.* The method used by a credit union to accrue or pay dividends on noncash deposits must be the same method used to determine the annual percentage yield earned.

(b)(2) Amount of dividends or interest

1. *Definition of earned.* The term "earned" is defined to include dividends and interest either "accrued" or "paid and credited." Credit unions may use either the "ledger" or the "collected" balance for either option. (See commentary to § 707.2(t).)

2. *Terminology.* In disclosing dividends earned for the period, credit unions must use the term "dividends" or terminology such as:

"Dividends paid," to describe dividends that have been credited

"Dividends accrued" or "dividends earned," to indicate that dividends are not yet credited.

3. *Closed accounts.* If a member closes an account between crediting periods and forfeits accrued dividends, the credit union may not show any figures for "dividends earned" or annual percentage yield earned for the period.

4. *Extraordinary dividends.* Extraordinary dividends are not a component of the annual percentage yield earned or the dividend rate, but are an addition to the member's account. Only the dollar amount of the extraordinary dividends paid, denoted as a separate, identified figure, can be disclosed on the periodic statement on which the extraordinary dividends are earned.

(b)(3) Fees imposed

1. *General.* Periodic statements must state fees debited to the account during the statement period even if assessed for an earlier period.

2. *Itemizing fees by type.* In itemizing fees by type, credit unions may group together fees of the same type that are imposed more than once in the period. If fees are grouped, the description must make clear that the dollar figure represents more than a single fee, for example, "total fees for checks written this period."

Examples of fees that may *not* be grouped together are:

Monthly maintenance and excess activity fees

"Transfer" fees, if different dollar amounts are imposed—such as $.50 for share deposits and $1.00 for withdrawals

Fees for electronic fund transfers and fees for other services, such as balance inquiry or maintenance fees (unless permitted by Regulation E)

3. *Identifying fees.* Statement details must enable the member to identify the specific fee. For example:

Credit unions may use a code to identify a particular fee if the code is explained on the periodic statement or in documents accompanying the statement.

Credit unions using debit slips may disclose the date the fee was debited on the periodic statement and show the amount and type of fee on the dated debit slip.

4. *Relation to Regulation E.* Compliance with Regulation E complies with this section for the disclosure of fees related to electronic fund transfers on periodic statements (for example, totaling all electronic funds transfer fees in a single figure).

(b)(4) Length of period

1. *General.* Credit unions that provide the beginning and ending dates of the period must make clear whether both dates are included in the period. For example, stating "April 1 through April 30" would clearly indicate that both April 1 and April 30 are included in the period.

2. *Opening or closing an account mid-cycle.* If an account is opened or closed

during the period for which a statement is sent, credit unions must calculate the annual percentage yield earned based on account balances for each day the account was open.

Section 707.7—Payment of dividends.

(a) Permissible methods

1. *Prohibited calculation methods.* Calculation methods that do not comply with the requirement to pay dividends on the full amount of principal in the account each day include:

The "rollback" method, also known as the "grace period" or "in by the 10th" method, where credit unions pay dividends on the lowest balance in the account for the period

The "increments of par value" method, where credit unions only pay dividends on full shares in an account, e.g., a credit union with $5 par value shares pays dividends on $20 of a $24 account balance

The "ending balance" method, where credit unions pay dividends on the balance in the account at the end of the period

The "investable balance" method, where credit unions pay dividends on a percentage of the balance, excluding an amount credit unions set aside for reserve requirements

2. *Use of 365-day basis.* Credit unions may apply a daily periodic rate that is greater than 1/365 of the dividend rate—such as 1/360 of the dividend rate—as long as it is applied 365 days a year.

3. *Periodic dividend payments.* A credit union can pay dividends each day on the account and still make uniform dividend payments. For example, for a one-year term, term share certificate account, a credit union could make monthly dividend payments that are equal to 1/12 of the amount of dividends that will be earned for a 365-day period, or 11 uniform monthly payments and a final payment that accounts for the total dividends earned for the period.

4. *Leap year.* Credit unions may apply a daily rate of 1/366 or 1/365 of the dividend rate for 366 days in a leap year, if the account will earn dividends for February 29.

5. *Maturity of term share accounts.* Credit unions are not required to pay dividends after term share accounts mature, such as:

During any grace period offered by a credit union for an automatically renewable term share account, if the member decides during that period not to renew the account

Following the maturity of nonrollover term share accounts

When the maturity date falls on a holiday, and the member must wait until the next business day to obtain the funds

6. *Dormant accounts.* Credit unions may contract with a member not to pay dividends if the account becomes "dormant," as defined by applicable state or other law.

7. *Insufficient funds.* Credit unions are not required to pay dividends on checks or share drafts deposited to a member's account that are returned for insufficient funds. If a credit union accrues dividends on a check that it later determines is not good, it may deduct from the accrued dividends any dividends attributed to the proceeds of the returned check. If dividends have already been credited before the credit union determines the item has insufficient funds, the credit union may deduct the amount of the check and associated dividends from the account balance. The dividend deduction should *not* be included in the dividend amount and annual percentage yield earned that is reported for the next period.

8. *Account drawn below par value of a share.* If a member draws his or her account below the par value of a share, dividends would continue to accrue on the account. However, under the *NCUA Standard FCU Bylaws*, if a member who reduces his or her share balance below the value of a par value share and does not increase the balance within at least six months, the credit union may terminate the member's membership. State-chartered credit unions may have similar termination provisions.

(a)(2) Determination of minimum balance to earn dividends

1. *General.* Credit unions may set minimum balance requirements that must be met in order to earn dividends. However, credit unions must use the same method to determine a minimum balance required to earn dividends as they use to determine the balance upon which dividends will accrue. For example, a credit union that calculates dividends on the daily balance method must use the daily balance method to determine if the minimum balance to earn dividends has been met. Similarly, a credit union that calculates dividends on the average daily balance method must use the average daily balance method to determine if the minimum to earn dividends has been met. Credit unions may have a par value of a share that is different from the minimum balance requirement to earn dividends (See commentary to § 707.4(b)(3)(i).)

2. *Daily balance accounts.* Credit unions that use the daily balance method to calculate dividends and require a minimum balance to earn dividends may choose not to pay dividends for days when the balance drops below the required daily minimum balance. For example, a credit union could set a minimum daily balance level of $200 and pay dividends only those days the $200 daily balance is maintained.

3. *Average daily balance accounts.* Credit unions that use the average daily balance method to calculate dividends and require a minimum balance to earn dividends may choose not to pay dividends for the average daily balance calculation period in which the average daily balance does not meet the required minimum. For example, a credit union could set a minimum average daily balance level of $200 and pay dividends only if the $200 average daily balance is met for the calculation period.

4. *Beneficial method.* Credit unions may not require members to maintain both a minimum daily balance and a minimum average daily balance to earn dividends, such as by requiring the member to maintain a $500 daily balance and an average daily balance that is higher or lower. But a credit union could determine the minimum balance to earn dividends by using a method that is "unequivocally beneficial" to the member such as the following:

A credit union using the daily balance method to calculate dividends and requiring a $500 minimum daily balance could choose to pay dividends on the account (for those days the minimum balance is not met) as long as the member maintained an average daily balance throughout the month of $400.

A credit union using the average daily balance method to calculate dividends and requiring a $400 minimum average daily balance could choose to pay dividends on the account as long as the member maintained a daily balance of $500 for at least half of the days in the period.

A credit union using either the daily balance method or average daily balance method to calculate dividends that requires either of the following, but not both, $500 daily balance or a $400 average daily balance to pay dividends on the account.

5. *Paying on full-balance.* Credit unions must pay dividends on the full balance in the account once a member has met the required minimum balance. For example, if a credit union sets $300 as is minimum daily balance requirement to earn dividends, and a member share and deposits $500, the credit union must pay the stated dividend rate on the full $500 and not just on $200.

6. *Negative balances prohibited.* Credit unions must treat a negative account balance as zero to determine:

The daily or average daily balance on which dividends will be paid

Whether any minimum balance to earn dividends is met

(See commentary to Appendix A, Part II, which prohibits credit unions from using negative balances in calculating the dividends figure for the annual percentage yield earned.)

7. *Club accounts.* Credit unions offering club accounts (such as "holiday" or "vacation" club accounts) cannot impose a minimum balance that is based on the total number or dollar amount of payments required under the club plan. For example, if a plan calls for $10 weekly payments for 50 weeks, the credit union cannot set a $500 minimum balance and then pay only if the member makes all 50 payments.

8. *Minimum balances not affecting dividends.* Credit unions may use the daily balance, average daily balance, or other computation method to calculate minimum balance requirements not involving the payment of dividends—such as to compute minimum balances for assessing fees.

(b) Compounding and crediting policies

1. *General.* Credit unions that choose to compound dividends may compound or credit dividends annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis.

2. *Withdrawals prior to crediting date.* If members withdraw funds, without closing the account, prior to a scheduled crediting date, credit unions may delay paying the accrued dividends on the withdrawn amount until the scheduled crediting date, but may not avoid paying dividends.

3. *Closed accounts.* If members close accounts prior to the date dividends are credited, credit unions may choose not to pay

accrued dividends as long as they have previously disclosed that fact to the member. If accrued dividends are paid, accrued dividends must be paid on funds up until the account is closed or the account is deemed closed. For example, if an account is closed on a Tuesday, accrued dividends on the funds through Monday would be paid. Whether (and the conditions under which) credit unions are permitted to deem an account closed by a member is determined by state or other law, if any. Credit unions are cautioned that bylaw requirements may prevent a credit union from deeming a member's account closed until certain time periods are extinguished. (See *NCUA Standard FCU Bylaws*, Art. III, § 3 (members have at least 6 months to replenish membership share before membership can terminate and the account is deemed closed). Such bylaw requirements may not be overridden without proper agency approval.

4. *Dormant account.* Subject to state or other law defining when an account becomes dormant, a credit union may contract with a member not to pay accrued, but uncredited, dividends if the account becomes dormant prior to the regular dividend crediting date.

(c) Date dividends begin to accrue

1. *Relation to Regulation CC.* Credit unions may rely on the Expedited Funds Availability Act (EFAA) and regulation CC (12 CFR part 229) to determine, for example, when a share is considered made for purposes of dividend accrual, or when dividends need not be paid on funds because a deposited check is later returned unpaid.

2. *Ledger and collected balances.* Credit unions may calculate dividends by using a "ledger" balance or "collected" balance method, as long as the crediting requirements of the EFAA are met.

3. *Withdrawal of principal.* Credit unions must accrue dividends on funds until the funds are withdrawn from the account. For example, if a check is debited to an account on a Tuesday, the credit union must accrue dividends on those funds through Monday.

Section 707.8—Advertising.

(a) Misleading or inaccurate advertisements

1. *General.* All advertisements must comply with the rule against misleading or inaccurate advertisements, even though the disclosures applicable to various media differ. The word "profit" may be used when referring to dividend-bearing share accounts, as it reflects the nature of dividends. The word "profit" may not be used when referring to interest-bearing deposit accounts.

2. *Indoor signs.* An indoor sign advertising an annual percentage yield is not misleading or inaccurate if:

For a tiered-rate account, it also provides the upper and lower dollar amounts of the advertised tier corresponding to the annual percentage yield

For a term, share account, it also provides the term required to obtain the advertised yield

3. *"Free" or "no cost" accounts.* For purposes of determining whether an account can be advertised as "free" or "no cost," maintenance and activity fees include:

Any fee imposed if a minimum balance requirement is not met, or if the member exceeds a specified number of transactions

Transaction and service fees that members reasonably expect to be regularly imposed on an account

Examples of maintenance and activity fees include:

A flat fee, such as a monthly service fee

Fees imposed to share and deposit, withdraw or transfer funds, including per-check or per-transaction charges (for example, $.25 for each withdrawal, whether by check, in person or at an ATM owned by the credit union)

Examples of fees that are *not* maintenance or activity fees include:

Fees that are not required to be disclosed under § 707.4(b)(4)

Check printing fees of any type

Fees for obtaining copies of checks, whether or not the original checks have been truncated or returned to the member periodically

Balance inquiry fees

Fees assessed against a dormant account

Fees for using an ATM not owned by the account-issuing credit union

Fees for electronic transfer services that are not required to obtain an account, such as preauthorized transfers or home electronic credit union services

Stop payment fees and fees for returned share draft or checks

4. *Similar terms.* An advertisement may not use a term such as "fees waived" if a maintenance or activity fee may be imposed because it is similar to the terms "free" or "no cost."

5. *Specific account services.* Credit unions may advertise a specific account service or feature as free as long as no fee is imposed for that service or feature. For example, credit unions that provide free access to their ATMs could advertise that fact.

6. *Free for limited time.* If an account or a specific account service is free only for a limited period of time—for example, for one year following the account opening—the account or service may be advertised as free as long as the time period is stated.

7. *Conditions not related to share accounts.* Credit unions may advertise accounts as "free" for members that meet conditions not related to share accounts such as age. For example, credit unions may advertise a share draft aaccount as "free for persons over 65 years old," even though a maintenance or activity fee may be assessed on accounts held by members that are 65 or younger.

(b) Permissible rates

1. *Tiered-rate accounts.* An advertisement for a tiered-rate account that states an annual percentage yield must also state the annual percentage yield for each tier, along with corresponding minimum balance requirements. Any dividend rates stated must appear in conjunction with the annual percentage yields for the applicable tier.

2. *Stepped-rate accounts.* An advertisement that states a dividend rate for a stepped-rate account must state each dividend rate and the time period each rate is in effect.

3 *Representative examples.* An advertisement that states an annual percentage yeild for a type of account (such as a term share account) need not state the annual percentage yield applicable to every variation offered by the credit union. For example, if rates vary depending on the amount of the initial share and deposit and term of a term share account, credit unions need not list each balance level and term offered. Instead, the advertisement may:

Provide a representative example of the annual percentage yields offered, clearly described as such. For example, if a credit union offers a $25 bonus on all term share accounts and the annual percentage yield will vary depending of the term selected, the credit union may provide a disclosure of the annual percentage yield as follows: "For example, our 6-month term share certificate of deposit currently pays a 3.15% annual percentage yield."

Indicate that various rates are available, such as by stating short-term and longer-term maturities along with the applicable annual percentage yields that depend on the maturity you choose. For example, our one-month CD earns a 2.75% APY. Or, earns a 5.25 APY for a three-year CD."

(c) When additional disclosures are required

1. *Trigger terms.* Disclosures are triggered by statements such as "We will pay a bonus of 1% over our current rate for one-year term share certificates of deposit opened before April 15, 1995." The following are examples of information stated in advertisements that are not "trigger" terms:

"One, three, and five year CDs available"

"Bonus rates available"

(c)(2) Time annual percentage yield is offered

1. *Specified recent date.* If an advertisement discloses an annual percentage yield as of a specified date, that date must be recent in relation to the publication or broadcast frequency of the media used. For example, the printing date of a brochure printed once for an account promotion that will be in effect for six months would be considered "recent," even though rates change during the six-month period. Interest rates published in a daily newspaper or on television must be a rate offered shortly before (or on) the date the rates are published or broadcast. Similarly, dividend rates published in a daily newspaper or on television must be a rate reflecting either the preceding dividend period, or a prospective rate, and the option chosen should be noted.

(c)(5) Effect of fees

1. *Scope.* This requirement applies only to maintenance or activity fees as described in paragraph 8(a).

(c)(6) Features of term share accounts

(c)(6)(i) Time requirements

1. *Club accounts.* If the maturity date of a club account is set but the term may vary depending on when the account is opened, credit unions may use a phrase such as:

"The term of the account varies depending on when the account is opened. However, the maturity date is November 15."

(c)(6)(ii) Early withdrawal penalties

1. *Discretionary penalties.* Credit unions that impose early withdrawal penalties on a case-by-case basis my disclose that they "may" (rather than "will") impose a penalty if that accurately describes the account terms.

(d) Bonuses

1. *General reference to "bonus."* General statements such as "bonus checking" or "get a bonus when you open a checking account" do not trigger the bonus disclosures.

(e) Exemption for certain advertisements

(e)(1) Certain media

(e)(1)(iii)

1. *Tiered-rate accounts.* Solicitations for tiered-rate accounts made through telephone response machines must provide all annual percentage yields and the balance requirements applicable to each tier.

(e)(2) Indoor signs

(e)(2)(i)

1. *General.* Indoor signs include advertisements displayed on computer screens, banners, preprinted posters, and chalk or peg boards. Any advertisement inside the premises that can be retained by a member (such as a brochure or a printout from a computer) is not an indoor sign.

2. *Members outside the premises.* Advertisements may be "indoor signs" even though they may be viewed by members from outside. An example is a banner in a credit union's glass-enclosed branch office, that is located behind a teller facing customers but also may be seen by passersby.

(e)(3) Newsletters

1. *General.* The partial exemption applies to all credit union newsletters, whether instituted before or after the compliance date of part 707. Nor must a newsletter be of any particular circulation frequency (e.g., weekly, monthly, quarterly, biannually, annually, or irregularly) or of any certain format (e.g. magazine, bulletin, broadside, circular, mimeograph, letter, or pamphlet) in order to be eligible for the partial advertising exemption.

2. *Distribution.* In order for newsletters to retain the partial advertising exemption, newsletters can be sent to existing credit union members only. Any distribution reasonably calculated to reach only members is also acceptable, such as

Mailing newsletters to existing members

Distributing newsletters at a function reasonably limited to members, such as an annual meeting or member picnic

Displaying or offering newsletters at a credit union lobby, branch, or office. Distributing a newsletter in a place open to nonmembers, such as a sponsor's lunch room, is not reasonably calculated to reach only members, and such newsletter would be subject to all applicable advertising rules.

Section 707.9—Enforcement and record retention.

(c) Record retention

1. *Evidence of required actions.* Credit unions comply with the regulation by demonstrating they have done the following:

Established and maintained procedures for paying dividends and providing timely disclosures as required by the regulation, and

Retained sample disclosures for each type account offered to members, such as account-opening disclosures, copies of advertisements, and change-in-term notices; and information regarding the dividend rates and annual percentage yields offered.

2. *Methods of retaining evidence.* Credit unions must retain information needed to reconstruct the required disclosures or other actions. They need not keep disclosures or other business records in hard copy. Records evidencing compliance may be retained on microfilm, microfiche, or by other methods that reproduce records accurately (including computer files). Credit unions must retain copies of all printed advertisements and the text of all advertisements conveyed by electronic or broadcast media, and newsletters.

3. *Payment of dividends.* Sufficient rate and balance information must be retained to permit the verification of dividends paid on an account, including the payment of dividends on the full principal balance.

Appendix A to Part 707—Annual Percentage Yield Calculation

Part I. Annual percentage yield for account disclosures and advertising purposes.

1. *Rounding for calculations.* The following are examples of permissible rounding rules for calculating dividends and the annual percentage yield:

The daily rate applied to a balance rounded to five or more decimals. For example; .008219178%, 3.00% for a 365 day year, would be rounded to no less than .00822%.

The daily dividends or interest earned rounded to five or more decimals. For example; $.08219178082, daily dividends on $1,000 at 3% for a 365 day year, would be rounded to no less than $.08219.

2. *Exponent numerator in a leap year.* The annual percentage yield formula's exponent numerator will remain 365 in leap years.

3. *First tier of a tiered rate account.* The first tier of a tiered rate account is to be disclosed and advertised; "Up to but not exceeding . . .", "$.01 to . . .", or similar language.

Part II. Annual percentage yield earned for periodic statements.

1. *Balance method.* The dividend or interest figure used in the calculation of the annual percentage yield earned may be derived from the daily balance method or the average daily balance method. The balance used in the annual percentage yield earned formula is the sum of the balances for each day in the period divided by the number of days in the period. The balance for each day is based on a point in time; i.e. beginning of day balance, end of day balance, closing of day balance, etc. Each day's balance must be based on the same point in time and cannot be based on the day's low balance.

2. *Collected balance method.* Credit unions that accrue or pay dividends on noncash deposits using the collected balance method must disclose collected balance information on the periodic statement in order that the member may calculate the dividend amount and annual percentage yield earned (e.g., each day's collected balance when the daily balance method is used and the average daily balance when the average daily balance is used).

3. *Negative balances prohibited.* Credit unions must treat a negative account balance as zero to determine the balance on which the annual percentage yield earned is calculated. (See commentary to § 707.7(a)(2).)

A. General formula.

1. *Accrued but uncredited dividends.* To calculate the annual percentage yield earned, accrued but uncredited dividends:

Shall not be included in the balance for statements that are issued at the same time or less frequently than the account's compounding and crediting frequency. For example, if monthly statements are sent for an account that compounds dividends daily and credits dividends monthly, the balance may not be increased each day to reflect the effect of daily compounding. Assume a credit union will pay $13.70 in dividends on $100,000 for the first day, $6.85 in dividends on $50,013.70 for the second day, and $3.43 in dividends on $25,020.55 for the third day. The sum of each days balance is $175,000 (does not include accrued, but uncredited, dividends amounts $13.70, $6.85, and $3.43), thereby resulting in an average daily balance for the three days of $58,333.33.

Shall be included in the balance for succeeding statements if a statement is issued more frequently than compounded dividends is credited on an account. For example, if monthly statements are sent for an account that compounds dividends daily and credits dividends quarterly, the balance for the second monthly statement would include dividends that had accrued for the prior month. Assume a credit union will pay $411.78 in dividends on 30 days of $100,000, $427.28 in dividends on 31 days of $100,411.78, and $415.23 in dividends on 30 days of $100,839.06. The balance (average daily balance in the account for the period) for the second 31 days is $100,411.78.

2. *Rounding.* The dividends earned figure used to calculate the annual percentage yield earned must be rounded to two decimals to reflect the amount actually paid. For example, if the dividends earned for a statement period is $20.074 and the credit union pays the member $20.07, the credit union must use $20.07 (not $20.074) to calculate the annual percentage yield earned. For accounts that pay dividends based on the daily balance method, compound and credit dividends or interest quarterly, and send monthly statements, the credit union may, but need not, round accrued dividends to two decimals for calculating the "projected"

or "anticipated" annual percentage yield earned on the first two monthly statements issued during the quarter. However, on the quarterly statement the dividends earned figure must reflect the amount actually paid.

3. *Compounding frequency using the average daily balance method.* Any compounding frequency, including daily compounding, can be used when calculating dividends using the average daily balance method. (See comment 707.7(b), which does not require credit unions to compound or credit dividends at any particular frequency).

B. Special formula for use where periodic statement is sent more often than the period for which dividends are compounded.

1. *Statements triggered by Regulation E.* Credit unions may, but need not, use this formula to calculate the annual percentage yield earned for accounts that receive quarterly statements and that are subject to Regulation E's rule calling for monthly statements when an electronic fund transfer has occurred. They may do so even though no monthly statement was issued during a specific quarter. This formula must be used for accounts that compound and credit dividends quarterly and that receive monthly statements, triggered by Regulation E, which comply with the provisions of § 707.6.

2. *Days in compounding period.* Credit unions using the special annual percentage yield earned formula must use the actual number of days in the compounding period.

Appendix B to Part 707—Model Clauses and Sample Forms

1. *Modifications.* Credit unions that modify the model clauses will be deemed in compliance as long as they do not delete information required by TISA or regulation or rearrange the format so as to affect the substance or clarity of the disclosures.

2. *Format.* Credit unions may use inserts to a document (see Sample Form B–11) or fill-in blanks (see Sample Forms B–4 and B–5, which use double underlining to indicate terms that have been filled in) to show current rates, fees or other terms.

3. *Disclosures for opening accounts.* The sample forms illustrate the information that must be provided to a member when an account is opened, as required by § 707.4(a)(1). (See § 707.4(a)(2), which states the requirements for disclosing the annual percentage yield, the dividend rate, and the maturity of a term share account in responding to a member's request.)

4. *Compliance with Regulation E.* Credit unions may satisfy certain requirements under Part 707 with disclosures that meet the requirements of Regulation E. (See § 707.3(c).) The model clauses and sample forms do not give examples of disclosures that would be covered by both this regulation and Regulation E (such as disclosing the amount of a fee for ATM usage). Credit unions should consult appendix A to Regulation E for appropriate Regulation E model clauses.

5. *Duplicate disclosures.* If a requirement such as a minimum balance applies to more than one account term (to obtain a bonus and determine the annual percentage yield, for example), credit unions need not repeat the requirement for each term, as long as it is clear which terms the requirement applies to.

6. *Guide to model clauses.* In the model clauses, italicized words indicate the type of disclosure a credit union should insert in the space provided (for example, a credit union might insert "March 25, 1995" in the blank for "(*date*)" disclosure). Brackets and diagonals ("/") indicate a Credit unions must choose the alternative that describes its practice (for example, [daily balance/average daily balance]).

7. *Sample forms.* The sample forms (B–4 through B–11) serve a purpose different from the model clauses. They illustrate various ways of adapting the model clauses to specific accounts. The clauses shown relate only to the specific transactions described.

By order of the National Credit Union Administration Board on July 26, 1994.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–18719 Filed 8–2–94; 8:45 am]

BILLING CODE 7535–01–V–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 330

[Docket No. 92N–0454]

RIN 0905–AA06

Labeling of Drug Products for Over-The-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its general labeling policy for over-the-counter (OTC) drug products that allows for the interchangeable use of certain words in labeling required by an OTC drug monograph. Examples of words already allowed include: "doctor" or "physician," "consult" or "ask," and "indications" or "uses." This proposal provides for an additional phrase ("Drug interaction precaution" or "Avoid mixing drugs" or "Do not mix drugs"). The agency is also requesting public comment on changing the wording of warnings from negative phraseology to a more positive approach (i.e., "Do not use more than 7 days" to "Use only 7 days").

DATES: Written comments by October 17, 1994; written comments on the agency's economic impact determination by October 17, 1994. The agency is proposing that any final rule that may issue based on this proposal become effective 30 days after the date of its publication in the **Federal Register**.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION:

Background

In the **Federal Register** of April 5, 1993 (58 FR 17553), the agency proposed to amend its general labeling policy for over-the-counter (OTC) drug products to allow for the interchangeable use of certain words in the labeling required by an OTC drug monograph. The agency had previously proposed in a number of tentative final monographs and included in a number of final monographs a provision that the words "doctor" and "physician" may be used interchangeably in the labeling of OTC drug products. Instead of including this provision in each OTC drug monograph, the agency proposed to include such a provision in § 330.1 (21 CFR 330.1) as part of the general conditions under which an OTC drug is generally recognized as safe, effective, and not misbranded. The agency also proposed that, at manufacturers' discretion, the word "ask" could be substituted for the word "consult," which appears in the directions for many OTC drug monograph ingredients. Thus, the agency proposed that the phrases "consult a physician," "consult a doctor," "ask a physician," and "ask a doctor" could be used interchangeably. The agency invited comments and suggestions as to such other terms that could be used interchangeably, i.e., terms general in nature that appear in more than one OTC drug monograph. The comments received in response to the proposed rulemaking were favorable and suggested a number of additional terms that could be used interchangeably.

In a final rule published in the **Federal Register** of January 28, 1994 (59 FR 3998), the agency allowed the following terms to be used interchangeably: (1) "Ask" or "consult," (2) "assistance" or "help,"(3) "clean" or "cleanse," (4) "continue" or "persist," (5) "continues" or "persists," (6) "doctor" or "physician," (7) "indication" or "use," (8) "indications" or "uses," and (9) "lung" or "pulmonary." These terms are included in § 330.1(i).

The agency intends to continue to examine labeling required by OTC drug monographs to provide consumers more simplified and understandable information. This includes interchangeable terms, alternative phraseology, and possibly a new or different labeling format. At this time, the agency is proposing additional words or phrases that could be used interchangeably. The words "Drug interaction precaution" appear in a number of OTC drug monographs. See, for example, § 341.76(c)(4) (21 CFR 341.76(c)(4)) which states: "*Drug interaction precaution.* Do not use this product if you are presently taking a prescription drug for high blood pressure or depression, without first consulting a doctor." The agency believes the phrase "Avoid mixing drugs" or "Do not mix drugs" may be better understood by consumers than "Drug interaction precaution." Accordingly, the agency is proposing to amend § 330.1(i) to include these additional terms that may be used interchangeably in the labeling of OTC drug products.

Additionally, the agency is requesting comment from manufacturers and the public on whether it would be desirable to change negatively worded warnings to a more positive phraseology. For example, in the labeling of first aid antibiotic drug products in § 333.150(c)(1) (21 CFR 333.150(c)(1)), the warning "Do not use in the eyes or apply over large areas of the body," could be changed to read: "Avoid use in the eyes or over large areas of the body." Similarly, the warning in § 333.150(c)(2), which states: "Do not use longer than 1 week unless directed by a doctor," could be changed to read: "Use for only 1 week unless directed by a doctor."

Another example is the warnings in § 331.30(c)(4) (21 CFR 331.30(c)(4)), which states: "Do not use this product except under the advice and supervision of a physician if you have kidney disease," and in § 331.30(c)(5) (21 CFR 331.30 (c)(5)), which states: "Do not use this product except under the advice and supervision of a physician if you are on a sodium restricted diet." These warnings could be changed to read: "Use only with a physician's help if * * *," or "Use only with the help of a doctor if * * *."

The warning statements cited are only selected examples. There are many other similar statements in proposed and final OTC drug monographs. At this time, the agency seeks comments on the following specific questions:

(1) Should the terms "Drug interaction precaution," "Avoid mixing drugs," or "Do not mix drugs" be used interchangeably?

(2) Is a positive phraseology for some warnings a desirable labeling approach or should the more emphatic negative phraseology be retained as the only allowed language in warning statements?

(3) Will consumers pay more attention to "Do not use" language than to "Use only" language? Do repetitive terms such as "Do not use" lose their impact and become less important when read by consumers?

(4) Should negative warnings be used only for the most important advice?

(5) Is it essential that similar products have identical warning language or may the language vary and still be desirable provided the meaning is the same?

The agency seeks comments from manufacturers, health professionals, and consumers on these issues. Any party having any survey data on these labeling approaches should provide that information to the agency.

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. If this proposed rule becomes a final rule, the labeling options could be implemented at very little cost by manufacturers at the next printing of labels, for those products for which the manufacturer chooses to make a change. Accordingly, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on the labeling of OTC drug products. Types of impact may include, but are not limited to, costs associated with relabeling. Comments regarding the impact of this rulemaking on OTC drug products should be accompanied by appropriate documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) 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.

Interested persons may, on or before October 17, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Written comments on the agency's economic impact determination may be submitted on or before October 17, 1994. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 330

Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 330 be amended as follows:

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

1. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 330.1 is amended by redesignating paragraphs (i)(7), (i)(8), and (i)(9) as paragraphs (i)(8), (i)(9), and (i)(10), respectively, and by adding new paragraph (i)(7), to read as follows:

§ 330.1 General conditions for general recognition as safe, effective and not misbranded.

* * * * *

(i) * * *

(7) "Drug interaction precaution" or "Avoid mixing drugs" or "Do not mix drugs".

* * * * *

Dated: July 27, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–18925 Filed 8–2–94; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL–5022–9]

Preparation, Adoption, and Submittal of State Implementation Plans; Test Method 205, Appendix M

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The purpose of this proposed rule is to add a test method which would be used to verify the performance and accuracy of gas dilution systems during a field test. The test method is entitled, "Verification of Gas Dilution Systems for Field Instrument Calibrations," and will be added to 40 CFR Part 51, Appendix M, as Test Method 205. This method will allow the facility greater flexibility while assuring the Administrator of the quality of the calibration of the field analyzers.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: *Comments.* Comments must be received on or before October 17, 1994.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by August 24, 1994, a public hearing will be held September 19, 1994 beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under ADDRESSES to verify that a meeting will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by August 24, 1994.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE–131), Attention: Docket Number A–93–36, U.S. Environmental Protection Agency, Room M–1500, First Floor, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Rima Dishakjian, Emission Measurement Branch, Technical Support Division (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443.

Docket. Docket No. A–93–36, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Air Docket Section, Room M–1500, First Floor, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Rima Dishakjian or Anthony Wayne, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

A. Summary of Proposed Changes

A verification procedure for gas dilution systems is being proposed. Gas dilution systems allow the user to dilute a high level certified gaseous standard to the concentration levels needed for multi-point calibration. The instrumental test methods in 40 CFR Part 60, Appendix A (e.g., Methods 3A, 6C, 7E, 10, 15, 16, 20, 25A, and 25B) require on-site, multi-point calibration using gases of known concentrations. An extensive field test can require the tester to transport dozens of high pressure gas cylinders to a test site. If a gas dilution system were available, the number of gas cylinders to be transported to the test site would be greatly reduced. This procedure provides a mechanism for the tester to avoid the cost and risk associated with transport of multiple gas cylinders, while also providing assurances to the on-site Administrator that the calibration gases produced by the gas dilution system will be precise and accurate.

B. Comments and Responses on Draft

The proposed method was published through the Emission Measurement Technical Information Center as Conditional Test Method 007 in April 1991. No technical comments have been submitted thus far. Several commenters suggested that the protocol be published in the CFR, thus resulting in this action.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed rulemaking in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see ADDRESSES section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are to: (1) allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) serve as the record in case of judicial review except for interagency review materials [Section 307(d)(7)(A)].

C. Office of Management and Budget Review

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because no additional costs will be incurred.

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide,

Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Dated: July 14, 1994.

Carol M. Browner,

Administrator.

EPA proposes to amend title 40, chapter I, part 51 of the Code of Federal Regulations as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410(a)(2), 7475(e), 7502 (a) and (b), 7503, 7601(a)(1) and 7620.

Appendix M—Recommended Test Methods for State Implementation Plans

2. Appendix M to part 51 is amended by adding Method 205 to read as follows:

Method 205—Verification of Gas Dilution Systems for Field Instrument Calibrations

1. Introduction

1.1 Applicability. A gas dilution system can provide known values of calibration gases through controlled dilution of high-level calibration gases with an appropriate dilution gas. The instrumental test methods in 40 CFR Part 60—e.g., Methods 3A, 6C, 7E, 10, 15, 16, 20, 25A and 25B—require on-site, multi-point calibration using gases of known concentrations. A gas dilution system that produces known low-level calibration gases from high-level calibration gases, with a degree of confidence similar to that for Protocol [1] gases, may be used for compliance tests in lieu of multiple calibration gases when the gas dilution system is demonstrated to meet the requirements of this method. The Administrator may also use a gas dilution system in order to produce a wide range of Cylinder Gas Audit concentrations when conducting performance specifications according to Appendix F, 40 CFR Part 60.

1.2 Principle. The gas dilution system shall be evaluated on one analyzer once during each field test. A precalibrated analyzer is chosen, at the discretion of the source owner or operator, to demonstrate that the gas dilution system produces predictable gas concentrations spanning the range of concentrations expected during the field test. After meeting the requirements of this protocol, the remaining analyzers may be calibrated with the dilution system in accordance to the requirements of the applicable method for the duration of the field test. In Methods 15 and 16, 40 CFR Part 60, Appendix A, reactive compounds may be lost in the gas dilution system. Also, in Methods 25A and 25B, 40 CFR Part 60, Appendix A, calibration with target compounds other than propane is allowed. In these cases, a laboratory evaluation is required once per year in order to assure the Administrator that the system will dilute these reactive gases without significant loss. Note: The laboratory evaluation is required only if the source owner or operator plans to utilize the dilution system to prepare gases mentioned above as being reactive.

2. Specifications

2.1 Gas Dilution System. The gas dilution system shall produce calibration gases whose measured values are within ±2 percent of the predicted values. The predicted values are calculated based on the certified concentration of the supply gas (Protocol gases, when available, are recommended for their accuracy) and the gas flow rates (or dilution ratios) through the gas dilution system.

2.1.1 For gas dilution systems utilizing mass flow controllers, the mass flow controllers in the gas dilution system shall be calibrated against a National Institute of Standards and Technology (NIST) traceable standard according to the manufacturer's instructions once per year.

2.1.2 For gas dilution systems using mass flow controllers, the accuracy of the controllers diminishes at low flow rates. Therefore, it is recommended that flow rates below 10 percent of flow controller capacity be avoided.

2.2 High-Level Supply Gas. An EPA Protocol calibration gas is recommended, due to its accuracy, as the high-level supply gas.

2.3 Mid-Level Supply Gas. An EPA Protocol gas shall be used as an independent check of the dilution system. The concentration of the mid-level supply gas shall be within 10 percent of one of the dilution levels tested in Section 3.2.

3. Performance Tests

3.1 Laboratory Evaluation (Optional). If the gas dilution system is to be used to formulate calibration gases with reactive compounds (Test Methods 15, 16, and 25A/25B (only if using a calibration gas other than propane during the field test) in 40 CFR Part 60, Appendix A), a laboratory certification must be conducted once per year for each reactive compound to be diluted. In the laboratory, carry out the procedures in Section 3.2 on the analyzer required in each respective test method to be laboratory certified (15, 16, or 25A and 25B for compounds other than propane). For each compound in which the gas dilution system meets the requirements in Section 3.2, the source must provide the laboratory certification data for the field test and in the test report.

3.2 Field Evaluation (Required). The gas dilution system shall be evaluated at the test site with an analyzer or monitor chosen by the source owner or operator. It is recommended that the source owner or operator choose a precalibrated instrument with a high level of precision and accuracy for the purposes of this test. This method is not meant to replace the calibration requirements of test methods. In addition to the requirements in this protocol, all the calibration requirements of the applicable test method must also be met.

3.2.1 Prepare the gas dilution system according to the manufacturer's instructions. Using the high-level supply gas, prepare, at a minimum, one dilution for each dilution device utilized in the dilution system. Dilution device in this method refers to the mass flow controller, critical orifice, capillary tube, or any other device which is used to achieve gas dilution. For gas dilution systems utilizing mass flow controllers, it is recommended that two dilutions be performed for each mass flow controller range.

3.2.2 Calculate the predicted concentration for each of the dilutions based on the flow rates through the gas dilution system (or the dilution ratios) and the certified concentration of the high-level supply gas.

3.2.3 Introduce each of the dilutions from Section 3.2.1 into the analyzer or monitor one at a time and determine the instrument response for each of the dilutions.

3.2.4 Repeat the procedure in Section 3.2.3 two times, i.e., until three injections are made at each dilution level. Calculate the average instrument response for each triplicate injection at each dilution level. No single injection shall differ by more than ±2 percent from the average instrument response for that dilution.

3.2.5 For each level of dilution, calculate the difference between the average concentration output recorded by the analyzer and the predicted concentration calculated in Section 3.2.2. The average concentration output from the analyzer shall be within ±2 percent of the predicted value.

3.2.6 Introduce the mid-level supply gas directly into the analyzer, bypassing the gas dilution system. Repeat the procedure twice more, for a total of three mid-level supply gas injections. Calculate the average analyzer output concentration for the mid-level supply gas. The difference between the certified concentration of the mid-level supply gas and the average instrument response shall be within ±2 percent.

3.3 If the gas dilution system meets the criteria listed in Section 3.2, the gas dilution system may be used throughout that field test. If the gas dilution system fails any of the criteria listed in Section 3.2, and the tester corrects the problem with the gas dilution system, the procedure in Section 3.2 must be repeated in its entirety and all the criteria in Section 3.2 must be met in order for the gas dilution system to be utilized in the test.

4. References

4.1 "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," EPA–600/R93/224, Revised September 1993.

[FR Doc. 94–18757 Filed 8–2–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP 7F3521/P587; FRL–4898–7]

RIN 2070–AC18

Pesticide Tolerances for Tefluthrin

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This document proposes to extend tolerances for the combined

residues of the synthetic pyrethroid tefluthrin [2,3,5,6-tetrafluoro-4-methylphenyl)methyl-(1 *alpha*, 3 *alpha*)-(Z)-(±)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecaboxylate] and its metabolite, (*Z*)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)2,2-dimethylcyclopropanecaboxylic acid, in or on the raw agricultural commodities corn, grain, field, and pop; corn, forage and fodder, field and pop. This proposal to extend the effective date for tolerances for maximum permissible levels of residues of this insecticide in or on these commodities was requested by Zeneca Ag Products (previously, ICI Americas, Inc.).

DATES: Written comments, identified by the document control number [PP 7F3521/P587], must be received on or before September 2, 1994.

ADDRESSES: Written comments, identified by the document control number [PP 7F3521/P587], may be submitted to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. M3708, 401 M St., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this document 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. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-6100.

SUPPLEMENTARY INFORMATION: The Agency issued a conditional registration for tefluthrin for use on corn, grain, field, and pop; corn, forage and fodder, field and pop on January 13, 1989. The registration was made conditional with a final expiration date of July 31, 1993, since certain data were lacking. See the **Federal Register** (FR) of March 8, 1989 (54 FR 9887) for specific data requirements. Because of the lack of these data the tolerances were established with an expiration date of July 31, 1994. (See the **Federal Register** of February 1, 1989 (54 FR 5080)).

On January 22, 1990, the Agency issued a Special Data Call-In Notice to Zeneca Ag Products requiring submission of a simulated aquatic field test (mesocosm study) to assess long-term aquatic adverse effects related to exposure to this pesticide. This data requirement was imposed because of a reported fish kill associated with alleged misuse of the product and was added to other conditions imposed on the registration in January 1989. This study was due by November 30, 1994.

On October 20 and November 13, 1992, Zeneca Ag Products requested an extension of the conditional registration and extension of time to November 15, 1994. They also requested a waiver of the mesocosm study because of a change in Agency policy on the need for higher tiered fate and ecological effects data such as an aquatic field study. The Agency reexamined the existing ecological effects database and concluded that it had sufficient baseline data to characterize aquatic hazard for this pesticide, and the Agency waived the requirement for a mesocosm study. However, the Agency still concluded that this pesticide may pose aquatic risk from use on corn and agreed to an extension of the conditional registration until November 15, 1994, provided Zeneca Ag Products submit risk reduction measures designed to reduce the potential for exposure of aquatic habitats of concern. Zeneca Ag Products agreed to these terms, and on June 14, 1993, the Agency extended the conditional registration for tefluthrin on corn to November 15, 1994. By November 15, 1994, the Agency intends to complete review of all data and other information submitted and to make FIFRA section 3(c)(5) or other appropriate regulatory decisions for the corn use of tefluthrin.

To be consistent with the extensions issued for the conditional registrations the Agency is proposing to extend the tolerances on corn and other affected commodities. The Agency has determined that extending the tolerances will protect the human health. Therefore, extensions for the tolerances on corn and other affected crops are proposed as set forth below.

The data submitted in support of these tolerances and other relevant material have been reviewed. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the **Federal Register** of February 1, 1989 (54 FR 5061), for corn.

Residues remaining in or on the above raw agricultural commodity after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term and in accordance with the provisions of the conditional registrations.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of FIFRA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, (PP 7F3521/P587). All written comments filed in response to this petition will be available to the Public Response Section, at the address given above, from 9 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or food/feed additive regulations or raising tolerance or food/feed additive regulation 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: July 19, 1994.

Lois Rossi,

Acting Deputy Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that part 180 of chapter I of title 40 of the Code of

Federal Regulations be amended as follows:

PART 180—[AMENDED]

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

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

b. By revising § 180.440, to read as follows:

§ 180.440 Tefluthrin; tolerances for residues.

Tolerances, to expire on November 15, 1995, are established for the combined residues of the insecticide tefluthrin (2,3,5,6 tetrafluroro-4-methylphenyl) methyl-(1 *alpha*, 3 *alpha*)-(*Z*)-(±)-3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate and its metabolite (*Z*)-3-(2-chloro-3,3,3-trifluoro-1-propenyl) 2,2-dimethylcyclopropanecarboxylic acid in or on the following commodities:

Commodity	Parts per million
Corn, grain, field, and pop	0.02
Corn, forage and fodder, field and pop	.06

[FR Doc. 94–18765 Filed 8–2–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300353; FRL–4902–7]

RIN No. 2070–AC18

Calcium Hypochlorite; Exemption From Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an exemption from the requirement of a tolerance for residues of chlorine gas in or on grapes when applied as a fumigant postharvest by means of a chlorine generator pad in accordance with good agricultural practices. Chiquita Frupac requested this proposed expansion of the tolerance exemption.

DATES: Written comments, identified by the document control number, [OPP–300353], must be received on or before September 2, 1994.

ADDRESSES: By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document 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. 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, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Ruth Douglas, Product Manager (PM) 32, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location and telephone number: Rm. 278, CM #2, Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-7964.

SUPPLEMENTARY INFORMATION: Under section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), EPA proposes to exempt from the requirement of a tolerance residues of chlorine gas in or on grapes when applied as a fumigant postharvest by means of a chlorine generator pad. The fumigation process uses polyethylene-lined paper pads containing calcium hypochlorite that are packed in grape containers during shipment. Under conditions of normal use, the pads are not in direct contact with the grapes. The moisture from inside the box and the carbon dioxide produced by the metabolic process of the fruit permeate the pad, activating the release of chlorine gas. The chlorine gas released in the pad diffuses through the paper and the polyethylene liner before depositing on the grapes. The exemption for chlorine generators would not apply to the use of chlorine gas during food processing or as a food-contact surface sanitizer since these uses are under the jurisdiction of the Food and Drug Administration.

Several clearances already exist for the calcium salt of hypochlorite used as the precursor of the chlorine gas. Calcium hypochlorite is exempted from the requirement of a tolerance when used preharvest or postharvest in solution on all raw agricultural commodities (40 CFR 180.1054). Calcium hypochlorite is an approved inert ingredient in pesticide products when added to a formulation as a sanitizing and bleaching agent (40 CFR 180.1001). Calcium hypochlorite is cleared by the Food and Drug Administration when used as a rinse on food-contact surfaces (21 CFR 178.1010). Chlorine gas is exempted from the requirement of a tolerance when used preharvest or postharvest in solution on all raw agricultural commodities (40 CFR 180.1095).

When added to water, chlorine gas reacts to form hypochlorous acid, a pesticidally active chemical which kills microorganisms on the surface of the commodity to which it is applied. Hypochlorous acid is consumed when it reacts with bacteria, fungi, and other organic matter. Because of the rapidity with which chlorine gas degrades, there is no reasonable expectation that residues of chlorine gas will remain in eggs, meat, milk, or poultry in accordance with 40 CFR 180.3. The residues that do remain are not of toxicological significance.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this active ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended that contains any of the ingredients listed herein may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Comments must bear a notation indicating the document control number, [OPP-300353]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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.

Dated: July 15, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that part 180 be 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 180.1054 is revised to read as follows:

§ 180.1054 Calcium hypochlorite; exemptions from the requirement of a tolerance.

(a) Calcium hypochlorite is exempted from the requirement of a tolerance when used preharvest or postharvest in solution on all raw agricultural commodities.

(b) Calcium hypochlorite is exempted from the requirement of a tolerance in or on grapes when used as a fumigant postharvest by means of a chlorine generator pad.

[FR Doc. 94–18911 Filed 8–2–94; 8:45 am]
BILLING CODE 6560–50–F

---

40 CFR Parts 180, 185, and 186

[PP 7F3500, 8F3592, FAP 8H5650/P586; FRL–4898–6]

RIN 2070–AC18

Pesticide Tolerances for Avermectin B_1 and its Delta-8,9-Isomer; Renewal of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to renew tolerances for the residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on certain raw agricultural commodities and food and feed commodities. Merck & Co., Inc., requested this proposal to renew the effective date for tolerances for maximum permissible levels of residues of this insecticide in or on these commodities.

DATES: Written comments, identified by the document control number [PP 7F3500, 8F3592, FAP 8H5650/P586] must be received on or before September 2, 1994.

ADDRESSES: Written comments, identified by the document control number, [PP 7F3500, 8F3592, FAP 8H5650/P586], may be submitted to: Public Response Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. Information submitted as a comment concerning this document 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. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-6100.

SUPPLEMENTARY INFORMATION: The Agency issued a conditional registration for avermectin B_1 for use on cotton on May 22, 1989, with an expiration date of March 31, 1992 (see the **Federal Register** of August 23, 1989 (54 FR 35059)). This conditional registration was amended on July 25, 1989, to include citrus (see the **Federal Register** of August 2, 1989 (54 FR 31836)). On April 1, 1992, this expiration date was subsequently extended to April 30, 1995, to allow the Agency sufficient time to review the data. The registrations were made conditional since certain data were lacking and required by the Agency to allow it to evaluate the effects of avermectin B_1 on fish and aquatic organisms. See the **Federal Register** of August 23, 1989 (54 FR 35059), for specific data requirements. Because of the lack of these data the tolerances on cotton and citrus were established with an expiration date of March 31, 1993.

On November 20, 1992, Merck & Co. requested a waiver of the aquatic field study (mesocosm study) due to a change in Agency policy regarding the need for higher tiered fate and ecological effects data. In addition, Merck & Co. agreed to implement interim risk reduction measures designed to reduce the potential for aquatic exposure from application of avermectin B_1 to cotton and citrus. The interim risk reduction measures included label changes aimed at reducing exposure to aquatic organisms such as (1) reduction in the number of applications and total seasonal applications; (2) increase in retreatment intervals; (3) geographic limitations; and (4) inclusion of aquatic buffer zones.

The Agency reexamined the existing ecological effects data base and concluded that it had sufficient baseline data to characterize aquatic hazard for this pesticide. Thus, on January 10, 1993, the Agency waived the requirement for a mesocosm study. However, the Agency still concluded that this pesticide may pose aquatic risk from use on cotton and citrus and that the registration must remain conditional until the Agency had evaluated the effectiveness of the risk reduction measures and completed its aquatic risk assessment. By April 30, 1995, or sooner, the Agency intends to complete review of all data and other information submitted and to make FIFRA section 3(c)(5) or other appropriate regulatory decisions for the cotton and citrus use of avermectin B_1.

To be consistent with the extensions issued for the conditional registrations, the Agency is proposing to renew the tolerances on cotton, citrus and other affected commodities. The Agency has determined that renewing the tolerances will protect the human health. Therefore, renewals for the tolerances on cotton, citrus, and other affected crops are proposed as set forth below.

The data submitted in support of these tolerances and other relevant material have been reviewed. The toxicological and metabolism data and analytical methods for enforcement purposes considered in support of these tolerances are discussed in detail in related documents published in the **Federal Registers** of May 31, 1989 (54 FR 23209) for cottonseed and August 2, 1989 (54 FR 31836) for citrus.

Residues remaining in or on the above raw agricultural commodity after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the conditional registrations.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of FIFRA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number (PP 7F3500, 8F3592, FAP 8H5650/P586). All written comments filed in response to this petition will be available to the Public Response Section, at the address given above from 9 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

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

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

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

Dated: July 19, 1994.

Lois Rossi,

Acting Deputy Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that chapter I of title 40 of the Code of Federal Regulations be amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. In § 180.449, by revising paragraph (a), to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) Tolerances, to expire on April 30, 1996, are established for the combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer (a mixture of avermectins containing > 80 percent avermectin B_{1a} (5-O-demthyl avermectin B_{1a}) and < 20 percent avermectin B_{1b} (5-O-demethyl-25-di (1-methylpropyl)-25-1 (1-methylelthyl) avermectin A_{1a}) in or on the following commodities:

Commodity	Parts per million
Citrus, whole fruit	0.02
Cattle, meat	0.02
Cattle, mbyp	0.02
Cottonseed	0.005
Milk	0.005

* * * * *

PART 185—[AMENDED]

2. In part 185:

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

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

b. By revising § 185.300, to read as follows:

§ 185.300 Avermectin B_1 and its delta-8,9 isomer; tolerances for residues.

Tolerances to expire on April 30, 1996, are established for the combined residues of the insecticide avermectin B1 and its delta 8,9-isomer (a mixture of avermectins containing ≧ 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and less than or equal to 20 percent avermectin B_{1b} (5-o-demethyl-25-di (1-methylpropyl) -25-(1-methylethyl) avermectin A_{1a})) in or on the following commodity:

Commodity	Parts per million
Citrus oil	0.10

PART 186—[AMENDED]

3. In part 186:

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

Authority: 21 U.S.C. 348.

b. In § 186.300, by revising paragraph (a) to read as follows:

§ 186.300 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) Tolerances to expire on April 30, 1996, are established for the combined residues of the insecticide avermectin B1 and its delta 8,9-isomer (a mixture of avermectins containing ≧ 80 percent avermectin B_{1a} (5-O-demethyl avermectin A_{1a}) and less than or equal to 20 percent avermectin B_{1b} (5-O-demethyl-25-di (1-methylpropyl) -25-(1-methylethyl) avermectin A_{1a})) in or on the following commodity:

Commodity	Parts per million
Dried citrus pulp	0.10

* * * * *

[FR Doc. 94-18759 Filed 8-2-94; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS-94; Notice 2]

[RIN 2137-AB 38]

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes qualification standards for personnel who perform, or directly supervise those persons performing, regulated operation, maintenance, and emergency-response functions. This action would amend current standards for training personnel performing operating or maintenance activities on hazardous liquid and carbon dioxide pipelines, and extend those standards to personnel performing similar functions on gas pipelines. This action is taken to ensure that pipeline personnel have the necessary knowledge and skills to competently perform these regulated functions. The intended effect of this proposed rulemaking is to improve pipeline safety by requiring operators to assure the competency of pipeline personnel through training, testing, and periodic refresher training.

DATES: Interested persons are invited to submit written comments in duplicate by October 3, 1994. Late filed comments will be considered to the extent practicable. Interested persons should submit as part of their written comments all the material that is considered relevant to any statement of fact or argument made.

ADDRESSES: Send comments to the Dockets Unit, Room 8421, Office of Pipeline Safety (OPS), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice

numbers stated in the heading of this notice. All comments and materials cited in this document will be available in the docket for inspection and copying in Room 8421 between 8:00 a.m. and 4:00 p.m. each working day. Non-Federal employee visitors are admitted to DOT headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366–2036, regarding the subject matter of this notice, or Dockets Unit, (202) 366–5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

The pipeline safety regulations in 49 CFR Parts 192 and 195 cannot be fully effective in preventing and mitigating pipeline accidents unless personnel who perform regulated functions, or directly supervise persons performing regulated functions, understand the applicable regulations and have the knowledge and skills needed for competent performance. Therefore, requiring operators to ensure that such personnel are qualified to perform operating, maintenance, and emergency response functions is an essential step in making the pipeline safety regulations effective. Also, requiring operation, maintenance, and emergency-response personnel to be knowledgeable about safety-related elements, such as flammability, toxicity, potential ignition sources, and to be able to recognize and appropriately react to abnormal and emergency conditions should further minimize the causes and consequences of pipeline accidents.

In accidents clearly recognized as involving human error, circumstances often indicate that a deficiency in knowledge or skill, i.e. lack of qualification, has been a significant accident factor. However, the effects of personnel lacking qualifications are not always apparent. The effects may be too subtle to be recognized as an accident factor. For example, accidents that operators have attributed to equipment failure or corrosion may have actually been set in motion by poorly performed operation or maintenance procedures. In addition, the pipeline safety regulations require operators to report "incidents" (49 CFR 191.3) and "accidents" (49 CFR 195.50) only in instances meeting threshold requirements set out in those regulations. Thus, there may be many more accidents involving personnel lacking qualifications than commonly reported.

Recommendations by National Transportation Safety Board

In a letter to RSPA dated May 14, 1987, the National Transportation Safety Board (NTSB) stated that incorrect human performance has already caused, or contributed to the severity of, many pipeline accidents, and that most of the errors involved could be linked to inadequate training. NTSB identified 110 related Safety Recommendations it had issued from 1975 through 1986 based on pipeline accidents indicating that training of pipeline personnel needed improvement.

The following two accidents are among those cited by NTSB in its correspondence:

On July 12, 1983, natural gas escaping under 60 psig pressure from a crack in a substandard butt-fusion joint in a 2-inch plastic gas main entered an apartment building in Clear Lake, Iowa. It exploded and then burned. Two gas distribution company employees were injured, one apartment building was destroyed, and the adjacent apartment building was damaged heavily. Damage was estimated at more than $1 million. Fortunately, none of the building residents were injured or killed. Company employees had been notified earlier about strong gas odors outside the apartments and were on site searching for the gas leak more than 2 hours before the explosion. They did not shut off the flow of gas to the leak and did not warn the residents to evacuate the apartment buildings before the explosion. NTSB recommended that the company train its employees, including supervisors, in procedures for responding to emergencies and protection of the public in areas exposed to leaking gas, and reinstruct its pipe fitters/operators in all elements of the procedures for fusion of plastic pipe.

On May 26, 1983, natural gas at 815 psig began to escape through a failed gasket in a compressor at a transmission company's field compressor plant near Bloomfield, New Mexico. The compressor station operator heard a loud noise, ran to the valve manifold outside the compressor building, and tried to shut off the gas supply to compressor No. 14. Another employee, who also heard the noise, ran into the compressor building and tried to shut down the compressor engine. Before either person succeeded, the escaping gas ignited, exploded, and burned. The two employees were burned severely, compressor No. 14 was destroyed, another compressor was damaged, the windows and doors of the compressor building were blown out, and other structural damage resulted. NTSB determined that the probable cause of the accident was the improper tightening of compressor head bolts, resulting in the rupture of a compressor head gasket and the escape and ignition of gas. Contributing to the accident was the operator's failure to assure that maintenance personnel were trained in proper bolt tightening procedures. Contributing to the extent of damage and to the duration of the emergency was the failure by plant personnel, due to inadequate training in emergency procedures, to promptly relieve gas pressure in the piping by activating the blowdown system.

In a February 1987 report (NTSB/PAR–87/01) detailing two Texas Eastern Gas Pipeline Company accidents occurring in Kentucky in 1985 and 1986, NTSB determined that company employees who inspected corrosion damage had not been adequately trained to assess the effect of corrosion. It also determined that in the 1986 accident, supervisors had not been properly trained to cooperate with local officials during an emergency. In this report, NTSB recommended that RSPA:

Amend 49 CFR Parts 192 and 195 to require that operators of pipelines develop and conduct selection, training, and testing programs to annually qualify employees for correctly carrying out each assigned responsibility which is necessary for complying with 49 CFR Part 192 and 195 as appropriate (Safety Rec. No. P–87–2).

Additionally, in the May 14, 1987, letter from NTSB to RSPA identifying its 110 Safety Recommendations, NTSB urged OPS to require all pipeline operators, without regard to size or ownership of the pipeline, to develop, through job/task analyses, employee qualifications for all activities addressed by the pipeline safety standards.

More recently the NTSB released the following account of an accident in Chicago that was attributed to inadequately trained gas distribution personnel.

On January 17, 1992, employees of a natural gas utility were performing annual maintenance on a pressure regulator station that reduced high pressure upstream gas to the low pressure requirements of the downstream distribution system. During this routine procedure the pressure regulator is taken out of service and the normally closed by-pass valve is manually throttled to control gas flow to the low pressure distribution system. Workers operating the by-pass valve normally determine the need to increase or decrease the gas flow to the low pressure system by monitoring the liquid levels in manometers installed on that system. A manometer is a clear plastic U-tube used throughout the gas industry to measure pressure (pressure head) in mains and services. When used on low pressure systems the open ended U-tube commonly contains water. By observing the difference in height of the water columns, workers can readily determine the pressure in the connected gas piping. Although, the workers saw the water blow out of their manometers, at least twice, they waited for instructions from headquarters before shutting off the gas supply by closing the 4-inch by-pass valve. The resulting over pressure condition (as high as 10 psig) lasted about 45 minutes, during which gas in the downstream distribution system escaped through gas appliances into homes and other buildings

where it was ignited by unidentified sources. The resulting explosion and fires killed four people, injured four people and damaged 14 houses and three commercial buildings. While the NTSB concluded that there was insufficient evidence to determine which way the 4-inch by-pass valve was turned or if it had been blocked by debris that become dislodged, it said that the accident could have been prevented or its severity lessened if the onsite supervisor had closed the by-pass valve as soon as he realized that the low pressure system was over pressured. Two of the workmen testified that they knew from their training that when water blew out of their manometers, it was caused by excessive high pressure gas flowing through the by-pass valve. However, none of the crew acknowledged having been trained to respond to emergencies, including those involving overpressurization. NTSB found that the gas company's training manual did not detail how to recognize or respond to those abnormal situations employees are likely to encounter nor did it tell supervisors the extent of their authority or reference the company's emergency plan. Nonetheless, the NTSB found that the gas company's service department responded very well after the gas was shut off.

The NTSB also noted that such training deficiencies are not confined to Chicago, but are a nationwide problem. As a result of its investigation of this accident, NTSB reiterated its 1987 recommendation to RSPA that it require operators of pipelines to develop and conduct selection, training and testing programs to annually qualify employees for their safety-sensitive responsibilities under 49 CFR Parts 192 and 195.

Recommendation by DOT Inspector General

As the use of insufficiently qualified personnel by some operators has become known, several sources in addition to NTSB have recommended that DOT take action to regulate the qualifications of pipeline personnel. In December 1982, the DOT Inspector General (IG) recommended in a memorandum to the RSPA Administrator that RSPA require licensing or certification of managers/superintendents of gas distribution systems. The IG said:

> State safety inspectors have indicated that operators of small municipal and privately owned gas distributors are frequently unaware of the federal safety standards or lack the know-how to implement them. Managers or superintendents of gas distribution systems should demonstrate a basic knowledge and understanding of federal safety standards before they are allowed to operate/manage the systems. Licensing or certification of natural gas distribution operators would improve compliance and enable State safety inspectors to provide greater coverage by reducing the amount of time expended in explaining standards to operators. Many States already require the operators of other utility systems to be licensed.

Recommendations by Congress

The House Committee on Energy and Commerce in its November 17, 1987, report to accompany H.R. 2266, a bill to amend the Natural Gas Pipeline Safety Act of 1968 (NGPSA) [1] and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA)± stated that DOT "may establish criteria for a program of testing for pipeline operations employees and include licensing based on that testing if this is appropriate" (H.R. Rep. No. 445, Pt. 1, 100th Congress, 1st Session, 13). This bill culminated in the Pipeline Safety Reauthorization Act of 1988 (Pub. L. No. 100–561; October 31, 1988), which, in sections 101 and 201, gave DOT discretionary authority to require "that all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to perform such functions."

Recommendation by Minnesota Commission on Pipeline Safety

The need for qualification standards for pipeline personnel has also been recognized at the state level. Following the July 1986 failure of an 8-inch products pipeline in Minnesota that resulted in the deaths of two people and serious injury to another person, the Governor of Minnesota established the Minnesota Commission on Pipeline Safety. This commission examined the safety and reliability of pipelines operating in Minnesota. The commission's December 1986 report included a recommendation that the U.S. Department of Transportation study the need for additional registration, licensing, and certification requirements for pipeline design and construction personnel.

Recommendations by National Association of Pipeline Safety Representatives

An alternative approach to government licensing or certification of operators or operator personnel was recommended in 1986 by the National Association of Pipeline Safety Representatives (NAPSR), an association of state pipeline safety inspectors. In one of its annual resolutions (1986–9) submitted to the RSPA Administrator, NAPSR urged DOT "to initiate a rulemaking to establish regulations which would require natural gas operator personnel qualification." NAPSR made this recommendation after determining that "it would be in the best interest of public safety, and as a general standard for the natural gas industry, that all natural gas system operations be under the direction of a person who is qualified by test, experience, and training in natural gas work." Again in 1990, in one of its annual resolutions (1990–3), NAPSR urged the DOT Office of Pipeline Safety (OPS) "to create specific qualification standards of uniformity across the industry" and that the rulemaking "be expanded to include personnel engaged in design and construction." Like NTSB, NAPSR has recommended a rulemaking approach rather than Federal licensing or certification. In this notice RSPA has proposed that regulated design or construction functions required to properly accomplish covered operation, maintenance or emergency-response work must be performed by persons qualified as proposed in this notice. However, persons with pipeline expertise and registered as professional engineers in the state where the work is located are qualified for any such engineering design under this proposal.

At this time, RSPA does not see the need to extend the proposed qualification requirements to include personnel engaged in all regulated design and construction functions as recommended in the NAPSR resolution. Application of the proposed requirements to only those personnel performing regulated operation, maintenance and emergency response functions is consistent with the intent of the Recommendations by Congress and the mandate contained in the Pipeline Safety Act of 1992 (below). Nonetheless, in response to that NAPSR resolution, RSPA invites persons to comment on whether we should extend the testing and certification requirements to personnel engaged in all regulated design and construction of covered pipelines. Persons commenting in support of such an extension are requested to support their positions with data from related accidents that includes: the quantity of gas, hazardous liquid or carbon dioxide released and any resulting deaths, personal injuries, property damages and environmental damages.

Small Gas Systems

Although lack of sufficient training has been a factor contributing to accidents on both large and small pipeline systems, OPS, the advisory committees (below) and state pipeline safety inspectors recognize that there is

[1] Pub. L. No. 103–272 was enacted on July 5, 1994. This Act revises, codifies and enacts without substantive changes certain transportation laws, including those related to pipeline safety. Thus citations to the NGPSA and the HLPSA have been changed to 49 U.S.C. sec. 60101 et seq.

a particular need to improve the knowledge and skills of personnel in some of the small gas distribution systems. Personnel with some deficiencies include not only the operator and operator personnel, but also contractors working for small gas distribution systems. Small gas distribution systems are characterized in this proposal as distribution systems serving fewer than 10,000 customers. They include petroleum gas systems (covered by § 192.11) and master meter systems (defined in § 191.3), both of which usually serve mobile home parks, housing projects, and apartment complexes; and public, private, and municipal distribution systems. Industry sources estimate that there are about 1,000 petroleum gas systems covered by § 192.11, that serve 10 or more customers. Additionally, information in the OPS enforcement data base shows there are 52,000 master meter systems and 1,150 other small public, private, and municipal distribution systems. The lack of qualified personnel working on these small gas distribution systems looms as a potential threat to gas pipeline safety.

Advance Notice of Proposed Rulemaking

On March 23, 1987, OPS published an advance notice of proposed rulemaking (ANPRM) titled, "Pipeline Operator Qualifications," requesting public comment on the need for additional regulations or a certification/licensing program regarding the qualification of personnel who design, construct, operate, or maintain gas or hazardous liquid pipelines (Docket PS–94, Notice 1; 52 FR 9189). The ANPRM outlined RSPA's existing regulations requiring the qualification or training of personnel in certain aspects of pipeline safety, such as welding steel pipe, corrosion control, and joining plastic pipe. In addition, the ANPRM discussed RSPA and state efforts to train operator personnel in understanding the pipeline safety regulations.

Comments were received from 134 persons representing various gas and liquid pipeline operators, governmental agencies, and other interested parties. Of the 116 persons who commented on the competency level of operator personnel, approximately 75 percent felt that a lack of competent personnel did not pose a significant enough threat to public safety to warrant further governmental action. However, a minority of about 22 percent felt some attention should be given to small gas distribution systems. Of the 60 persons who commented on the question of whether governmental action, if taken, should apply industry-wide or be limited to small systems, approximately 62 percent favored the latter. Of the 34 persons expressing an opinion on the appropriate governmental action, about 53 percent favored increasing direct training and the preparation of guidance material for operator personnel. The remainder were almost evenly divided between more regulation of training/qualification and a licensing/certification program. Of the 24 persons who commented on what areas of pipeline safety should be covered if additional training and qualification requirements are developed, almost everyone favored various combinations of design, construction, operation, and maintenance. Finally, of the 61 persons expressing an opinion on whether additional regulations for training and qualification would result in an improvement in pipeline safety, approximately 46 percent expected an improvement in accidents prevented or mitigated.

Advisory Committees

The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) are OPS's gas and liquid advisory committees representing government agencies, pipeline operators, and the public. At a joint meeting in Washington, DC on September 23, 1987, the TPSSC and THLPSSC discussed the ANPRM. The advisory committees generally supported requiring all pipeline operators to conduct training and testing programs for personnel assigned to perform operation and maintenance functions. Many committee members were concerned, however, about the ability of some small gas distribution system operators to provide the necessary training, and requested that any new regulations be sensitive to the limited financial and technical resources of these small operators.

Subsequently, on September 13 and 14, 1988, these committees met again in Washington, DC, and discussed a preliminary rulemaking proposal which OPS had developed for the qualification of pipeline personnel. The basic training and testing requirements now being put forward for public comment were embodied in that proposal. The TPSSC supported the proposal by unanimous vote. The THLPSSC, after making three minor recommendations for clarification of statements in the proposed regulations, also supported the proposal unanimously. However, the three recommendations are no longer germane, since the statements that required clarification have been removed from the proposed requirements.

Congressional Mandate

Under sections 106 and 205 of the Pipeline Safety Act of 1992 (Pub. L. No. 102–508; October 24, 1992), 49 U.S.C. § 60102, Congress mandated that DOT require "all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to perform such functions". In complying with the congressional mandate, DOT is required to "address the ability to recognize and appropriately react to abnormal operating conditions which may indicate a dangerous situation or a condition exceeding design limits." Furthermore, Congress provided that certification may, "as the Secretary considers appropriate, be performed by the operator."

Qualification and Certification

RSPA is proposing that regulated pipeline operators implement requirements for the qualification of operation, maintenance and emergency-response personnel (including contractor personnel) and for the qualification of certain supervisory personnel. These requirements would be based on the continuing training program applicable to hazardous liquid and carbon dioxide pipeline operators. Operators would be required to certify the qualification of personnel for the performance of covered functions. However, RSPA is not proposing to establish an industry-wide personnel licensing program. This decision was made because the severity and extent of the personnel qualification problem does not currently warrant such an ambitious undertaking. In addition, there is no private or governmental apparatus currently in place to conduct such extensive licensing. This decision is consistent with the regulatory authority provided by 49 U.S.C. § 60102, which requires qualification and certification of those individuals performing functions related to the operation and maintenance of pipeline facilities. Of course, where local conditions warrant more rigorous action, state agencies are not precluded from starting a licensing or certification program for intrastate pipeline operators under their regulatory jurisdiction.

It is difficult to assess how detailed and extensive the new Federal personnel qualification regulations should be, because many pipelines have unique operating and maintenance requirements. Therefore, RSPA is proposing a more general performance-

oriented regulatory approach based on an expansion of the continuing training program hazardous liquid operators must now provide under § 195.403.

Available Training

Several states are working to improve the knowledge and skills of operator personnel in small gas distribution systems, including master meter systems, by state-sponsored educational programs. Currently, states with notable training programs include Alabama, Arizona, California, Kentucky, and Texas. In addition, some gas operators have established statewide and regional gas associations for the purpose of improving technical skills and the understanding of the gas pipeline safety regulations. These associations often encourage gas equipment suppliers to exhibit and instruct gas distribution and transmission personnel in the proper use of special tools and equipment. Similarly, state regulatory agencies are often encouraged to participate by teaching or clarifying the applicable Federal/state pipeline safety regulations to personnel working on small gas distribution systems.

At the Federal level, RSPA provides pipeline safety training through its Transportation Safety Institute (TSI) in Oklahoma City, Oklahoma. In 1992 and 1993 gas pipeline safety seminars taught by instructors from the TSI were held in 20 and 21 states, respectively. These one, two, three, and four-day seminars teach various aspects of pipeline safety regulations and include instructional material oriented toward the operator personnel working on small gas distribution systems. The gas pipeline safety seminars will also be held in 26 states during 1994. Attendance at these instructive seminars requires advance registration and payment of a modest registration fee. Additionally, other hazardous liquid and gas pipeline safety courses planned by TSI for presentation in 1994 include regulation compliance, corrosion control and computer simulator dispatching. Pipeline operators interested in further information on TSI training courses should contact their state pipeline safety regulatory office or phone the Pipeline Safety Division of the Transportation Safety Institute at (405) 954–7219.

In 1989, RSPA distributed to each state pipeline safety agency a set of 10 VHS cassettes prepared by the Pipeline Safety Section of the Arizona Corporation Commission for training small gas distribution operators in that state. The cassettes can be used by operators of small distribution systems in all the states to augment the training of their employees. The cassettes present fundamental theory and practical application of gas distribution plus the basics of the Federal pipeline safety regulations.

Another RSPA training aid is the "Guidance Manual for Operators of Small Gas Systems," which is available (in single copy) to pipeline operators at no cost from the Transportation Safety Institute, Pipeline Safety Division, DTI–60, Post Office Box 25082, Oklahoma City, Oklahoma 73125–5050. The manual was developed by RSPA with the assistance of state pipeline safety representatives and gas distribution trade association members. The manual has recently been revised and updated. It provides a broad overview of compliance responsibilities under parts 191, 192, and 199 of the Federal pipeline safety regulations and is designed for use by non-technically trained operator personnel working on small gas distribution systems, including master meter systems. Since the publication of the first edition in 1982, some 50,000 copies have been disseminated to gas operator personnel.

Covered Functions

The proposed regulations apply to personnel who perform regulated operation, maintenance, and emergency-response functions (covered functions) on a "pipeline," as that term is defined in §§ 192.3 and 195.2 of the pipeline safety regulations. Additionally, the proposed regulations would apply to "supervisory persons" (defined in §§ 192.803 and 195.503, as operators, managers, supervisors, foremen, co-workers, and other personnel) who directly oversee persons performing these same covered functions. Lack of qualified personnel to perform regulated pipeline design and construction functions that are unrelated to pipeline operation, maintenance, or emergency response has not been identified as a significant safety problem. Thus, at this time, no new requirements are proposed for these areas. Nonetheless, if regulated design or construction functions are required to properly accomplish regulated operation, maintenance, or emergency-response work, then persons performing those related design or construction functions must be qualified as proposed in this notice. However, persons with pipeline expertise and registered as professional engineers in the state where the pipeline work is located are qualified for any such engineering design under the proposed requirements.

Covered functions are those operation, maintenance, and emergency-response functions that are regulated by the pipeline safety regulations. However, covered functions are not limited to those under Part 192, Subpart L—Operations and Subpart M—Maintenance or Part 195, Subpart F—Operation and Maintenance. The covered functions are much broader and are generally identified as having all three of the following characterics:

- Characteristic No. 1—The function is performed by persons either in direct contact, or in close association with pipelines regulated by parts 192 or 195.
- Characteristic No. 2—The function performed applies to the operation or maintenance of pipelines, or the response to an emergency involving pipelines. These functions are performed on pipelines that are or have been in service, as opposed to new pipelines that have not yet been readied for service. Operating functions include, among other things, the control of pressure, movement, or storage of gas under part 192 and hazardous liquids or carbon dioxide under part 195. Maintenance functions keep a pipeline in proper condition or preserve a pipeline for future use. They include, among other things, functions involved in inspection, protection, repair, replacement, and integrity testing. Emergency-response functions are steps an operator takes to recognize emergency conditions; control or mitigate their harmful effects to persons, property, or the environment; and then return the pipeline to normal operating conditions.
- Characteristic No. 3—The function is regulated by a provision contained in part 192 or 195. A function is regulated in instances where a provision: (1) contains a rule that governs the conduct of the function, or (2) requires that the function be done according to a plan or procedure.

Proposed Subparts

Because the training and testing of pipeline personnel may be an expanding requirement, the qualification regulations under this proposal would be placed in new subpart N of part 192 and new subpart G of part 195. The current § 195.403 (Training) would be deleted.

Under the proposed §§ 192.805(a) and 195.505(a), operators would have to assure that personnel (both experienced and inexperienced) who perform, or directly oversee persons performing, regulated operation, maintenance, or emergency-response functions (covered functions) have been qualified by completion of all the requirements for qualification. Persons qualified to perform certain covered functions may need additional training and testing before performing other covered

functions to which they are upgraded, promoted, or transferred. The personnel affected by this proposal may be operators themselves; regular, part-time, or temporary employees of the operator; independent contractors and subcontractors engaged by the operator; and regular, part-time, or temporary employees of contractors and subcontractors.

Under §§ 192.805(b) and 195.505(b), functions required to be performed by qualified persons may (except for the specified functions) also be performed by persons without such qualification if, while performing the function, those persons are accompanied and directed by a qualified supervisory person. This provision is intended to permit on-the-job training of persons not yet qualified. The supervisory person involved would not only have to directly oversee performance of the covered function, but accompany and direct the trainee (or unqualified person) while he or she performs the function.

Moreover, supervisory persons directly overseeing qualified persons performing covered functions would, themselves, be required to be qualified or required to be qualified administratively for those covered functions as required in §§ 192.805(c) and 195.505(c). The term "qualified administratively" is defined in §§ 192.803 and 195.503.

Under the proposed §§ 192.805(c) and 195.505(c), supervisory persons may become qualified administratively in certain covered functions by meeting all the proposed training and testing requirements, except those involving the demonstration of competent manual skills. Accordingly, supervisory persons directly overseeing personnel such as qualified welders would be permitted an exemption from "hands-on" welding. However, such supervisory persons would be required to demonstrate an appropriate knowledge of the pipeline safety regulations for welding—subpart E of part 192 or subpart D of part 195 as required under the proposed §§ 192.811(d)(1) and 195.511(d)(1). RSPA encourages the practice of some pipeline operators to require that persons directly supervising welders be, themselves, fully qualified welders.

Under §§ 192.807 and 195.507, all evaluating, training, and testing of personnel would be performed by an instructor with demonstrable proficiency in the functions to be taught and tested. Demonstrable proficiency is proposed to be defined as evidence of competence acceptable to other persons with specialized training or certification in the performance of similar functions. However, the instructor's proficiency need only be commensurate with the level of knowledge and skills required for competent performance of the function on the operator's unique pipeline. This provision recognizes that the degree or extent of knowledge and skills required to competently perform some functions on a particular pipeline may be less than that required for similar functions on more complex pipelines.

Operators (who own or operate pipelines) are permitted to serve as instructors or to select operator personnel or other entities to serve as instructors, providing that the operator or persons selected as instructors have the required level of proficiency. An operator who would not qualify as an instructor but would need to be evaluated for purposes of qualification would have to obtain the evaluation from an instructor, who could be another operator, employee of that other operator or an entity qualified as an instructor.

Under §§ 192.809(a) and 195.509(a), instructors would be required to evaluate the work experience and training of persons requiring qualification in order to determine what, if any, prior work experience and training were suitable and applicable to that required for competent performance of the persons' current functions. Work experience and training that are evaluated as equivalent to any of the general or specific training elements of §§ 192.811 and 195.511 would not require retraining, but would require testing under §§ 192.813 and 195.513 to confirm the evaluation. After completion of the evaluation of the prior experience and training of persons performing covered functions, the operator would be required by §§ 192.809(b) and 195.509(b) to prepare a written or computerized qualification training and testing schedule containing details such as names and titles of affected persons, dates and locations for training and testing, elements of general and specific training to be taught or tested, and names of instructors. Under §§ 192.809(c) and 195.509(c), the operator would be required to prepare a written or computerized refresher training schedule showing similar details, except that testing is not required, under this proposal, for refresher training. The proposed elements of qualification training under §§ 192.811 and 195.511 are based on the training program hazardous liquid operators are now required to conduct under § 195.403(a). However, the proposed requirements are more comprehensive.

Under the proposal, all affected personnel (except persons with prior equivalent work experience or training that have been confirmed by testing) would have to satisfactorily complete general training elements of §§ 192.811 and 195.511 appropriate to the operator's unique pipeline and specific training elements relevant to a person's covered functions on that unique pipeline. Operators would have to demonstrate that their personnel have received training relevant to the operator's unique pipeline system in the applicable elements of §§ 192.811 and 195.511 through any, or a combination of the following methods: prior formal education, prior company-sponsored training, work experience, apprenticeship, or newly provided on-the-job or classroom training. All would qualify as legitimate training methods. The necessary depth and length of training would be established by the operator so that they are sufficient to assure personnel competency as demonstrated by subsequent testing under §§ 192.813 and 195.513.

Under this approach, pipeline instructors would determine for each individual what work experience and prior education or training are relevant to that individual's covered functions and what additional training is needed to meet the proposed elements of training. Consequently, wholesale training should be unnecessary for most experienced personnel of pipeline operators with currently adequate training programs. Although this approach is intended to give operators latitude in developing a qualification program, each operator's program would be required to result in personnel of the operator and the contractor being proficient in all the training elements proposed under §§ 192.811 and 195.511. Because the training appropriate for one individual function, or a particular pipeline, may not be appropriate for another individual function, or another pipeline, an operator's qualification program would be developed and implemented to accommodate such distinctions.

RSPA is particularly concerned that control center dispatchers and other operating personnel are adequately trained to recognize the abnormal operating conditions or the emergency conditions of proposed §§ 192.811(d)(4) and 195.511(d)(4). Further, RSPA is concerned that control center persons and other operating personnel are adequately trained in the appropriate reactions to restore abnormal operating conditions to normal conditions and are adequately trained in the appropriate reactions to prevent the development of

emergency conditions. Additionally, in the proposed §§ 192.811(d)(5) and 195.511(d)(5), control center persons, and operating and emergency-response personnel must be adequately trained in the appropriate reactions to control emergency conditions or to mitigate the potential for personal injury, death, property damage, and environmental damage. Sections 192.811(d)(5) and 195.511(d)(5) would supplement the requirements of the current §§ 192.615 (Emergency plans) and 195.402 (Procedural manual for operations, maintenance, and emergencies).

Under §§ 192.813 and 195.513, tests would have to be designed by the operator to demonstrate that personnel possess the knowledge and skills that training is intended to impart. Testing could be through any, or a combination of, written, hands-on, or oral methods appropriate for the function tested. For some functions, a suitable test might consist of observing "hands-on" performance supplemented by appropriate questioning. Operators must set the minimum acceptable test grade at a level that would demonstrate the knowledge and skills required to competently perform the function tested. Testing would be required for all persons performing covered functions including experienced personnel evaluated under §§ 192.809(a) and 195.509(a) to have met training requirements by equivalent prior training or experience. RSPA believes that testing is the only reasonable way to ensure that personnel possess the knowledge and skills required for qualification.

Under these proposed regulations, qualification of an individual based on training and testing would not be a one-time event. Each time the pipeline safety regulations or the operator's procedures are changed or new ones are put into effect, operators would have to determine which persons may need additional training to carry out their covered functions under the new regulations or procedures. When further qualification training is required, it would have to be followed by a test. When qualification is required to comply with new or revised pipeline safety regulations, the qualification training and testing would have to be completed before the compliance dates specified in the rule and before the affected person begins performance of a covered function. A similar evaluation and timely qualification process would be required each time a person is given an operation, maintenance, or emergency-response assignment for which that person is not qualified. Until that person becomes qualified, the person must be accompanied and directed by a qualified person.

The requirement of existing § 195.403(a) that the training program be continuing would be made more definite under the proposed requirement for refresher training at intervals not to exceed 2 years. Under the proposed §§ 192.815 and 195.515, refresher training is intended to be a review of the general and the appropriate specific elements under §§ 192.811 and 195.511. The review may be accomplished by the same methods used for qualification training. However, there is no exception for prior experience or training evaluated as equivalent, as permitted in §§ 192.811(a) and 195.511(a). An existing requirement under § 195.403(c) requires hazardous liquid operators to require and verify that their supervisors maintain a thorough knowledge of that portion of the procedures established under § 195.402 (Procedural manual for operations, maintenance, and emergencies). This requirement would not be continued in its present form under the proposed qualification standards because it is less rigorous than the proposed requirement that affected personnel be qualified. Moreover, an existing requirement under § 195.403(b) concerning review of personnel performance relative to the objectives of the training program would be carried forward into proposed competency reviews under §§ 192.817(e) and 195.517(e).

The purpose of competency reviews is to evaluate the effectiveness of qualification training, testing, and refresher training by reviewing the performance of personnel involved with covered functions which resulted in reportable accidents and other nonreportable events. The nonreportable events would be deaths, personal injuries, property damage, or damage to the environment, any of which may have occurred without a release of the gas, hazardous liquid, or carbon dioxide, or otherwise did not meet the threshold limits for reportable gas incidents under § 191.5 or reportable liquid accidents under § 195.50. Among other such events would be violation of operating procedures, and abnormal operating conditions or emergency conditions as set out in the proposed §§ 192.811(d)(4)-(d)(5) and §§ 195.511(d)(3)-(d)(4).

Within 2 months after a competency review, the operator would be required to have identified and implemented appropriate revisions, if any are identified, in the qualification program to reduce the likelihood of the reoccurrence of a similar accident or event.

Sections 192.819 and 195.519 would require the operators to prepare and maintain records showing that personnel have been trained and tested as required. Additionally, the operator would be required to sign and date certification statements specifying the covered functions for which each person is qualified. The date of the certification statement becomes the date of the persons qualification for the specified covered functions. Records would be kept for a minimum of 3 years after a person is no longer employed by the operator in a capacity that requires qualification.

Relation to Other Qualification Rules

Except for the removal of § 195.403 discussed above, RSPA does not intend that the qualification rules proposed by this notice substitute for any of the existing requirements of parts 192 and 195 governing the qualification of personnel to perform specific functions. Consequently, individuals who perform functions requiring qualification under the existing pipeline safety regulations such as welding, nondestructive testing, corrosion control, or plastic pipe joining as part of a regulated operation, maintenance, or emergency-response function on a pipeline would have to meet both the existing job-specific qualification requirements, and the additional qualification standards put forth in this notice.

Contractor Personnel

The proposed regulations apply to persons performing covered functions and supervisory persons directly overseeing persons performing covered functions. The persons may be employed by the operator, be a contractor engaged by the operator, or be employed by the contractor. Thus, contractor and subcontractor personnel performing covered functions for an operator on the pipeline would be required to be qualified, as prescribed in this notice.

The pipeline operator is responsible for assuring that contractor personnel performing covered functions comply with the proposed qualification requirements. To comply with this requirement, operators may elect to implement the following steps: (1) include appropriate "qualification of personnel" clauses in contracts with contractors; (2) require contractors to prepare and keep current records demonstrating that personnel performing covered functions receive training, testing and refresher training and, if required, competency reviews as

required by the proposed requirements in this notice; and (3) monitor onsite contractor personnel to ensure that persons performing covered functions are qualified and certified as proposed in this notice.

Proposed Compliance Deadlines

RSPA proposes, under §§ 192.821(a)–(b) and 195.521(a), that all pipeline operators be given 6 months to prepare a qualification training and testing schedule. However, operators of small gas systems would be given 3 years and all other pipeline operators would be given 2 years to comply with all other requirements for personnel qualification under the proposed §§ 192.821 and 195.521. Based on the recommendations of the joint advisory committees made on September 23, 1987, that the regulations be sensitive to the limited financial and technical resources of operators of small gas distribution systems, the proposed §§ 192.821(b)(2)–(b)(4) would allow operators of such systems an additional year to comply with all the regulations except the requirement for preparation of the qualification training and testing schedule as set out in § 192.821(b)(1). This extra year should provide a reasonable time period for small gas distribution operators to utilize the state, Federal, and gas association training aids to develop the relevant training and testing required to qualify personnel to whom these proposed rules would apply. All the compliance dates begin at the date of promulgation of the final rule in the **Federal Register**.

Operators of pipelines subject to part 195 remain subject to § 195.403 until the proposed subpart G becomes effective.

Rulemaking Analyses

E.O. 12866 and DOT Regulatory Policies and Procedures

This proposed rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is subject to review by the Office of Management and Budget (OMB). The proposal is considered significant under the Department of Transportation Policies and Procedures (44 FR 11034; February 26, 1979), because of the substantial interest expressed by the pipeline industry, state and Federal agencies, and Congress. A regulatory evaluation is available for review in the docket.

Federalism Assessment

The proposed rulemaking action would not have substantial direct effects on states, on the relationship between the Federal 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 (52 FR 41685; October 30, 1987), RSPA has determined that this notice does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

Based on the facts available about the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C 601–612) that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This notice of proposed rulemaking contains information collection requirements in the form of written or computerized training and testing schedules under the proposed §§ 192.809 and 195.509, and recordkeeping to substantiate the training and testing of personnel under the proposed §§ 192.819 and 195.519. These paperwork requirements are necessary to properly implement 49 U.S.C. § 60102. The operator would develop the schedules and prepare and maintain the personnel training and testing records for proper performance of the proposed rule. However, pipeline operators with adequately qualified personnel currently have such records of training and testing. For persons newly trained and tested under the requirements of this proposal, much of the information required for the personnel records would be available in the required qualification schedules. None of these information collection requirements would be prepared for the purpose of submittal to RSPA.

These proposed information collection requirements have been submitted to the OMB for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35) and 5 CFR 1320 under the following:

ADMINISTRATION: Department of Transportation, Research and Special Programs Administration;

TITLE: Qualification of Pipeline Personnel;

NEED FOR INFORMATION: To prevent pipeline incidents and accidents by assuring the competency of pipeline personnel through training, testing, and periodic refresher training;

PROPOSED USE OF INFORMATION: To ensure pipeline personnel have the necessary knowledge and skills to competently perform regulated operation, maintenance, and emergency response functions;

FREQUENCY: On occasion;

BURDEN ESTIMATE: $2.5 million (initially), and $0.9 million (annually) thereafter;

RESPONDENTS: Operators subject to CFR Parts 192 & 195;

FORM(S): None;

AVERAGE BURDEN HOURS PER RESPONDENT: 1.8 hours (initially), and 0.7 hours (annually).

For further information contact: The Information Management Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Tel. (202) 366–4735.

Comments on the proposed information collection requirements should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attn: Desk Officer for Department of Transportation, Research and Special Programs Administration. It is requested that comments sent to OMB also be sent to the RSPA rulemaking docket for this proposed action.

List of Subjects

49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend title 49 of the Code of Federal Regulations parts 192 and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 is revised to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60118; 49 CFR 1.53.

2. A new subpart N would be added to read as follows:

Subpart N—Qualification of Pipeline Personnel

Sec.

192.801 Scope.
192.803 Definitions.
192.805 Personnel to be qualified.
192.807 Instructors.
192.809 Evaluation and scheduling.
192.811 Qualification training.
192.813 Testing.
192.815 Refresher training.
192.817 Competency reviews.
192.819 Recordkeeping.
192.821 Compliance dates.

Subpart N—Qualification of Pipeline Personnel

§ 192.803 Scope.

(a) This subpart prescribes minimum requirements for the qualification of personnel performing covered functions.

(b) Under this subpart, personnel must complete requirements for qualification training, testing, and refresher training.

(c) Under this subpart, the operator must ensure implementation of the following requirements: identification of covered functions and affected personnel; selection of instructors and subject matter; evaluation of prior experience and training of personnel; scheduling and implementation of training, testing, and refresher training; performance of competency reviews; maintenance of qualification records; certification of personnel and supervisory person qualification; and adherence with compliance dates.

(d) No operator may use a person to perform any covered function for which qualification is needed, unless and until that person is qualified and certified by the operator, or that person is accompanied and directed by a qualified person.

§ 192.803 Definitions.

As used in this subpart:

Covered functions means regulated operation, maintenance, and emergency-response functions performed in direct contact, or in close association with pipelines subject to this part. Covered functions are not limited to those under Subpart L—Operations or Subpart M—Maintenance of this part. Covered functions do not include clerical, truck driving, accounting, or other functions not subject to this part.

Demonstrable proficiency means evidence of knowledge and skill acceptable to other persons with specialized training or certification in the performance of similar functions.

Demonstrated successful performance on a test means achievement of at least the minimum acceptable grade level that demonstrates the knowledge and skills required to competently perform the function tested.

Personnel means persons performing covered functions or supervisory persons directly overseeing persons performing covered functions. The persons may be the operator or employed by the operator, be a contractor engaged by the operator, or be employed by such contractor.

Qualification training and testing schedule means a written or computerized schedule, prepared by the operator, that sets out the following minimum details: names and titles of personnel, dates of training and testing, elements of general and specific training to be taught or tested, and names of instructors.

Qualified means meeting the training, testing, and recordkeeping requirements of this subpart for a covered function.

Qualified administratively means meeting the training, testing, and recordkeeping requirements of this subpart for covered functions, except those involving the demonstration of competent "hands-on" skills, such as required for welding.

Refresher training schedule means a written or computerized schedule, prepared by the operator, that sets out the details of the qualification training and testing schedule, except that information relating to testing is not required.

Small gas distribution systems means, as characterized in this subpart, gas distribution systems serving fewer than 10,000 customers. They include petroleum gas systems (covered by § 192.11) and master meter systems (defined in § 191.3), both of which usually serve mobile home parks or housing complexes; and private or municipal systems.

Supervisory persons means persons such as operators, managers, supervisors, foremen, co-workers and other personnel.

§ 192.805 Personnel to be qualified.

(a) Except as provided in paragraphs (b) and (c) of this section, persons performing covered functions and supervisory persons directly overseeing persons performing covered functions must be qualified under this subpart. Personnel requiring such qualification may be the operator or employed by the operator, be a contractor engaged by the operator, or be employed by such contractor.

(b) Except for the covered functions of welding and nondestructive testing under subpart E of this part and of plastic pipe joining under subpart F of this part, personnel requiring qualification under paragraph (a) of this section may perform a covered function without qualification if, while performing the function, those persons are accompanied and directed by a supervisory person qualified under this subpart.

(c) Supervisory persons directly overseeing qualified persons performing covered functions must, themselves, be qualified or be qualified administratively for those functions.

§ 192.807 Instructors.

(a) To implement the evaluating, training, and testing requirements of this subpart, an instructor (the operator or others selected by the operator) must have demonstrable proficiency in the functions to be taught and tested commensurate with the level of knowledge and skills required for the operator's unique pipeline system.

(b) Whenever an instructor selected by the operator is a person or entity other than the operator or operator personnel, the operator remains responsible for ensuring that the requirements of this subpart are complied with.

§ 192.809 Evaluation and scheduling.

(a) The instructor shall evaluate any prior experience and training of personnel requiring qualification under § 192.805. Previous experience or training equivalent to any of the general or specific training elements of § 192.811 would not require qualification training in those elements, but would require testing under § 192.813.

(b) To ensure completion of the evaluation under paragraph (a) of this section and the scheduling necessary for implementation of training and testing under §§ 192.811 and 192.813, the operator shall prepare a written or computerized qualification training and testing schedule. The schedule shall contain names and titles of affected persons, dates and locations for training and testing, elements of general and specific training to be taught or tested, and names of instructors.

(c) To ensure completion of the scheduling necessary for implementation of the refresher training under § 192.815, the operator shall prepare a written or computerized refresher training schedule. The schedule shall contain details, with the exception of testing, similar to those required in paragraph (b) of this section.

§ 192.811 Qualification training.

(a) Except for any prior experience or training evaluated as equivalent under § 192.809(a), to be qualified under this subpart, personnel must satisfactorily complete general and specific training appropriate to the operator's unique pipeline system. Supervisory persons are required to be similarly qualified or, under § 192.805(c), are permitted to be qualified administratively.

(b) General and specific training may be acquired through one or any combination of classroom education, operator-sponsored training, on-the-job training, or apprenticeship.

(c) Minimum general training required by all persons includes knowledge of the following elements:

(1) Characteristics and hazardous properties of gas transported, such as explosive range, temperature, and corrosive effects on pipeline systems, as well as toxicity, olfactory, asphyxiatory, and temperature effects on persons, property, and the environment;

(2) Potential ignition sources of escaping gas;

(3) Purpose and operation of the damage prevention program in § 192.614 including the operation of one-call systems; and

(4) Purpose of the drug testing program under part 199 of this chapter.

(d) Minimum specific training required when relevant to a person's function includes knowledge of the following elements:

(1) Requirements of the other subparts of this part;

(2) Requirements of part 191 of this chapter—Transportation of Natural and Other Gas by Pipelines: Annual Reports; Incident Reports, and Safety-Related Condition Reports;

(3) Requirements of part 199 of this chapter—Drug Testing;

(4) Recognition of abnormal and emergency conditions:

(i) Ability to recognize abnormal operating conditions which may indicate a dangerous situation or a condition exceeding operating design limitations, such as a pressure above the maximum allowable operating pressure but not exceeding the limitations of § 192.201, and to recognize other conditions such as those in §§ 192.605 (c) and (f).

(ii) Ability to recognize emergency conditions such as an operating pressure exceeding the limitations of § 192.201 and to recognize emergency conditions such as those in §§ 192.605 and 192.615.

(iii) Training for paragraphs (d)(4)(i) and (d)(4)(ii) of this section shall, where feasible, utilize simulated pipeline conditions.

(5) Reaction to abnormal and emergency conditions:

(i) Ability to react appropriately to an abnormal operating condition or to a condition exceeding design limitations in a manner that restores the normal operating condition or prevents the development of an emergency condition.

(ii) Ability to react appropriately to an emergency condition to control or mitigate the potential for personal injury, death, property damage, and environmental damage.

(iii) Training for paragraphs (d)(5)(i) and (d)(5)(ii) of this section shall, where feasible, utilize simulated pipeline conditions.

(6) Requirements for notifying and responding to notifications from one-call systems where the operator is a participating member;

(7) Repairs of pipelines using appropriate precautions, such as isolation, purging, and venting;

(8) Proper operation and maintenance of available combustible gas detecting equipment and locating instruments for underground pipelines.

(9) Firefighting procedures and proper use of available equipment, such as fire suits, breathing apparatus, water hoses, and chemical fire extinguishers (by utilizing, where feasible, simulated pipeline emergency conditions).

§ 192.813 Testing.

(a) Except as provided for supervisory persons in this paragraph, to be qualified under this subpart, personnel must have demonstrated successful performance on a test of the general training elements in § 192.811(c) and relevant specific training elements in § 192.811(d). Testing may be performed through one or any combination of written, hands-on, or oral methods appropriate for the function tested. Supervisory persons are required to be similarly qualified or, under § 192.805(c), are permitted to be qualified administratively.

(b) Testing is not required for the refresher training under § 192.815.

§ 192.815 Refresher training.

(a) To remain qualified under this subpart personnel, within 24 months of the date of the certification statement required under § 192.819(b), must receive refresher training. Refresher training is a review of the requirements for general training and the appropriate requirements for specific training under § 192.811.

(b) Refresher training is required within 24-month intervals thereafter.

§ 192.817 Competency reviews.

At intervals not exceeding 7 months, but at least twice each calendar year, an operator shall review the performance of any personnel involved in an incident (reportable or nonreportable events under § 191.5 of this chapter) that resulted in an explosion, fire, unintentional release of gas, personal injury or death, property damage to the operator or others, damage to the environment or that is a violation of the operator's procedures under § 192.605. Among other such events are abnormal operating conditions or emergency conditions set out in §§ 192.811 (d)(4) and (d)(5). Within 2 months after a competency review, the operator shall:

(a) Evaluate the effectiveness of qualification training, testing, and refresher training required by this subpart; and

(b) Identify and implement appropriate revisions, if any, in the qualification program to improve the competency of operator personnel in order to reduce the likelihood of similar incidents.

§ 192.819 Recordkeeping.

(a) For personnel qualified to perform covered functions, the operator shall prepare and maintain written or computerized records and dates of:

(1) The general and specific training elements of § 192.811 which the person has satisfactorily completed;

(2) The results of the testing required by § 192.813 indicating the person has demonstrated successful performance; and

(3) The refresher training required by § 192.815 which the person has received.

(b) Each operator shall sign and date the following statements, and include it among the records for each qualified person: "I certify that on this date [insert name of person] is [qualified or qualified administratively] to perform the specified covered function(s) by the training and testing required by 49 CFR Part 192, Subpart N, as demonstrated by the accompanying record(s) prepared for that person in accordance with § 192.819."

(c) The records shall be retained for at least 36 months after a person ceases to be employed by the operator in a capacity that requires qualification under this subpart.

§ 192.821 Compliance dates.

(a) Except for operators of small gas systems under paragraph (b) of this section, operators shall meet the following compliance dates:

(1) Completion of the initial qualification training and testing schedule required by § 192.809(b) before [6 months after date of publication of final rule];

(2) Completion of the initial qualification training and testing required by §§ 192.811 and 192.813 and recordkeeping required by § 192.819 before [24 months after date of publication of final rule];

(3) Completion of the initial refresher training schedule required by § 192.809(c) before [30 months after publication of final rule]. Thereafter, the refresher training schedule shall be updated as necessary for implementation of the requirements for refresher training under § 192.815;

(4) Completion of the initial refresher training required by § 192.815 before [42

months after date of publication of final rule]; and

(5) Completion of the initial competency reviews, if any, required under § 192.817 before [12 months after date of publication of final rule].

(b) Operators of small gas distribution systems defined in § 192.803 shall meet the following compliance dates:

(1) Completion of the initial qualification training and testing schedule required by § 192.809(b) before [6 months after date of publication of final rule];

(2) Completion of the initial qualification training and testing required by §§ 192.811 and 192.813 and recordkeeping required by § 192.819 before [36 months after date of publication of final rule];

(3) Completion of the initial refresher training schedule required by § 192.809(c) before [42 month after date of publication of final rule]. Thereafter, the schedule shall be updated as necessary for implementation of the requirements for refresher training under § 192.815;

(4) Completion of the initial refresher training required by § 192.815 before [54 months after date of publication of final rule]; and

(5) Completion of the initial competency reviews, if any, required under § 192.817 before [24 months after date of publication of final rule].

PART 195—[AMENDED]

3. The authority citation for part 195 is revised to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, 60109; 49 CFR 1.53.

4. Section 195.403 would be removed and reserved and a new subpart G would be added to read as follows:

Subpart G—Qualification of Pipeline Personnel

Sec.

195.501 Scope.
195.503 Definitions.
195.505 Personnel to be qualified.
195.507 Instructors.
195.509 Evaluation and Scheduling.
195.511 Qualification training.
195.513 Testing.
195.515 Refresher training.
195.517 Competency reviews.
195.519 Recordkeeping.
195.521 Compliance dates.

Subpart G—Qualification of Pipeline Personnel.

§ 192.503 Scope.

(a) This subpart prescribes minimum requirements for the qualification of personnel performing covered functions.

(b) Under this subpart, personnel must complete requirements for qualification training, testing, and refresher training.

(c) Under this subpart, the operator must ensure implementation of the following requirements: identification of covered functions and affected personnel; selection of instructors and subject matter; evaluation of prior experience and training of personnel; scheduling and implementation of training, testing, and refresher training; performance of competency reviews; maintenance of qualification records; certification of personnel and supervisory person qualification; and adherence with compliance dates.

(d) No operator may use a person to perform any covered function for which qualification is needed, unless and until that person is qualified and certified by the operator, or that person is accompanied and directed by a qualified person.

§ 195.503 Definitions.

As used in this subpart:

Covered functions means regulated operation, maintenance, and emergency-response functions performed in direct contact, or in close association with pipelines subject to this part. Covered functions are not limited to those under Subpart F—Operation and Maintenance of this part. Covered functions do not include clerical, truck driving, accounting, or other functions not subject to this part.

Demonstrable proficiency means evidence of knowledge and skill acceptable to other persons with specialized training or certification in the performance of similar functions.

Demonstrated successful performance on a test means achievement of at least the minimum acceptable grade level that demonstrates the knowledge and skills required to competently perform the function tested.

Personnel means persons performing covered functions or supervisory persons directly overseeing persons performing covered functions. The persons may be the operator or employed by the operator, be a contractor engaged by the operator, or be employed by such contractor.

Qualification training and testing schedule means a written or computerized schedule, prepared by the operator, that sets out the following minimum details: names and titles of personnel, dates of training and testing, elements of general and specific training to be taught or tested, and names of instructors.

Qualified means meeting the training, testing, and recordkeeping requirements of this subpart for a covered function.

Qualified administratively means meeting the training, testing, and recordkeeping requirements of this subpart for a covered function, except those involving the demonstration of competent "hands-on" skills, such as required for welding.

Refresher training schedule means a written or computerized schedule, prepared by the operator, setting out the same details as the qualification training and testing schedule, except that information relating to testing is not required.

Supervisory persons means persons such as operators, managers, supervisors, foremen, co-workers and other personnel.

§ 195.505 Personnel to be qualified.

(a) Except as provided in paragraphs (b) and (c) of this section, persons performing covered functions and supervisory persons directly overseeing persons performing covered functions must be qualified under this subpart. Personnel requiring such qualification may be the operator or employed by the operator, be a contractor engaged by the operator, or be employed by such contractor.

(b) Except for the covered functions of welding and nondestructive testing under subpart D of this part, personnel requiring qualification under paragraph (a) of this section may perform a covered function without qualification if, while performing the function, those persons are accompanied and directed by a supervisory person qualified under this subpart.

(c) Supervisory persons directly overseeing qualified persons performing covered functions must, themselves, be qualified or be qualified administratively for those functions.

§ 195.507 Instructors.

(a) To implement the evaluating, training, and testing requirements of this subpart, an instructor (the operator or others selected by the operator) must have demonstrable proficiency in the functions to be taught and tested commensurate with the level of knowledge and skills required for the operator's unique pipeline system.

(b) Whenever an instructor selected by the operator is a person or entity other than the operator or operator personnel, the operator remains responsible for ensuring that the requirements of this subpart are complied with.

§ 195.509 Evaluation and scheduling.

(a) The instructor shall evaluate any prior experience and training of personnel requiring qualification under § 195.505. Previous experience or training equivalent to any of the general or specific training elements of § 195.511 would not require qualification training in those elements, but would require testing under § 195.513.

(b) To ensure completion of the evaluation under paragraph (a) of this section and the scheduling necessary for implementation of training and testing under §§ 195.511 and 195.513, the operator shall prepare a written or computerized qualification training and testing schedule. The schedule shall contain names and titles of affected persons, dates and locations for training and testing, elements of general and specific training to be taught or tested, and names of instructors.

(c) To ensure completion of the scheduling necessary for implementation of the refresher training under § 195.515, the operator shall prepare a written or computerized refresher training schedule. The schedule shall contain details, with the exception of testing, similar to those required in paragraph (b) of this section.

§ 195.511 Qualification training.

(a) Except for any prior experience or training evaluated as equivalent under § 195.509(a), to be qualified under this part, personnel must satisfactorily complete general and specific training appropriate to the operator's unique pipeline system. Supervisory persons are required to be similarly qualified or, under § 195.505(c), to be qualified administratively.

(b) General and specific training may be acquired through one or any combination of classroom education, operator-sponsored training, on-the-job training, or apprenticeship.

(c) Minimum general training required by all persons includes knowledge of the following elements:

(1) Characteristics and hazardous properties of non-HVL hazardous liquid, HVL, or carbon dioxide transported, such as flammability range, temperature, and corrosive effects on pipeline systems, as well as toxicity, olfactory, asphyxiatory, low temperature freeze burns, and vapor cloud effects on persons, property, and the environment;

(2) Potential ignition sources of escaping liquids;

(3) Purpose and operation of the damage prevention program in effect by the operator; and

(4) Purpose of the drug testing program under part 199 of this chapter.

(d) Minimum specific training required when relevant to a person's function includes knowledge of the following elements:

(1) Requirements of the other subparts of this part;

(2) Requirements of part 194 of this chapter—Response Plans for Onshore Oil Pipelines;

(3) Requirements of part 199 of this chapter—Drug Testing;

(4) Recognition of abnormal and emergency conditions:

(i) Ability to recognize abnormal operating conditions which may indicate a dangerous situation or a condition exceeding operating limitations, such as a pressure above the normal operating pressure but not exceeding the limitations of § 195.406(b), and to recognize other conditions such as those in § 195.402(d).

(ii) Ability to recognize emergency conditions such as an operating pressure exceeding the limitations of § 195.406(b) and to recognize emergency conditions such as those in § 195.402(e) including release of carbon dioxide.

(iii) Training for paragraphs (d)(4)(i) and (d)(4)(ii) of this section shall, where feasible, utilize simulated pipeline emergencies.

(5) Reaction to abnormal and emergency conditions:

(i) Ability to react appropriately to an abnormal operating condition or to a condition exceeding design limitations in a manner that restores the normal operating condition or prevents the development of an emergency condition.

(ii) Ability to react appropriately to an emergency condition to control or mitigate the potential for personal injury, death, property damage, and environmental damage.

(iii) Training for paragraphs (d)(5)(i) and (d)(5)(ii) of this section shall, where feasible, utilize simulated pipeline conditions.

(6) Requirements for notifying and responding to notifications from one-call systems where the operator is a participating member;

(7) Repairs of pipelines using appropriate precautions, such as isolation, purging, and venting;

(8) Proper operation and maintenance of available combustible gas detecting equipment and locating instruments for underground pipelines; and

(9) Firefighting procedures and proper use of available equipment, such as fire suits, breathing apparatus, water hoses, and chemical fire extinguishers (by utilizing, where feasible, simulated pipeline emergency conditions).

§ 195.513 Testing.

(a) Except as provided for supervisory persons in this paragraph, to be qualified under this subpart, personnel must have demonstrated successful performance on a test of the general training elements in § 195.511(c) and relevant specific training elements in § 195.511(d). Testing may be performed through one or any combination of written, hands-on, or oral methods appropriate for the function tested. Supervisory persons are required to be similarly qualified or, under § 195.805(c), are permitted to be qualified administratively.

(b) Testing is not required for the refresher training under § 195.515.

§ 195.515 Refresher training.

(a) To remain qualified under this subpart personnel, within 24 months of the date of the certification statement required under § 195.519(b), must receive refresher training. Refresher training is a review of the requirements for general training and the appropriate requirements for specific training under § 195.511.

(b) Refresher training is required within 24-month intervals thereafter.

§ 195.517 Competency reviews.

At intervals not exceeding 7 months, but at least twice each calendar year, an operator shall review the performance of any personnel involved in an accident (reportable or nonreportable event under § 195.50) that resulted in an explosion, fire, unintentional release of liquid, personal injury or death, property damage to the operator or others, or damage to the environment or that is a violation of the operator's procedures under § 195.402. Among other such events are abnormal operating conditions or emergency conditions set out §§ 195.511(d)(3) and (d)(4). Within 2 months after a competency review, the operator shall:

(a) Evaluate the effectiveness of qualification training, testing, and refresher training required by this subpart; and

(b) Identify and implement appropriate revisions, if any, in the qualification program to improve the competency of operator personnel in order to reduce the likelihood of similar incidents.

§ 195.519 Recordkeeping.

(a) For personnel qualified to perform covered functions, the operator shall prepare and maintain written or computerized records and dates of:

(1) The general and specific training elements of § 192.511 which the person has satisfactorily completed;

(2) The results of the testing required by § 195.513 indicating the person has demonstrated successful performance; and

(3) The refresher training required by § 195.515 which the person has received.

(b) Each operator shall sign and date the following certification, and include it among the records for each qualified person. "I certify that on this date [insert name of person] is [qualified or qualified administratively] to perform the specified covered function(s) by the training and testing required under 49 CFR Part 195, Subpart G, as demonstrated by the accompanying record(s) prepared for that person in accordance with § 195.519."

(c) The records shall be retained for at least 3 years after a person ceases to be employed by the operator in a capacity that requires qualification under this subpart.

§ 195.521 Compliance dates.

Operators shall meet the following compliance dates:

(a) Completion of the qualification training and testing schedule required by § 195.509(b) before [6 months after date of publication of final rule];

(b) Completion of the qualification training and testing required by §§ 195.511 and 195.513 and recordkeeping required by § 195.519 before [24 months after date of publication of final rule];

(c) Completion of the initial refresher training schedule required by § 195.509(c) before [30 months after publication of final rule]. Thereafter, the refresher training schedule shall be updated as necessary for implementation of the requirements for refresher training under § 195.515.

(d) Completion of the initial refresher training required by § 195.515 before [36 months after date of publication of final rule].

(e) Completion of the initial competency reviews, if any are required under § 195.517 before [12 months after date of publication of final rule].

Issued in Washington, DC on July 27, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 94–18864 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–60–P

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–94–9]

RIN 2125–AD37

Parts and Accessories Necessary For Safe Operation; Automatic Brake Adjusters and Brake Adjustment Indicators

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing to require the use of automatic brake adjusters (ABAs) on hydraulically-braked commercial motor vehicles (CMVs) and air-braked CMVs manufactured on or after October 20, 1993, and October 20, 1994, respectively. The FHWA is also proposing a requirement for brake adjustment indicators on air-braked CMVs with external adjustment mechanisms manufactured on or after October 20, 1994. This rulemaking is intended to: Insure that the operational standards for brakes in the Federal Motor Carrier Safety Regulations (FMCSRs) are consistent with the manufacturing standards in the Federal Motor Vehicle Safety Standards (FMVSSs) numbers 105 and 121, which now require the installation of automatic brake adjusters and adjustment indicators on certain CMVs manufactured on or after these dates; and improve the safety of operation of CMVs by reducing the incidence of brakes that are out of adjustment.

In addition, the FHWA requests information concerning the possibility of requiring these devices to be retrofitted to CMVs placed in operation prior to the effective dates of the recent amendments to FMVSS Nos. 105 and 121.

DATES: Comments must be received on or before October 3, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–94–9, room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. All answers to questions should refer to the appropriate question number and all comments on specific provisions should refer to the appropriate section and paragraph number. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Standards, (202) 366–2981, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

A. General Information

Proper brake adjustment is critical to the safe operation of commercial motor vehicles. When brakes are correctly adjusted, vehicles can generally be brought to a stop within a satisfactory distance and in a controlled manner. However, brakes that are not properly adjusted cannot develop the retardation force designed into the vehicle's brake system, resulting in increased stopping distances. Under emergency conditions, this can result in a collision that might otherwise have been avoided, or in a more severe collision than would have occurred with properly-adjusted brakes.

Out-of-adjustment brakes are the primary equipment-related cause for commercial motor vehicles to be placed out of service during roadside inspections. According to the FHWA's Office of Motor Carrier Field Operations Annual Report for Fiscal Year 1992, 36.2 percent of vehicles placed out-of-service are cited for this deficiency. A copy of this report has been placed in the docket.

In addition, brake-related accidents, some stemming from gross brake maladjustment, are also a factor in some "equipment malfunction" CMV accident citations. The National Highway Traffic Safety Administration's (NHTSA) regulatory evaluation, prepared in conjunction with their rulemaking on automatic brake adjusters (ABAs), noted that 6.8 percent of all medium and heavy truck accidents were reported as being caused by defective equipment. Of that figure, 31 percent were due to defective brakes, with 60 percent of those brakes judged to be out of adjustment; this amounts to 1.3 percent of accidents reported—or nearly 4,000 accidents per year. The regulatory evaluation also cited a review of National Transportation Safety Board (NTSB) reports on 97 serious heavy truck accidents investigated from 1969 to 1981. Out-of-adjustment brakes were cited as a causal or contributing factor in 27 of those 97 accidents, or 28

percent. A copy of the NHTSA's regulatory evaluation has been placed in the docket.

B. Safety and Operational Role of Automatic Brake Adjusters and Brake Adjustment Indicators

Automatic brake adjusters significantly reduce the effort required for inspection and manual adjustment of the brakes. Clearance-sensing ABAs limit the clearance between brake linings and drums, or pads and rotors, to a level that ensures effective brake actuator strokes. They adjust on every complete brake application. Stroke-sensing ABAs adjust on brake applications severe enough to cause the brake actuator stroke to exceed that which the ABA is designed to maintain. ABAs include, but are not necessarily limited to, automatic slack adjusters (ASAs). The term "automatic brake adjusters" is used to provide a performance-based description of this class of devices.

Brake adjustment indicators (BAIs), especially when used in concert with ABAs, can do a great deal to address the brake adjustment problem. A BAI conforming to the NHTSA requirements can significantly reduce the time necessary to assess brake adjustment levels. Use of these indicators will make it easier for drivers and maintenance personnel to make brake-adjustment checks at more frequent intervals, and detect brake adjustment problems before they become severe enough to cause, or worsen the outcome of, an accident.

C. NHTSA and NTSB Research on CMV Brake Performance and ABAs.

Two extensive research studies of CMV brake performance, and operational and maintenance experiences of motor carrier fleets utilizing CMVs equipped with ABAs, have been performed by the NHTSA and the NTSB. We summarize both here. Copies of the NHTSA and the NTSB studies are available from the National Technical Information Service (NTIS, Springfield, Virginia, telephone (800) 553–6847). Copies have also been placed in the public docket.

1. NHTSA Research. The NHTSA research was reported in "Automatic Brake Adjusters for Heavy Vehicle Air Brake Systems," February 1991, report DOT-HS–807–724 (PB 91–215814). Seven fleets participated during a 2.5-year initial study period and an additional 3 years of follow-up; 245 tractors and 289 trailers accumulated nearly 50 million miles of travel during this time.

Researchers and fleet maintenance staffs made nearly 20,000 measurements of brake stroke length on approximately 1,800 brake adjusters (four different manufacturers' ABAs, plus manual brake adjusters (MBAs)). For 36 types of ABA installations, the median out-of-adjustment rate was 4.0 percent, and the median number of out-of-adjustment observations per brake per 10,000 miles was 0.016. The NHTSA noted that "[t]he ASAs tested were principally models designed and marketed in the early to mid 1980's. There have been extensive design improvements in both ASAs and other brake system components since that time. Thus, the performance data presented here for these earlier ASA designs likely understate the performance levels that can be expected from ASAs purchased today."

The NHTSA collected a limited amount of control data on MBAs. There were 96 MBAs used in portions of 3 of the fleets. The use of MBAs generally resulted in higher percentages and rates of out-of-adjustment brakes than did the use of ABAs, and the differences were considered to be statistically significant.

2. NTSB Research. The NTSB, an independent Federal agency responsible for investigating and determining the probable cause or causes of certain transportation-related accidents, has studied numerous accidents in which brake deficiencies have been cited as causal factors.

A recent NTSB study, "Heavy Vehicle Airbrake Performance," adopted April 29, 1992, report NTSB/SS–92/01 (PB 92–917003), analyzed information gathered over a 17-month period from selected brake-related accidents involving heavy trucks and buses, as well as data collected by NTSB staff during roadside inspections in 5 States. The report's findings highlighted the role of brake system components in certain vehicle instability accidents, and pointed out that many brake out-of-adjustment problems were due both to the small tolerance range and to a lack of proper brake maintenance. The NTSB recommended that the DOT, among other things: (1) Require air-braked vehicles to be equipped with visible adjustment indicators that will allow one person to check the level of adjustment (Recommendation H–92–50); (2) require automatic adjusters on vehicles equipped with airbrake systems (Recommendation H–92–51); and (3) encourage the installation of visible brake adjustment indicators on all vehicles equipped with air brake systems for easy detection of adjustment levels (Recommendation H–92–57).

D. NHTSA Requirement for ABAs and Automatic Adjustment Indicators

The FHWA strives to maintain consistency between the manufacturing standards for commercial motor vehicles contained in the NHTSA's Federal Motor Vehicle Safety Standards (FMVSSs), and the operations and maintenance regulations contained in the FMCSRs. On October 20, 1992 (57 FR 47793), the NHTSA issued a final rule amending FMVSS No. 105, *Hydraulic Brake Systems*, to require ABAs on motor vehicles equipped with hydraulic brake systems. The NHTSA also amended FMVSS No. 121, *Air Brake Systems*, to require ABAs on all air-braked motor vehicles and adjustment indicators on air-braked vehicles with external adjustment mechanisms. The effective dates are October 20, 1993, for the amendments to FMVSS No. 105 and October 20, 1994, for the amendments to FMVSS No. 121.

While the NHTSA rulemaking requires manufacturers to equip new vehicles with ABAs in order to ensure brakes are in proper adjustment, it does not affect the readjustment limits used by the States in roadside inspections nor those required by the FHWA for periodic inspections (contained in Appendix G to the FMCSRs, "Minimum Periodic Inspection Standards"). The reach of the NHTSA's regulatory authority extends only to vehicle manufacturers. The FMCSRs apply to employers, employees, and commercial motor vehicles which transport property or passengers in interstate commerce.

E. Brake Adjustment Criteria

The North American Uniform Driver-Vehicle Inspection Procedure (NAUDVIP) provides a standardized procedure used by States and local governments to inspect in-service CMVs. The NAUDVIP was developed by the Commercial Vehicle Safety Alliance (CVSA). The Commercial Vehicle Safety Alliance is an association of Federal, State, and Provincial officials responsible for the administration and enforcement of motor carrier safety laws in the United States, Canada, and Mexico, who work together to enhance commercial motor vehicle safety.

As a part of the NAUDVIP, the CVSA specifies certain limits for pushrod travel. These limits, which are identical to the limits contained in Appendix G to the FMCSRs, "Minimum Periodic Inspection Standards," have been set in consultation with motor carrier safety enforcement officials and brake manufacturers. Brakes at or beyond these limits are considered to be out of adjustment.

The origin of the CVSA out-of-adjustment criteria can be traced back to the California Highway Patrol (CHP) inspection criteria established in the 1960's. The CHP readjustment limits were based on brake adjustment limits developed by the former Motor Vehicle Manufacturers Association (now the American Automobile Manufacturers Association, which no longer deals with heavy truck issues). These limits are approximately 80 percent of full brake chamber stroke. This is generally the point on the force versus stroke curve for a typical brake chamber where the brake force starts decreasing rapidly with increasing stroke.

CVSA criteria regarding brake adjustment limits specify that a vehicle is to be placed out of service if 20 percent or more of its brakes are defective. A brake is considered *defective* if its adjustment is *1/4 inch (6.5 mm) or more beyond the readjustment limit.* Two brakes at the readjustment limit or less than 1/4 inch beyond the readjustment limit are also considered one *defective* brake. For example, on a 5-axle combination vehicle with 10 brakes, 4 brakes at the readjustment limit would be considered as 2 defective brakes, and would also result in an out-of-service condition.

Since the readjustment limits are based upon the characteristics of the brake chamber, the use of ABAs would not affect the brake chamber output force. Therefore, the FHWA believes that the current readjustment limits are appropriate for CMVs equipped with ABAs, as well as those currently equipped with MBAs. When properly installed and maintained, ABAs can thus help prevent sudden and unexpected loss of braking ability due to a loss of brake force resulting from excessive pushrod stroke.

F. ABA Installation and Reliability

As noted in the NHTSA's final rule, ABAs are currently being installed on a large percentage of newly-manufactured medium- and heavy-duty air-braked vehicles. Some fleets have been specifying ABAs for their vehicles for a number of years. However, NHTSA also noted that one major manufacturer and several smaller ones did not provide ABAs as standard equipment, and many purchasers did not order them as optional equipment. In addition, the majority of CMVs currently in operation are not equipped with ABAs.

Brake adjuster lifespan generally depends upon the number of brake applications and the number of brake service cycles of the CMV. The NHTSA fleet study noted that most ABAs observed performed for the duration of the study without mechanical failure. The researchers did observe some mechanical failures, and some apparent failures that were actually due to other problems in the brake system, such as wear in the foundation brakes. A number of the failures were caused by wear to specific parts. The manufacturers reported that they have implemented design changes to remedy those problems. The NHTSA's supplemental fleet data collected in 1988–1990 on newer ABAs indicated high levels of reliability. The reported average replacement rates for ABAs were 0.06 replacements per million tractor miles and 0.3 per million trailer miles.

The NHTSA research report emphasized that ABAs must be installed in accordance with manufacturer specifications to maintain efficient adjustments. In most cases, no special adjustments in brake component geometry are required. Manufacturers of these devices provide drawings, templates, and similar aids to facilitate installation.

The figures for CMVs placed out of service appear to indicate that there are considerable difficulties in monitoring brake adjustment status. The findings of the NHTSA research demonstrate that BAIs, especially when used in concert with ABAs, can make a significant contribution to resolving the brake adjustment problem. Aside from the clear safety benefits of maintaining proper brake adjustment, ABAs can have a positive benefit on motor carrier productivity by preventing CMVs from being placed out of service, reducing roadside service calls and the resulting delays to transportation operations.

A BAI conforming to the NHTSA requirements (49 CFR 571.121) can significantly reduce the time needed to assess brake adjustment status. As their name implies, BAIs provide a visible indication of pushrod stroke. There are several varieties: some BAIs consist of color-coded or scribed marks on the pushrod, others raise a plastic or metal "flag" when the pushrod stroke reaches the prescribed adjustment limit.

ABAs do not eliminate the need for periodic inspection and maintenance of the brake system, but they do reduce the need for brake adjustment. Recommended Practice RP–609 of The Maintenance Council of the American Trucking Associations states that "[a]n automatic slack adjuster should not have to be manually adjusted except for initial installation and at brake reline * * *." If adjustment is needed, it could be a sign that the ABA is not working or that there is a problem with the [foundation] brake system. Brake actuator strokes must still be monitored, of course.

Like their manual counterparts, ABAs and BAIs require regular maintenance. They operate in the same hostile and exposed environment as manual systems. The NHTSA notes that their performance is affected by failures and wear in other parts of the foundation brake system, and, like other components, their life expectancy can be less than that of the tractor or trailer on which they are installed.

Discussion of Proposal

The FHWA believes that the information presented in the reports cited above indicates that both motor carriers and the travelling public may derive substantial operational and safety benefits from the use of automatic brake adjusters and brake adjustment indicators.

The FHWA proposes to amend the FMCSRs by adding a new § 393.53, Automatic Brake Adjusters and Brake Adjustment Indicators. This section would be added to Subpart C, Brakes.

The provisions of paragraphs (a), (b), and (c) would require that automatic brake adjusters and brake adjustment indicators installed on newly manufactured CMVs to comply with the requirements of FMVSS 105 and 121 be maintained by the motor carriers operating those CMVs.

Questions

The FHWA believes there are also opportunities for improvements to operational safety of CMVs manufactured prior to the effective dates of the recent amendments to FMVSS 105 and 121. The FHWA therefore requests information regarding the potential impacts of requiring CMVs subject to the FMCSRs to be retrofitted with ABAs, and for requiring air-braked CMVs with external adjustment mechanisms to be retrofitted with brake adjustment indicators. The FHWA specifically requests comments on the following questions:

1. Should air-braked CMVs manufactured before the effective date of NHTSA's rule be required to be retrofitted with ABAs?

2. Should all air-braked CMVs with external brake adjustment mechanisms be required to be retrofitted with brake adjustment indicators?

3. If certain CMVs are to be retrofitted, how much time should be allowed for installation of the new equipment?

4. Are there certain types or configurations of air-braked vehicles that cannot be equipped with ABAs because of space limitations around the axles and wheels?

5. Should different periods be specified for retrofitting single-unit trucks, tractors, converter dollies, and trailers?

6. The requirements proposed by this NPRM would exclude air-braked vehicles that were not subject to FMVSS No. 121 on the date of manufacture. (Vehicles not subject to the requirements are listed under Paragraph S3 of § 571.121, and include certain types of limited- or specialized-use vehicles such as wide trailers, vehicles equipped with an axle with a gross axle weight rating of 29,000 pounds or more, any truck or bus that has a speed attainable in 2 miles of not more than 33 mph, heavy hauler trailer sets, and load divider dollies.) Should specific types of CMVs, or CMVs used in unique operations, (i.e., CMVs that are *not* subject to the requirements of FMVSS 121, but are subject to the FMCSRs) be exempt from a requirement to be retrofitted with ABAs? Should these specific types of air-braked CMVs manufactured on or after October 20, 1994, be required to be *equipped* with ABAs prior to being placed in operation in interstate commerce? Please provide details.

7. What are the costs associated with retrofitting an ABA compared to replacement of an MBA? Please include the cost of the device, the time required to complete the installation, and a representative hourly salary of the mechanic performing the installation. Please also include a "loss of use" cost figure if a CMV were to be taken out of revenue service for retrofitting at some time other than a time when a brake adjuster would normally be due for replacement. How often do tractors and trailers visit a facility where retrofitting could take place?

8. Should the FHWA consider a retrofitting requirement for hydraulically-braked CMVs? Please address the cost questions asked in Question 7.

The FHWA requests that commenters address the specific questions above. However, the FHWA encourages commenters to include a discussion of any other issues that the commenters believe are relevant to the use and/or retrofitting of automatic brake adjusters and brake adjustment indicators on CMVs.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This rule would, if adopted, provide a companion operational standard for brakes in the FMCSRs to make them consistent with the manufacturing standards in the FMVSSs 105 and 121. It would require automatic brake adjusters and brake adjustment indicators installed on newly manufactured CMVs in accordance with those manufacturing standards to be maintained by the motor carriers operating those vehicles. Based on the NHTSA studies, the FHWA believes that operation and maintenance costs of the automatic brake adjusters and adjustment indicators required under the new FMVSSs will be lower than costs of the devices previously required. Although the FHWA requests information concerning the possibility of requiring these devices to be retrofitted to CMVs placed in operation prior to the effective dates of FMVSSs 105 and 121, no rule to require such retrofitting is being proposed at this time. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. If the FHWA proposes retrofitting of these devices at some future date, a regulatory evaluation of the effects of that action will be prepared at that time.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed rule on small entities. This rule would modify the operational standards for brakes in the Federal Motor Carrier Safety Regulations (FMCSRs) to make them consistent with the manufacturing standards in the Federal Motor Vehicle Safety Standards (FMVSSs) numbers 105 and 121, which now require the installation of automatic brake adjusters and adjustment indicators on certain newly-manufactured CMVs. As stated above, the FHWA believes that operation and maintenance costs of the automatic brake adjusters and adjustment indicators required under the new FMVSSs will be lower than costs of the devices previously required. Therefore, the FHWA hereby certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Freight Transportation, Highway safety, Highways and roads, Motor carriers, and Motor vehicle safety.

In consideration of the foregoing, the FHWA is proposing to amend title 49, Code of Federal Regulations, part 393, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 3102; 49 U.S.C. app. 2505; 49 CFR 1.48.

2. In Subpart C, § 393.53 is added to read as follows:

§ 393.53 Automatic brake adjusters and brake adjustment indicators.

(a) *Automatic brake adjusters (hydraulic brake systems).* Each commercial motor vehicle manufactured on or after October 20, 1993, and equipped with a hydraulic brake system, shall be equipped with an automatic brake adjustment system that meets the requirements of Federal Motor Vehicle Safety Standard No. 105 (49 CFR 571.105, S5.1) of this title) applicable to the vehicle at the time it was manufactured.

(b) *Automatic brake adjusters (air brake systems).* Each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system, shall be equipped with an automatic brake adjustment system that meets the requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S.5.1.8) applicable to the vehicle at the time it was manufactured.

(c) *Brake adjustment indicator (air brake systems).* On each commercial motor vehicle manufactured on or after October 20, 1994, and equipped with an air brake system which contains an external automatic adjustment mechanism and an exposed pushrod, the condition of service brake under-adjustment shall be displayed by a brake adjustment indicator conforming to the requirements of Federal Motor Vehicle Safety Standard No. 121 (49 CFR 571.121, S5.1.8) applicable to the vehicle at the time it was manufactured.

Issued on: July 28, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–18901 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–22–P

National Highway Traffic Safety Administration

49 CFR Part 571

Lamps, Reflective Devices and Associated Equipment; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking by Baran Advanced Technologies, Ltd., to amend Federal Motor Vehicle Safety Standard No. 108 to allow the abrupt release of the accelerator pedal to operate stop lamps. The reason for the denial is the importance of retaining the existing requirement for activating the stop lamps only through application of the brake pedal in order to avoid confusion.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Vehicle Safety Standards, NHTSA (202–366–6346).

SUPPLEMENTARY INFORMATION: Baran Advanced Technologies, Ltd. of Israel manufactures a device called "Red Alert" which is intended to activate the stop lamps during emergency braking before the brake pedal is applied, thereby providing an earlier warning for following vehicles. The device senses the rate at which the accelerator pedal returns to its upper stop after being released. It activates the stop lamps for one second if the accelerator pedal reaches its upper stop at greater than a certain predetermined rate. Its operation is based on the assumption that any rapid release of the accelerator pedal is the beginning of an emergency braking maneuver, and thus will be immediately followed by application of the brake pedal. Application of the brake pedal continues to activate the stop lamp in the usual way. If the brake pedal is depressed within one second of the release of the accelerator, the brake light will remain on at the end of the initial one second period of activation and thus provide a steady signal.

Standard No. 108 requires that stop lamps "shall be activated upon application of the service brakes." That requirement has been interpreted to mean that the stop lamps are to be activated only upon activation of the service brakes. Some years ago, Baran's competitor in the Israeli market, ATAT, sought an interpretation of Standard No. 108 that would allow the aftermarket installation of its similar Advanced Brake Light Device (ABLD) in the U.S. In a letter of January 25, 1990, to Larry Snowhite, Esq., the agency concluded that accelerator release activation by an aftermarket device such as the ABLD would render the stop lamps partially inoperative within the meaning of the prohibition of 15 U.S.C. 1397(a)(2)(A). Said NHTSA:

> The heart of our concern is that while the standard requires the stop lamp to operate in only one particular circumstance, the ABLD causes the stop lamp to operate at an earlier time when the lamp is supposed to be unlighted. Further, the ABLD's activation of the stop lamp indicates only that the operator has released the accelerator. It does not necessarily follow that the brake pedal will be applied. Under this fact situation, the stop lamps fulfill a purpose other than for which they are installed. This can only create the potential for confusion and dilution of the effectiveness of the stop signal. For the reasons stated above, we have concluded that installation of the ABLD in the aftermarket would render the stop lamps partially inoperative.

Baran's "Red Alert" and ATAT's ABLD operate under the same fundamental principle of measuring the accelerator pedal return rate to anticipate emergency braking. ATAT did not report its threshold rate for accelerator pedal release. However, the fact that its false alarm rate is similar to that of the Baran system suggests that the activation of both systems is based on a similar threshold rate of accelerator release. These rates are discussed later in the notice.

NHTSA has examined Baran's petition in an effort to balance possible safety benefits of the device against the possible safety disbenefits of signal confusion.

The first issue is whether the petitioner can demonstrate that its device is likely to lessen the number of accidents. Baran estimates large reductions in rear-end accidents using figures from a paper by Enke "Possibilities for Improving Safety Within the Driver-Vehicle Environment Control Loop" and from a NHTSA report on Intelligent Vehicle Highway System (IVHS) countermeasures to rear end accidents (DOT HS 807 995). Enke's paper estimates that the impact speed of 25 percent of rear end accidents is no more than 10 km/hr (9 ft/sec) and that the amount of distance traveled at the assumed initial speed for 0.25 second equals the distance required to stop from the impact speed. Baran claims that "based on Enke's analysis, providing a driver with an additional .25 seconds of warning of an impending stop by the leading driver could result in a 25 to 30 percent reduction in all rear-end accidents."

NHTSA disputes this conclusion. Enke's analysis presumes that the following driver is attentive to the very first glimmer of a stop signal from the car ahead and that (s)he reacts immediately even though a speed differential has not yet occurred. It also presumes that the lead driver decelerates so rapidly that the following driver cannot "outbrake" the lead driver and that the initial distance between them is less than following driver's reaction time multiplied by the initial speed. NHTSA views these presumptions as unrealistic.

Further, NHTSA's IVHS report characterizes a rear-end crash as "largely a dry/straight road phenomenon associated with driver inattention." It found the lead vehicle stopped (LVS) in 75 percent of rear-end crashes, which

> Typically do not involve simply a "too-slow" reaction of the following driver to a sudden crash threat. In the most common scenario, the lead vehicle is stopped for an extended interval (i.e., 2–6 seconds) before it is struck by the following vehicle. There is adequate time to provide a warning to the following driver and for the driver to avoid the crash. Vehicles involved in this crash subtype should not be viewed as a locked pair where one vehicle is following the other at a specified distance. Instead, the following vehicle is closing on a stationary object. The initial gap distance between the vehicles is often several hundred feet or more. No cases were identified where a lead vehicle decelerated rapidly and then was hit by a closely following vehicle immediately after coming to a stop.

It is difficult to see how a 0.25 second advance stop lamp warning would be of any use in the 75 percent of rear-end accidents in the LVS category when prolonged driver inattention appears to be a near universal cause.

The report characterized the remaining 25 percent of rear-end accidents, those in which the lead vehicle was moving (LVM) at impact, as follows:

> In contrast, the LVM crash subtype may involve driver reaction time following a sudden crash threat as a critical factor. Vehicles involved in this circumstance are often "locked pairs" with one vehicle following the other. However, gaps or following distances can range from a few lengths to very substantial distances even in this subtype. Not all LVM crashes are precipitated by rapid deceleration of the lead vehicle. Many involve slow decelerations (e.g., typical slowing before a turn) or simply a speed differential between the lead and following vehicles.

This also indicates that driver inattentiveness is critical in LVM crashes. It is hard to accept that a 0.25 second advance in stop lamp activation would be of value to an inattentive following driver. NHTSA accepts the IVHS report as an accurate reflection of the conditions under which rear-end collisions happen, and has concluded that Red Alert would not provide an adequate warning to avoid these collisions in virtually all the circumstances under which they occur.

Nevertheless, a manufacturer should not be precluded from offering its product, even if safety benefits cannot be demonstrated, unless there are potential safety disbenefits created by the product. The agency objected to ATAT's ABLD because it was not an unambiguous signal of brake application. NHTSA believed that such devices created the potential for confusion and dilution of the effectiveness of the stop signal. It pointed out that the activation of the stop signal under the requested circumstances only signified that the accelerator had been released. It did not necessarily follow that the brakes would be applied. The brakes were not applied 28 percent of time that the ABLD activated in a test report submitted by its proponent, ATAT. Similarly, the brakes were not applied 23 percent of the time the "Red Alert" activated in a test report submitted as part of Baran's petition.

However, both devices activated the stop lamps far less frequently than did the ordinary brake switch activated by depression of the brake pedal. During their respective tests, the ABLD activated the stop signal about 3 percent as frequently as the ordinary brake switch did. "Red Alert" activated the signal about 1.2 percent as frequently. Both tests compared the number of false alarms to the number of ordinary stop signal activations of one second or less. False alarms of "Red Alert" were about 2.4 percent as frequent as short brake applications, and false alarms of the ATAT device were reported as less than 10 percent as frequent as short brake applications. The conditions under which the two devices were tested differed greatly. ATAT used a special test course, three test vehicles and a limited number of test subjects who knew that some undisclosed part of their driving behavior was being evaluated. Baran installed "Red Alert" on six communal car pool vehicles that were operated for a period of months in ordinary traffic by various drivers who had no knowledge that their behavior was being measured. Given the large variations in activation and false alarm rates between test vehicles within each test and the differences in test conditions between the ABLD and "Red Alert" tests, there is no reason to believe that the two devices vary significantly in activation rate and false alarm performance.

The activation rate observed in both tests seems to be too high for true emergency braking actions, as neither test documented an actual incident of emergency braking. ATAT did not report either observing emergency maneuvers or questioning its subjects regarding such instances, but it did measure the foot movement times when the accelerator control activated the stop lamp. A range between 0.23 and 0.77 second was observed. When ATAT's subjects were asked to perform fast accelerator to brake movements, the 5th and 95th percentile times were 0.10 and 0.28 second respectively. It appears that very few of the activations in ATAT's test of an accelerator controlled stop lamp were rapid enough to indicate an emergency. Baran did not report measurements of foot movement times, but it assumed that "Red Alert" activations were equivalent to instances of emergency braking. "Red Alert" was characterized as providing an advance warning of 0.35 second which falls outside of ATAT's rapid foot movement range.

Both manufacturers argued that the false alarms were insignificant because they were few in comparison to the quite large number of brake applications of less than one second. Baran also argued that the short brake applications themselves had little significance because the duration of brake effort would be further reduced by the time consumed to build up pressure and to release the brake pedal within one second. Baran pointed out that a short brake application may represent only a release of cruise control, a state of preparedness or a warning to other drivers. While these facts tend to diminish the importance of the systematic false alarms, they also demonstrate why following drivers are unlikely to act at the instant of the stop lamp illumination in the absence of closing speed or some other cue. All the test experience reported for accelerator controlled stop lamps involved leading and following drivers who were unaware of the use of the device. But this device facilitates intentional false alarms as well as systemic occurrences. Its widespread use would raise suspicions of intentional false alarms on the part of drivers in following vehicles. Intentional false alarms can and will occur, sending a misleading signal to the driver behind.

To sum up, the idea that a slightly anticipatory brake lamp will prevent large numbers of rear-end collisions is intuitively attractive. However, it ignores the fact that lack of driver attention is the root cause of rear-end accidents. It is unlikely than an extra quarter second of brake light activation would cure or offset the inattentiveness of a following driver.

The agency concludes that the potential safety benefits are minimal, but it will consider the results of the Israeli Highway Safety Administration's trial of accelerator-controlled stop lamps when they are available. While Baran's data indicate that the absolute numbers of systematic false alarms may be small on average, a perception by following

drivers that the brake signal allowed false alarms, whether or not intentional, might dilute the currently unambiguous message of the stop signal. The agency previously found that ATAT's device would render the stop lamp partially inoperative as a result of the same loss of unambiguous operation. There are no fundamental differences between the systems to cause the agency to change its determination or even to allow the agency to distinguish between them in a regulation.

Accordingly, NHTSA has conducted and concluded a technical review of the petition, and has determined that there is not a reasonable possibility that the amendment requested would be issued at the conclusion of a rulemaking proceeding. Accordingly, the petition by Baran Advanced Technologies, Ltd., for rulemaking to amend Standard No. 108 is denied.

Authority: 49 U.S.C. 30103; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 28, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–18802 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–59–P

INTERSTATE COMMERCE COMMISSION

49 CFR Chapter X

[Ex Parte No. 274 (Sub–No. 13)]

Rail Abandonments—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: By petition filed March 29, 1994, the National Association of Reversionary Property Owners (NARPO) sought a rulemaking in order to amend the Commission's procedural rules concerning the Rails-to-Trails Program, 16 U.S.C. 1247(d). The Commission, however, has previously addressed similar arguments raised by NARPO. In a decision served February 21, 1990, the Commission, upon reconsideration of a decision served May 26, 1989, 54 FR 22970 (1989), declined to amend the rules implementing the National Trails System Act and found that the requirements sought by NARPO would be time-consuming, expensive, and burdensome and were not warranted given the Commission's limited involvement in trail use proposals and the purpose of the Trails Act, which is to encourage and facilitate interim trail use.[1] The law applicable to our previous decisions has not changed. Therefore, NARPO's petition for rulemaking is denied.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, D.C. 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: July 27, 1994.

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

Vernon A. Williams

Acting Secretary

[FR Doc. 94–18862 Filed 8–2–94; 8:45 am]

BILLING CODE FR–7035–01–P

DEPARTMENT OF THE INTERIOR

Fish And Wildlife Service

50 CFR Part 17

RIN 1018–AC63

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Five Freshwater Mussels and Proposed Threatened Status for Two Freshwater Mussels From Eastern Gulf Slope Drainages of Alabama, Florida, and Georgia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list seven freshwater mussels: The fat three-ridge (*Amblema neislerii*), shiny-rayed pocketbook (*Lampsilis subangulata*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), and oval pigtoe (*Pleurobema pyriforme*) as endangered, and the Chipola slabshell (*Elliptio chipolaensis*) and purple bankclimber (*Elliptoideus sloatianus*) as threatened under the Endangered Species Act (Act) of 1973, as amended. These mussels are endemic to eastern Gulf Slope streams draining the Apalachicolan Region of southeast Alabama, southwest Georgia, and north Florida. They are currently known from localized portions of from one to four isolated marine river systems, mostly in the eastern portion of the Apalachicolan Region. Impoundments and deteriorating water and benthic (bottom) habitat quality resulting from channel modification, siltation, agricultural runoff, silvicultural activities, mining activities, pollutants, poor land use practices, increased urbanization, and waste discharges have resulted in the restriction and fragmentation of these mussels current ranges. In addition, the Service has little evidence to suggest that populations of these seven species of mussels are reproductively viable.

DATES: Comments from all interested parties must be received by November 1, 1994. Public hearing requests must be received by September 19, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216 (904/232–2580). Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Robert S. Butler at the above address.

SUPPLEMENTARY INFORMATION:

Background

The fat three-ridge, shiny-rayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, oval pigtoe, Chipola slabshell, and purple bankclimber are freshwater mussels endemic to eastern Gulf Slope streams draining the Apalachicolan Region (streams from the Escambia to the Suwannee river systems in southeast Alabama, southwest Georgia and north Florida). The Apalachicolan Region primarily drains the Coastal Plain Physiographic Province. Only the headwaters of the Flint and Chattahoochee rivers, in the Apalachicola River system, occur above the Fall Line in the Piedmont Physiographic Province in west-central Georgia. Streams draining the East Gulf Coastal Plain are generally low gradient and have substrates of sand, silty sand, mud, and gravel. Some streams, particularly in the Apalachicola River system, have coarser substrates of cobble, boulders, and bedrock in addition to areas with softer bed materials. The seven species of mussels being considered for listing inhabit

[1] *Rail Abandonments—Use of Rights-Of-Way as Trails—Supplemental Trails Act Procedures*, Ex Parte No. 274 (Sub–No. 13) (ICC served Feb. 21, 1990) at 1–2.

medium-sized streams to large rivers with substrates of silty sand, sand, or gravel, and mixtures of these substrates. All are generally found in areas with water currents, often in stream channels swept free of silt. The life histories of these seven species of mussels are unknown and little biological information is available.

The Apalachicolan Region is known for its high level of endemicity, harboring nearly 30 species of endemic mussels (Butler 1989), at least a dozen fishes, over 20 aquatic snails, and nearly two dozen species of crayfish. In addition, several candidate species from the Service's animal notice of review published on November 21, 1991 (56 FR 58804) are also known from the Apalachicolan Region, the majority being endemic to these drainages. One of these candidates, the Ochlockonee arc-mussel is thought to be extinct (Turgeon *et al.* 1988), last reported in the early 1930's (Williams and Butler, in press). A recent status survey for candidate species of mussels in the Apalachicola River system did not locate any populations of the winged spike and lined pocketbook, species endemic to this system that were last sighted in 1958 and 1967, respectively. Between 1991 and 1993, the Service's National Fisheries Research Center, now the National Biological Survey, Biological Science Center, in Gainesville, Florida, completed field surveys for mussels in both the Apalachicola (325 collections at 315 sites) and Ochlockonee (77 collections at 72 sites) river systems. These surveys are summarized by Butler (1993), and the information is sufficient to support a status recommendation of endangered for the fat three-ridge, shiny-rayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, and oval pigtoe, and a status recommendation of threatened for the Chipola slabshell and purple bankclimber. Common and scientific nomenclature used in this rule follows that suggested by Turgeon *et al.* (1988).

The fat three-ridge (*Amblema neislerii*) is a medium-sized to large, subquadrate, inflated, solid, and heavy shelled mussel that reaches a length of 102 millimeters (4.0 inches). Older individuals are often so inflated that their width approximates their length. The dark brown to black shell is strongly sculptured with seven to eight prominent horizontal parallel ridges. Internally, there are two subequal pseudocardinal teeth in the left valve and one large and one small tooth in the right valve. The nacre is bluish white to light purplish and very iridescent. The Service considers *Unio neislerii* to be a synonym of *Amblema neislerii*.

This taxon was originally assigned to the genera *Quadrula* and *Crenodonta* by Simpson (1914) and Clench and Turner (1956), respectively. Subsequent investigators have placed the fat three-ridge in the genus *Amblema*. The fat three-ridge was described from the Flint River, Macon County, Georgia, and it historically occurred in the mainstems of the lower two-thirds of the Flint, the lower one-third of the Chipola, and in the Apalachicola rivers (Clench and Turner 1956, Butler 1993). Since 1981, no live specimens have been found in the Flint River. Its present range is restricted to six localities in Florida, three each in the Apalachicola River mainstem and the lowermost Chipola River mainstem (Butler 1993). Only two of these localities have sizable populations, which number in the dozens of specimens. However, the viability of these populations of the fat three-ridge is not known. The fat three-ridge has a very low tolerance for impoundments.

The shiny-rayed pocketbook (*Lampsilis subangulata*) is a medium-sized mussel that reaches approximately 85 mm (3.3 in) in length. The shell is subelliptical, with broad, somewhat inflated umbos and a rounded posterior ridge. The fairly thin but solid shell is smooth and shiny, and light yellowish brown with fairly wide bright emerald green rays over its entire length. Older individuals appear much darker brown with obscure raying. Internally, the pseudocardinal teeth are double and fairly large and erect in the left valve with one large tooth and one spatulate tooth in the right valve. The nacre is white, with some individuals exhibiting a salmon tint in the vicinity of the umbonal cavity. The Service recognizes *Unio subangulatus* and *Unio kirklandianus* as synonyms of *Lampsilis subangulata*.

The shiny-rayed pocketbook was described from the Chattahoochee River, Columbus, Georgia. Historically, this mussel occurred at 18 different Flint River system localities including numerous tributaries and several mainstem sites, 1 Chattahoochee River mainstem site and 6 sites in some of its tributaries, 2 sites in an Apalachicola River tributary (Mosquito Creek), a couple of Chipola River tributary sites and several localities in the mainstem above Dead Lake, and several sites in the Ochlockonee River mainstem from Talquin Reservoir upstream to Georgia and in a couple of its tributaries (Clench and Turner 1956, Butler 1993). The 19 populations presently known are restricted to: a single Uchee Creek system site in the Chattahoochee River system of Alabama, 11 scattered sites in Flint River tributaries, 2 sites in the Chipola River system including a mainstem and tributary (Dry Creek) site, and 5 Ochlockonee River mainstem and tributary sites in the upper half of the system (Butler 1993). The shiny-rayed pocketbook presently occupies about two-thirds of its original range. Population sizes numbered in the dozens of individuals at a few historical sites in both systems. However, recent collections are generally represented by only a few individuals, and evidence of any production is scarce. This riverine species does not tolerate impoundments.

The Gulf moccasinshell (*Medionidus penicillatus*), a small mussel, reaches a length of about 55 mm (2.2 in), is elongate-elliptical or rhomboidal in shape and fairly inflated, and has relatively thin valves. The ventral margin is nearly straight or slightly rounded. The posterior ridge is rounded to slightly angled and intersects the end of the shell at the base line. Females tend to have the posterior point above the ventral margin and are somewhat more inflated than males. Sculpturing consists of a series of thin, radially-oriented plications along the length of the posterior slope. The remainder of the shell surface is smooth and yellowish to greenish brown with fine, typically interrupted green rays. The left valve has two stubby pseudocardinal and two arcuate lateral teeth and the right valve has one pseudocardinal and one lateral tooth. Nacre color is smokey purple or greenish and slightly iridescent at the posterior end. The Service recognizes *Unio penicillatus* and *Unio kingi* as synonyms of *Medionidus penicillatus*.

Much confusion clouds the taxonomy of *Medionidus* species in the Apalachicolan Region. In the Chipola River system, van der Schalie (1940) recorded two species of *Medionidus* (*M. kingi* and *M. penicillatus*). Clench and Turner (1956) synonomized *M. kingi* and two other nominate species, the Ochlockonee moccasinshell and Suwannee moccasinshell with the Gulf moccasinshell, an arrangement also followed by Burch (1975). Johnson (1970) erroneously reported both the Gulf moccasinshell and Suwannee moccasinshell from the Apalachicola River system and the Suwannee moccasinshell from the Ochlockonee and Suwannee rivers as well. In his monograph on *Medionidus*, Johnson (1977) recognized the validity of the Gulf moccasinshell, Ochlockonee moccasinshell, and Suwannee moccasinshell from Apalachicolan

Region streams based on shell characters. Turgeon *et al.* (1988) also recognized the validity of these three allopatrically distributed mussels.

The Gulf moccasinshell was described from three sites in the Apalachicola River system in Georgia: the Chattahoochee River near Columbus and Atlanta, and the Flint River near Albany. The historical distribution of this diminutive species included 18 sites in the tributaries and mainstems of the Flint and Chattahoochee rivers, one Apalachicola River site, and 12 sites in the Chipola River system. The Gulf moccasinshell is known from 38 historical sites and has been eliminated from about three-quarters of its original range. It persists at eight tributary sites in the middle Flint River system, and in Econfina Creek (Butler 1993) but has not been collected in the Choctawhatchee River system since the early 1930's. Large populations (60+ individuals) were documented at several of historical sites in the Chipola River system (van der Schalie 1940); they probably occurred in similar numbers at other sites as well. However, recent collections of the Gulf moccasinshell indicate that only small populations persist today. The Service's recent survey of the Apalachicola River system located a total of only 10 specimens. Given the small sample sizes, the population viability of this species is questionable. The Gulf moccasinshell does not tolerate impoundments.

The Ochlockonee moccasinshell (*Medionidus simpsonianus*) is a small species, generally under 55 mm (2.5 in) in length. It is slightly elongate-elliptical in outline with the posterior end obtusely rounded at the shells median line and the ventral margin broadly curved. The posterior ridge is moderately angular and covered in its entire length with well developed, irregular ridges. Sculpturing may also extend onto the disk below the ridge and the surface texture is smooth. The color is light brown to yellowish green, with dark green rays formed by a series of connecting chevrons or undulating lines across the length of the shell. Internal characters include thin straight lateral teeth and compressed pseudocardinal teeth. There are two laterals and two pseudocardinals in the left valve and one lateral and one pseudocardinal in the right valve. The nacre is bluish white. The Service considers *Unio simpsonianus* to be a synonym of *Medionidus simpsonianus*.

The Ochlockonee moccasinshell was described from the Ochlockonee River, Calvary, Grady County, Georgia. This mussel was known historically from six sites in the mainstem above Talquin Reservoir, three each in Georgia and Florida, and single site locations on the lower mainstem below Talquin Reservoir and in the Little River (Johnson 1977, Butler 1993). However, since 1974, the Ochlockonee moccasinshell has been represented by only two live individuals (both found as individuals at a single site in the mainstem above Talquin Reservoir in Florida in the past 5 years) despite concerted efforts by numerous investigators to locate additional populations. Four weathered dead shells were found at other mainstem sites in the past few years, including two sites in Georgia and one site in Florida. Once a fairly common species, with some populations numbering in the dozens of individuals, the Ochlockonee moccasinshell is now one of the rarest mussels in North America. This narrow endemic does not tolerate impoundment conditions.

The oval pigtoe (*Pleurobema pyriforme*) is a small to medium-sized mussel that attains a length of about 60 mm (2.4 in). The shell is suboviform compressed, with a shiny smooth epidermis. The periostracum is yellowish, chestnut, or dark brown, rayless, and with distinct growth lines. The posterior slope is biangulate and forms a blunt point on the posterior margin. The umbos are slightly elevated above the hingeline. As is typical of the genus, no sexual dimorphism is displayed in shell characters. Internally the pseudocardinal teeth are fairly large, crenulate and double in both valves. The lateral teeth are somewhat shortened, arcuate and double in each valve. Nacre color varies from salmon to bluish white and is iridescent posteriorly. Variation in this species has led to the description of various nominal species. The Service recognizes *Unio pyriforme, Unio modicus, Unio bulbosus, Unio amabilis, Unio reclusum, Unio harperi,* and *Pleurobema simpsoni* as synonyms of *Pleurobema pyriforme*.

The oval pigtoe was described from the Chattahoochee River, near Columbus, Georgia. Historically, this species was one of the most widely distributed mussels endemic to the Apalachicolan Region. It occurred throughout the mainstems and several tributaries of both the Flint (16 sites) and Chipola (10 sites) river systems, at 5 sites in the Chattahoochee River system including one mainstem site, all associated with the Fall Line in Alabama and Georgia, at 6 sites in the Ochlockonee River mainstem above Talquin Reservoir in Florida and Georgia, at a single site on the lower Suwannee River and 15 sites in the upper Santa Fe River system, its major tributary, in north Florida, and at a site in Econfina Creek, in northwest Florida (Clench and Turner 1956, Butler 1993). Fifty-four total historical sites are known. Existing populations have been verified from 21 sites, including 5 scattered tributaries (7 sites) of the Flint River system and a single mainstem site, 4 Chipola River sites and 1 in its tributary Dry Creek, 6 upper Ochlockonee River mainstem sites, and single sites in both the New River in the upper Santa Fe River system, and in Econfina Creek (Butler 1993).

Recent surveys have documented the extirpation of the oval pigtoe from approximately two-thirds of its historical range, with no populations persisting in Alabama. Once a species of localized abundance (Clench and Turner 1956), oval pigtoe populations sometimes numbered in the hundreds (van der Schalie 1940). However, recent collections of the oval pigtoe are generally small, and rarely exceed a dozen individuals at any one site. The Service in its recent survey located only a single specimen from the entire Flint River mainstem. It is not known whether existing populations are sufficient in numbers to sustain the species. The oval pigtoe does not tolerate impoundments.

The Chipola slabshell (*Elliptio chipolaensis*) is a medium-sized species reaching a length of about 85 mm (3.3 in). The shell is ovate to subelliptical, somewhat inflated and with the posterior ridge starting out rounded but flattening to form a prominent biangulate margin. The shell surface is smooth and chestnut in color. Dark brown coloration may appear in the umbonal region and the remaining surface may exhibit alternating light and dark bands. The umbos are prominent, well above the hingeline. Internally, the umbonal cavity is rather deep. The lateral teeth are long, slender, and slightly curved, with two in the left and one in the right valve. The pseudocardinal teeth are compressed and crenulate, with two in the left and one in the right valve. Nacre color is salmon, becoming more intense dorsally and somewhat iridescent posteriorly. The Service considers *Unio chipolaensis* to be a synonym of *Elliptio chipolaensis*.

The Chipola slabshell was described from the Chipola River in Florida. Clench and Turner (1956) restricted the type locality to the Chipola River, 1 mile north of Marianna, Jackson County, Florida. Until recently, this species was considered endemic to the Chipola River system, occurring in the mainstem above Dead Lake and a few of the larger

tributaries, all in Florida (van der Schalie 1940, Clench and Turner 1956). A single record of this mussel from a tributary of the Chattahoochee River in extreme southeastern Alabama has been verified by Butler (1993). These localities bring the total number of historic sites the Chipola slabshell inhabited to nine. The Chipola slabshell is known to persist only at four Chipola River mainstem sites and in Dry Creek, with the populations from Spring Creek (Chipola River system) and the Chattahoochee River system apparently extirpated. The numbers of specimens from recent collections indicate that populations are generally small, except at one site in the lower mainstem where three dozen specimens were recently observed (W. McCullagh, pers. comm.). The Chipola slabshell has the most restricted range of the Apalachicolan Region mussels. This species does not tolerate impoundments, but is more tolerant of silt than the other species of mussels.

The purple bankclimber (*Elliptoideus sloatianus*) is a large, heavy shelled, strongly sculptured mussel reaching a length of about 200 mm (8.0 in). A well developed posterior ridge extends from the umbos to the posterior ventral margin of the shell. The posterior slope and the disk just anterior to the posterior ridge are sculptured by several irregular ridges that vary greatly in development. Umbos are low, extending just above the dorsal margin of the shell. Internally, there is one pseudocardinal tooth in the right valve and two in the left valve. The lateral teeth are very thick and slightly curved. Nacre color is whitish near the center of the shell becoming deep purple towards the margin, and very iridescent posteriorly. The Service recognizes *Unio sloatianus*, *Unio atromarginatus*, *Unio aratus*, and *Unio plectophorus* as synonyms of *Elliptoideus sloatianus*. The purple bankclimber was described from the Chattahoochee River and its type locality is restricted to the Chattahoochee River at Columbus, Georgia (Clench and Turner 1956).

Historically, the purple bankclimber was found at 14 sites in the Flint River system; 3 sites on the Chipola River mainstem (Dead Lake vicinity); 2 sites on the Apalachicola River mainstem; the type locality on the Chattahoochee River; and at 4 sites along the lower two-thirds of the Ochlockonee River mainstem in Florida and Georgia (Clench and Turner 1956, Butler 1993). A total of 24 historic sites are known for this species.

This large mussel persists at 10 sites in the lower two-thirds of the Flint River mainstem, at 4 sites in the Apalachicola River, and at 8 sites in the Ochlockonee River mostly above Talquin Reservoir (Butler 1993). Although the purple bankclimber is currently known from only two fewer total sites than before, the species has nevertheless experienced a significant reduction in its total range. No specimens in recent years have been reported from the Chipola River and the species has not been collected in the Chattahoochee River for several decades. In addition, Flint River tributary populations appear to have been totally eliminated. At a few sites in the Florida portion of the Ochlockonee River, the purple bankclimber may number in the dozens of individuals. This species of mussel does not tolerate impoundment conditions well.

On November 18, 1993, the Service notified (by mail; 72 letters) Federal and State agencies, local governments, and interested individuals that a status review was being conducted for these seven species. A total of ten comments was received as a result of this notification. The Florida Division Office of the Federal Highway Administration replied that no bridge replacement projects were currently being planned in northwest Florida, and it was anticipated that any future bridge replacement projects would have no effect on these species based on the localized and short-term impacts associated with these activities. The Federal Energy Regulatory Commission reported that it licenses 12 hydroelectric development projects in the study area, and that any issues concerning these species could best be coordinated with the Office of Hydropower Licensing. The Fayette County (Georgia) Board of Commissioners expressed concern over the Service's contention that impoundments have played a major role in the decline of these species, but they did not oppose the listing. The Alachua County (Florida) Environmental Protection Department, after consultation with a Florida Museum of Natural History malacologist, indicated that none of these seven species of mussels are known or were suspected to occur in Alachua county. The Florida Game and Fresh Water Fish Commission expressed concern with how its plan to dredge the mouths of several silted-in streams along the Apalachicola River to improve access to striped bass might have on these mussels. The Georgia Department of Natural Resources (GDNR) had some questions concerning the distribution of these mussels, particularly in Georgia. The Florida Natural Areas Inventory supported the Service's listing of these species and provided information on Econfina Creek watershed where the Gulf moccasinshell and oval pigtoe occur. Three experts on freshwater mussels supported the potential Federal protection of these species. No objections to the proposed listing of these species were received.

Previous Federal Action

The purple bankclimber, oval pigtoe, shiny-rayed pocketbook, and fat three-ridge are included as category 2 species in the Service's notices of review for animal candidates that were published in the **Federal Register** on January 6, 1989 (54 FR 554) and on November 21, 1991 (56 FR 58804). A category 2 species is one that may be in need of listing as endangered or threatened, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. Based on status surveys that were completed in 1993, the Service has determined that all of the species included in this proposal now qualify as category 1 species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the fat three-ridge *(Amblema neislerii)*, shiny-rayed pocketbook *(Lampsilis subangulata)*, Gulf moccasinshell *(Medionidus penicillis)*, Ochlockonee moccasinshell *(Medionidus simpsonianus)*, oval pigtoe *(Pleurobema pyriforme)*, Chipola slabshell *(Elliptio chipolaensis)*, and purple bankclimber *(Elliptoideus sloatianus)* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

These species of mussels are endemic to the eastern Gulf Slope streams draining the Apalachicolan Region of southeast Alabama, southwest Georgia and north Florida. They are currently found in localized portions of from one to four isolated marine river systems, mostly in the eastern portion of the Apalachicolan Region. These species have been rendered vulnerable to extinction by the significant loss of habitat within their restricted ranges in Apalachicolan Region streams. Factors

contributing to this habitat loss are: impoundments and deteriorating water and benthic habitat quality resulting from channel modification, siltation, agricultural runoff from crop monoculture and poultry farms, silvicultural activities, mining activities, pollutants, poor land use practices, increased urbanization, and municipal and industrial waste discharges.

A consideration of the effects of these impacts upon fishes is of critical importance in evaluating the well-being of mussels. Mussels and fishes are inextricably linked ecologically; most larval mussels (glochidia) are obligate parasites of specific fishes. Therefore, these various impacts may have resulted in the elimination of certain fishes that serve as potential host species for these mussels.

Impoundments have altered a significant portion of the free-flowing big river habitats of the Apalachicola and Ochlockonee river systems in which most of these species occur. Stream habitat is destroyed by the conversion of free-flowing streams to man-made lakes and ponds. In addition to riverine habitat destruction, dams block the passage of certain migratory fishes which serve as hosts for one or more of these seven mussel species. None of these seven mussel species are known to reproduce in impoundments.

The Apalachicola River system has been especially impacted by the construction of numerous mainstem dams. This is true for the Chattahoochee River, which has nine major dams and four locks and dams along its lower mainstem to facilitate barge traffic. Additional major dams are located on the Flint River mainstem (*e.g.*, Blackshear Reservoir) and on the Apalachicola River where it is formed by the confluence of the Chattahoochee and Flint Rivers (Seminole Reservoir). Smaller dams are located on major rivers and tributaries throughout the Apalachicola River system and in other regional streams. Although pre-impoundment records are generally unknown for the fat three-ridge, shiny-rayed pocketbook, Gulf moccasinshell, oval pigtoe, and purple bankclimber in the Apalachicola River system, numerous populations of these species were possibly destroyed as a result of impoundments. It has been decades since any live specimens of these five species were found along the Chattahoochee River mainstem; the type locality for the shiny-rayed pocketbook, Gulf moccasinshell, oval pigtoe, and purple bankclimber.

Talquin Reservoir, an impoundment on the Ochlockonee River formed by the closure of Jackson Bluff Dam, inundated a significant reach of the middle portion of the river mainstem. Pre-impoundment records for the shiny-rayed pocketbook, Ochlockonee moccasinshell, oval pigtoe, and purple bankclimber from a site at the upstream end of Talquin Reservoir exist in museum collections. Most of these mussel species once had sizable populations at this site. Undocumented populations of these four species were probably destroyed by the filling of Talquin Reservoir.

In addition to riverine habitat being destroyed by Talquin Reservoir, the river downstream of Jackson Bluff Dam shows noticeable signs of being impacted by sediment deposition. Riverine mussels such as the shiny-rayed pocketbook, Ochlockonee moccasinshell, oval pigtoe, and purple bankclimber, are nearly absent in sizable stretches of this heavily silted river. One site recently sampled by the Service (with SCUBA gear) had deposits of detritus and silt sediments. The river lacked flows adequate to flush the channel of silty sediments. Potential lower mainstem channel habitat of the shiny-rayed pocketbook, Ochlockonee moccasinshell, oval pigtoe, and purple bankclimber are being impacted by this deposition.

Navigation channel maintenance in the Chattahoochee and Apalachicola Rivers has destroyed long stretches of benthic habitat. In addition to the damage caused by the mechanical removal of tons of substrate, these activities increase sedimentation in downstream areas by resuspending silt fines which smother benthic organisms. Dredging activities may also resuspend contaminants that are bound to sediments, thus potentially exposing aquatic organisms to released toxicants. Potential host fishes for the fat three-ridge and purple bankclimber in the Apalachicola River may also be disrupted by channel modifications. Maintenance operations in the Apalachicola River mainstem continue to disrupt habitat for these two species. A third mussel, the Gulf moccasinshell, has apparently been extirpated from the Apalachicola River.

Gravel mining operations have been observed in various portions of the Apalachicolan Region. Primary stream impacts associated with gravel mining include stream channel modifications (alterations of habitat, flow patterns, and sediment transport), water quality modifications, aquatic invertebrate population changes and changes in fish populations (alteration and elimination of spawning and nursery habitats, and food web disruptions) (Kanehl and Lyons 1992). Channel degradation caused by gravel mining has been implicated in the destruction of mussel populations (Hartfield 1993, Grace and Buchanan 1981). In a study by Grace and Buchanan (1981), mussels were still absent from an in-stream dredged area 15 years after mining took place. Siltation is particularly increased during the mining of in-stream gravel and/or during the washing of gravel which rinses silt and debris back into the stream. Gravel from the Chattahoochee River is used for various purposes including landscaping throughout the region. Jenkinson (1973) recorded the shiny-rayed pocketbook, oval pigtoe, Gulf moccasinshell, and 10 other mussel species in Little Uchee Creek (Chattahoochee River system) in Alabama. The creek now has active in-stream gravel mines; only a few shell fragments were found during a recent survey by the Service.

Municipal and industrial pollutants are widespread in Apalachicolan Region streams. Many municipal waste water treatment plants provide only secondary treatment of waste water and three plants discharging wastes into the New River (Suwannee River system) threaten that stream's population of the oval pigtoe. From 1955 to 1977, an estimated 950,000,000 gallons of chemical-laden solutions were discharged into the Flint River from a Department of Defense facility in Albany, Georgia (P. Laumeyer, Service, pers. comm.). Service biologists surveyed a stretch of the Flint River where dozens of purple bankclimbers had been killed by an unknown pollutant. Hundreds of round washboards (*Megalonaias boykiniana*) were found dead in the upper Flint River (C. Coney, Los Angeles County Museum, pers. comm.) and various beds of dead mussels (species unknown) were observed in the Suwannee River (L. Parker, Service, pers. comm.). A battery plant operation threatens water quality in the Chipola River system, which harbors populations of the fat three-ridge, shiny-rayed pocketbook, oval pigtoe, and Chipola slabshell.

Various agricultural practices conducted in the Apalachicolan Region have contributed to stream and habitat degradation. A Soil Conservation Service (1993) study of a small agricultural watershed area in the middle Flint River system reported an average of 35.44 metric tons per hectare per year (15.8 tons per acre per year) of sediment loading into area waters; 97% of the total sedimentation in the watershed was generated from agricultural runoff. Agricultural runoff, in the form of organophosphate or carbamate pesticides, has been implicated in the die-off of populations

of freshwater mussels (J. Fleming, National Biological Survey, unpub. data). The poultry industry is expanding operations into the Apalachicolan Region, particularly in the watersheds of the upper Apalachicola River system. Runoff from chicken farms causes oxygen depletion in streams and has been implicated in fish and mussel die-offs in Alabama (U.S. Fish and Wildlife Service 1993). Feedlots are also another source of pollution in localized portions of the region's streams. Large dairy farms located in the Suwannee River watershed also contribute to the pollution of this system's waters.

Erosion from poor land use practices causes extensive loss of topsoil and the subsequent siltation of stream bottoms. Sources of siltation include timber clearcutting and other silvicultural activities, clearing of riparian vegetation for agricultural purposes, and those construction and mining practices that allow exposed earth to enter streams. Light to moderate levels of siltation are common in many of the streams in the Apalachicolan Region that still have populations of these seven mussel species. Heavily silted streams were observed by Service biologists in numerous tributaries of the Chattahoochee and upper Flint Rivers, particularly those draining the Piedmont Physiographic Province, which is well known for its highly erodible soils. Stream banks devoid of riparian vegetation commonly slough-off into stream channels. Several clear-cuts have been observed in watersheds of the middle Apalachicola River system, some with inadequate riparian buffer strips (J. Brim-Box, Service, pers. comm.). A disregard for maintaining riparian buffers during silvicultural activities threaten streams throughout the Apalachicolan Region. Continued siltation and sedimentation of these streams may result in a depauperate fish fauna, reducing populations at many sites to those dominated by species tolerant of degraded habitats. The negative effects of silt on benthic fishes were summarized by Burkhead and Jenkins (1991). Siltation reduces habitat heterogeneity and increases fish egg and larval mortality, abrades organisms, and alters macrobenthic communities.

The health of these seven mussel species is directly tied to benthic habitat quality. The effects of siltation on freshwater mussels is more devastating than on fishes due to the sedentary nature of mussels. Ellis (1936) conducted experiments on the effects of silt on mussels and determined that most mussels tested died from silt deposits of one quarter to one inch. Silt also transfers organic substances into streams, adversely affecting stream habitat and water quality by producing increased and localized enrichment impacts (Ellis 1936).

Artifact and fossil collectors regularly work streams in various portions of the Apalachicolan Region and have been known to use suction dredges to scour benthic habitats, thus increasing siltation downstream. A study on the effects of suction gold dredging on stream invertebrates (Harvey 1986) concluded that impacts from these activities are more severe in streams with soft substrates, which are typical for most Apalachicolan Region streams where these mussels occur.

Much non-agricultural and non-silvicultural habitat degradation in the upper Apalachicola River system watershed is attributed to increased urbanization, particularly in the metropolitan areas of Atlanta, Columbus, and Albany. This current high rate of development is resulting in the conversion of farmland in areas relatively remote from these cities. Associated with increased development and land clearing is increased siltation from erosion, accelerated runoff and transport of pollutants in stormwater, and increased discharge of effluents.

The tributaries harboring populations of these seven mussel species are criss-crossed by numerous road and railroad bridges. These crossings are potential sites for accidental spills of toxic materials into streams. The large number of bridge crossings in the Apalachicolan Region makes it probable that such a spill might occur in the future.

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

The fat three-ridge is a potential target species for the cultured pearl industry. Currently a congener (the three-ridge, *Amblema plicata*) is heavily utilized as a source of shell for pearl nuclei in more northern rivers. Due to a tremendous increase in the price of shell, the harvesting of shell beds has resulted in the scouting of larger drainages in the Apalachicolan Region for potential sources of shell. Although prices have decreased since 1992, future increases in shell price and competition for harvestable populations can not be ruled out. Biological supply companies have utilized the Flint and Ochlockonee rivers as sources for larger mussel specimens, including the purple bankclimber and possibly the fat three-ridge, to sell to academic institutions for use in laboratory studies. Supply company representatives have contacted Service biologists in hopes of obtaining information on new, unexploited mussel populations in the Apalachicolan Region. On one recent occasion, approximately 10,000 large mussel specimens, presumably including the purple bankclimber and possibly the fat three-ridge, were harvested from the Flint River near Bainbridge for this purpose (J. Brim-Box, pers. comm.). Some of these species are a potential source of raw material for the polished chip industry. Costume jewelry crafted from purple bankclimber shells has been observed in arts and crafts fairs in the Southeast. Unregulated harvest of the fat three-ridge and purple bankclimber for these purposes, if unchecked, could decimate their remaining populations. Small and/or thin-shelled mussel species, such as the other five mussels considered here, are not known to be utilized commercially.

There are a large number of shell clubs in Florida and surrounding States. Both national and international meetings for amateur and professional malacologists are held in this area, and generally include organized field collecting trips to a variety of habitats. The attraction of large numbers of people interested in the study and collection of mollusks increases the potential for overcollection of these mussels. These species, particularly the larger ones, are potential bait species, and are susceptible to harvesting especially during low-flow periods. Publication of this rule will inform the general public as to the presence of these seven mussels in Apalachicolan Region streams. The rarity of these mussels potentially makes them more appealing to shell collectors. Thus, revealing specific stream reaches harboring these species could pose a threat from such collectors. Federal protection would serve to minimize adverse population impacts from illegal take.

C. Disease or Predation.

Although diseases of freshwater mussels are virtually unknown, the periodic dieoff of mussel populations in several primarily midwestern rivers in recent years may be due to unidentified diseases. Juvenile and adult mussels serve as prey for various animals, and the muskrat has been implicated in jeopardizing recovery of listed mussels (Neves and Odum 1989). Muskrats do not occur with regularity on Coastal Plain streams, where most of these mussels exist. However, Piedmont populations of the shiny-rayed pocketbook and oval pigtoe in the upper Flint River system may be subjected to some degree of muskrat predation.

D. The Inadequacy of Existing Regulatory Mechanisms

A scientific collecting permit is required by the State of Georgia to collect mussels for scientific purposes. However, dredging, brailling, or any form of mechanical harvest of mussels is illegal. In addition, a size limit has been placed on mussels harvested commercially in Georgia. Handpicking mussels requires only a resident or non-resident fishing license. In the State of Florida an individual must purchase a fishing license to collect mussels. Despite these permit requirements, there are no restrictions on the seasonality or sites of harvest, quantity, or species of mussels collected in Florida or Georgia. Alabama has recently imposed a set of guidelines concerning commercial harvest of mussels, including species-specific size limits, restricted areas for harvest, and closed seasons. Existing authorities available to protect aquatic systems, such as the Clean Water Act, administered by the Environmental Protection Agency (EPA) and the Army Corps of Engineers, have not been fully utilized and may have led to the degradation of aquatic environments in the Southeast Region, thus resulting in a decline of aquatic species. If these seven species are listed under the Act, it would provide protection under section 9 of the Act by prohibiting the take of these species except under Federal permit. Further, listing will require consultation with the EPA in relationship to water quality criteria, standards, and National Pollution Discharge Elimination System permits under the Clean Water Act, and implementation of actions to recover the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The range of these seven mussel species has been fragmented, and significant portions of the Apalachicola and Ochlockonee river systems have been permanently altered by various reservoirs. Many of the streams these species inhabit exhibit moderate to heavy degradation from poor land use practices. These factors have caused local extirpation and fragmentation of most of these species' populations. It is not known how many populations of these seven species are viable, but few juveniles have been observed in recent years. The restricted distribution of these seven mussels makes them vulnerable to extirpation from catastrophic events, such as toxic chemical spills.

The introduced Asian clam (*Corbicula fluminea*) has invaded nearly all of the river systems in which these mussels occur, competing with native mussels for nutrients and space. Densities of Asian clams are sometimes heavy in Apalachicolan Region streams, with estimates running from approximately one hundred per square meter (Flint River, Sickel 1973) to thousands per square meter (Santa Fe River, Bass and Hitt 1974). In some streams the substrate has changed from one of a fairly homogeneous silty sand or sand to one with a gravel-like composition comprised of huge numbers of live and dead Asian clam shells. In some of these streams, the Gulf moccasinshell and Ochlockonee moccasinshell were once common but are now extirpated or severely reduced in numbers. This exotic species may be particularly competitive with small native mussels such as the diminutive moccasinshells.

In developing this rule, the Service has assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these seven mussels. Based upon these evaluations, the preferred action is to list the fat three-ridge, shiny-rayed pocketbook, oval pigtoe, Gulf moccasinshell, and Ochlockonee moccasinshell as endangered and the Chipola slabshell and purple bankclimber as threatened. These seven mussel species are endemic to the Apalachicolan Region in southeast Alabama, southwest Georgia, and north Florida, where they occur in from one to four isolated marine river systems. The fat three-ridge, Chipola slabshell, and Ochlockonee moccasinshell are endemic to single drainages, the former two species to the Apalachicola and the latter species to the Ochlockonee river systems. The shiny-rayed pocketbook and purple bankclimber are restricted to both the Apalachicola and Ochlockonee river systems, while the oval pigtoe is found in these two rivers in addition to the Suwannee River and Econfina Creek systems. The Gulf moccasinshell is now restricted to the Apalachicola River system and Econfina Creek.

These species have been rendered vulnerable to extinction by significant loss of habitat and severe range restriction. The restricted distribution of these seven species also makes localized populations susceptible to catastrophic events and increased pressures from take.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. Such a determination would result in no known benefit to these species, and designation of critical habitat could further increase the threat of collecting or vandalism.

Regulations promulgated for implementing section 7 provide for both a jeopardy standard, based on listing alone, and for a destruction or adverse modification standard, in cases where critical habitat has been designated. The fat three-ridge, shiny-rayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, oval pigtoe, Chipola slabshell, and purple bankclimber occupy very restricted stream reaches. Any significant adverse modification or destruction of their habitat would likely jeopardize their continued existence. Therefore, no additional protection for the species would accrue from critical habitat designation that would not also accrue from listing these species. If these are listed, the Service believes that protection of their habitat can be accomplished through the section 7 jeopardy standard, and through section 9 prohibitions against take.

The publication of critical habitat maps in the **Federal Register** and local newspapers and other publicity accompanying critical habitat designation could increase the harvest or collection threat and also increase the potential for vandalism during the critical habitat designation process.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The 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 taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal involvement is expected to include the EPA through the Clean Water Act's provisions for pesticide registration and waste management actions. The Corps of Engineers will consider these species in project planning and operation, and during the permit review process. The Federal Energy Regulatory Commission will consider these species prior to the relicensing of hydropower dams. The Federal Highway Administration will consider impacts of federally funded bridge and road construction projects when known habitat may be impacted. Continuing development within the Apalachicolan Region may involve the Farmers Home Administration and their loan programs. The Soil Conservation Service will consider the species during project planning and under their farmer's assistance programs. The Forest Service will consider downstream impacts to habitat of the fat three-ridge and purple bankclimber when planning or implementing silvicultural, recreational, or other programs in lands adjacent the lower mainstem of the Apalachicola River, and to habitat of the purple bankclimber when planning or implementing these activities in lands adjacent the lower mainstem of the Ochlockonee River, both drainages are in the Apalachicola National Forest.

The Act and implementing regulations found at 50 CFR 17.21 for endangered species, and 17.21 and 17.31 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, in part, make it illegal for any person subject to jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purpose of the Act.

In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. However, since none of the species in this proposal are currently in active trade, no such permits are expected.

Public Comments Solicited

The Service intends that any final action resulting from these proposals will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the species; and

(4) Current or planned activities in the subject areas and their possible impacts on the species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communication may lead to final regulations that differ from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and should be addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

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

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Robert S. Butler, U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216 (904/232–2580).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, the Service hereby proposes to amend part 17, subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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. Section 17.11(h) is amended by adding the following, in alphabetical order under "CLAMS", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
CLAMS							
•	•	•	•	•	•		•
Bankclimber, purple	*Elliptoideus sloatianus.*	U.S.A. (AL, FL, GA)	NA	T		NA	NA
•	•	•	•	•	•		•
Moccasinshell, Gulf	*Medionidus penicillatus.*	U.S.A. (AL, FL, GA)	NA	E		NA	NA
Moccasinshell, Ochlockonee.	*Medionidus simpsonianus.*	U.S.A. (FL, GA)	NA	E		NA	NA
•	•	•	•	•	•		•
Pigtoe, oval	*Pleurobema pyriforme.*	U.S.A. (AL, FL, GA)	NA	E		NA	NA
•	•	•	•	•	•		•
Pocketbook, shiny-rayed.	*Lampsilis subangulata.*	U.S.A. (AL, FL, GA)	NA	E		NA	NA
•	•	•	•	•	•		•
Slabshell, Chipola	*Elliptio chipolaensis*	U.S.A. (AL, FL)	NA	T		NA	NA
•	•	•	•	•	•		•
Three-ridge, fat	*Amblema neislerii*	U.S.A. (FL, GA)	NA	E		NA	NA
•	•	•	•	•	•		•

Dated: July 19, 1994

Mollie H. Beattie

Director, Fish and Wildlife Service.

[FR Doc. 94–18923 Filed 8–2–94; 8:45 am]

BILLING CODE 4310–55–P

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC 62

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the Arkansas River Basin Population of the Arkansas River Shiner as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Arkansas River basin population of the Arkansas River shiner (*Notropis girardi*) as an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. The Arkansas River shiner is a small fish found in the Canadian (South Canadian) River in New Mexico, Oklahoma, and Texas; and the Cimarron River in Kansas and Oklahoma. A non-native, introduced population occurs in the Pecos River in New Mexico; however, protection for this population is not under consideration. The Arkansas River basin population is threatened by habitat destruction and modification from stream dewatering or depletion due to diversion of surface water and excessive groundwater pumping, water quality degradation, and construction of impoundments. Incidental capture of the Arkansas River shiner during pursuit of commercial bait fish species, and competition with the introduced Red River shiner (*Notropis bairdi*) may also contribute to reduced population sizes. This proposal, if made final, will implement Federal protection provided by the Act for *Notropis girardi*. Critical habitat is prudent but not currently determinable.

DATES: Comments from all interested parties must be received by October 3, 1994. Public hearing requests must be received by September 19, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to: Field Supervisor, Ecological Services Field Office, 222 South Houston, Suite A, Tulsa, Oklahoma 74127. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Collins at the above address (918/581–7458).

SUPPLEMENTARY INFORMATION:

Background

The Arkansas River shiner was first discovered by A. I. Ortenburger in 1926 in the Cimarron River northwest of Kenton, Cimarron County, Oklahoma (Hubbs and Ortenburger 1929). The Arkansas River shiner is a small, robust shiner with a small, dorsally flattened head, rounded snout, and small subterminal mouth (Miller and Robison 1973, Robison and Buchanan 1985). Adults attain a maximum length of 51 millimeters (mm) (2 inches (in)). Dorsal, anal, and pelvic fins all have eight rays and there is usually a small, black chevron present at the base of the caudal fin. Dorsal coloration tends to be light tan, with silvery sides gradually grading to white on the belly. The Arkansas River shiner historically inhabited the main channels of wide, shallow, sandy-bottomed rivers and streams of the Arkansas River Basin. Adults are uncommon in quiet pools or backwaters, and almost never occur in tributaries having deep water and bottoms of mud or stone (Cross 1967).

Adults prefer to orient into the current on the "lee" sides of transverse sand ridges and feed upon organisms washed downstream (Cross 1967). Their food habits have not been recorded but their principal food items are presumed to be small aquatic invertebrates (Gilbert 1978) or plankton (Sublette *et al.* 1990). The Arkansas River shiner spawns in

July, usually coinciding with flood flows following heavy rains (Moore 1944). The pelagic eggs drift with the swift current and hatching occurs within 24–48 hours. The larvae are capable of swimming within 3–4 days; they then seek out backwater pools and quiet water at the mouths of tributaries where food is more abundant (Moore 1944). Both Moore (1944) and Cross (1967) inferred that this species will not spawn unless conditions are favorable to the survival of the larvae.

Maximum longevity is unknown, but Moore (1944) speculated that the species' life span is likely less than 3 years (age class II) in the wild. The age structure of Arkansas River shiners collected from the Pecos River in New Mexico included three, and possibly four, age classes (Bestgen *et al.* 1989). The majority of the fish captured were juveniles (age class 0) and first-time spawners (age class I). Most of the fish in spawning condition were age class I. Bestgen *et al.* (1989) thought mortality of post-spawning fish was extremely high based on the absence of age class I and older fish from collections made after the spawning period (late July and August).

Historically, the Arkansas River shiner was widespread and abundant throughout the western portions of the Arkansas River Basin in Kansas, New Mexico, Oklahoma, and Texas. There is one record from the Arkansas River at the mouth of Piney Creek in Logan County, Arkansas (Black (1940), as cited in Robison and Buchanan (1988)). A record (one individual) also exists for the Red River Basin in Oklahoma (Cross 1970), possibly originating from a release of bait fish by anglers. Within the last 20 years, this species has disappeared from over 80 percent of its historic range and is now almost entirely restricted to the Canadian (South Canadian) River in Oklahoma, Texas, and New Mexico. A non-native population of the Arkansas River shiner has become established in the Pecos River of New Mexico within the last 15 years (Bestgen *et al.* 1989).

Recent surveys for the Arkansas River shiner were conducted at 155 localities within the Arkansas River Basin (Larson *et al.* 1991). Fish collections were made at 128 of 155 localities; the remaining 27 sites were dry. The surveys resulted in the capture of 1,455 Arkansas River shiners from 23 localities: 14 in Oklahoma, 5 in Texas, and 4 in New Mexico. No Arkansas River shiners were captured in Kansas. The decline of this species throughout its historic range may primarily be attributed to inundation and modification of stream discharge by impoundments, channel desiccation by water diversion and excessive groundwater pumping for agriculture, stream channelization, and introduction of non-native species.

The Arkansas River shiner began to decline in the Arkansas River in western Kansas prior to 1950 due to increasing water diversions for irrigation and completion of John Martin Reservoir in 1942 (Cross *et al.* 1985). The Arkansas River from Coolidge to near Great Bend, Kansas, is frequently dewatered (Cross *et al.* 1985). Habitat alteration following construction of Kaw and Keystone reservoirs on the Arkansas River in Oklahoma, in conjunction with completion of the McClellan-Kerr Navigation System in 1970, greatly reduced Arkansas River shiner habitat in Oklahoma and Arkansas. The Arkansas River shiner no longer occurs in the Arkansas River in Arkansas, Kansas, and Oklahoma.

The Arkansas River shiner was once common throughout the Cimarron River and its tributaries (Pigg 1991). The abundance of the Arkansas River shiner in the Cimarron River declined markedly after 1964 (Felley and Cothran 1981). In 1976, the Red River shiner (*Notropis bairdi*) was first recorded from the Cimarron River (Marshall 1978). Since that time, the Red River shiner has essentially replaced the Arkansas River shiner. Habitat alteration and resulting flow modification also contributed to the decline of the species from the Cimarron River. A small, remnant population may still persist in the Cimarron River, based on the collection of nine individuals since 1985.

The Arkansas River shiner was first reported from the North Canadian (Beaver) River drainage in 1926 (Hubbs and Ortenburger 1929). Collections between 1947 and 1976 indicated that the Arkansas River shiner occurred in large numbers in the river and some larger tributaries despite the construction of Optima and Canton reservoirs (Pigg 1991). This fish was still sporadically collected from the North Canadian River until 1987. Several collection attempts at 15 localities over the next 2 years failed to capture any Arkansas River shiners (Pigg 1991). In 1990, four specimens were collected from the river south of Turpin, Beaver County, Oklahoma (Larson *et al.* 1991; Jimmie Pigg, Oklahoma Department of Health, pers. comm., 1993). Commercial bait dealers were observed flushing their tanks in the vicinity of the site where the Arkansas River shiners were captured and may have been responsible for the unintentional release of this species back into the North Canadian River. The species has not been captured from the North Canadian River since 1990 (J. Pigg, pers. comm. 1993).

Historically, the species occurred in the Canadian (South Canadian) River from its confluence with the Arkansas River near Sallisaw, Sequoyah County Oklahoma as far upstream as the Sabinoso area in central San Miguel County, New Mexico (Pigg 1991, Sublette *et al.* 1990). Construction and operation of Ute and Conchas reservoirs in New Mexico, Lake Meredith in Texas and Eufaula Reservoir in Oklahoma altered or eliminated sections of riverine habitat and diminished the range of Arkansas River shiners within the Canadian River. Eufaula Reservoir isolated Canadian River populations from the Arkansas River and, in combination with Lake Meredith and Ute Reservoir, confined Arkansas River shiners to two restricted segments of the Canadian River, one between Ute Dam and the upper reaches of Lake Meredith, and the other below Lake Meredith to the upper reaches of Eufaula Reservoir. The reservoirs function as barriers, significantly inhibiting dispersal and interchange between the two segments.

A non-native population of Arkansas River shiners has become established in the Pecos River in New Mexico, presumably originating from the release of bait fish downstream of Sumner Dam in 1978 (Bestgen *et al.* 1989). The species is presently known to occupy a portion of the Pecos River extending from Ft. Sumner to Carlsbad, New Mexico. The largest populations, based on the number of fish collected, occur in the vicinity of Lake Arthur Falls. Natural flow patterns in the Pecos River have been altered by reservoir releases and irrigation withdrawals and return flows. Flow regimes in the Pecos River now mimic the intermittent flows formerly present within areas historically supporting natural populations of Arkansas River shiners, and are presently serving to maintain habitat and provide discharge pulses necessary for reproduction and survival of this population (Bestgen *et al.* 1989). As demand for water increases in New Mexico, the success of this artificial population may decline or the population may cease to exist. Protection of this artificial population would also conflict with efforts to manage native fish populations in the Pecos River. The Pecos River supports populations of the federally threatened Pecos bluntnose shiner (*Notropis simus pecosensis*) and once supported the proposed federally endangered Rio Grande silvery minnow (*Hybognathus amarus*). The establishment of Arkansas River shiners in the Pecos River is a

potential threat to the Pecos bluntnose shiner (U.S. Fish and Wildlife Service 1992). Recovery of the native fish fauna of the Pecos River may eventually require restoration of historic flow conditions and eradication of competitive, non-native fishes such as the Arkansas River shiner. Management and recovery efforts for the Pecos bluntnose shiner and other fish species native to the Pecos River will focus on the preservation of native species to the detriment of the Arkansas River shiner population. Listing and protection of the Pecos River population of the Arkansas River shiner would conflict with the preservation of the Pecos bluntnose shiner and possibly the Rio Grande silvery minnow. While the Pecos River population may be important in efforts to supplement natural, native populations within the historic range of the species, protection of this artificial population would not improve the status of the Arkansas River shiner within its historic range. Therefore, the Service is not proposing to list the introduced population in the Pecos River.

The Arkansas River shiner first received listing consideration when the species was included in the September 18, 1985, Review of Vertebrate Wildlife (50 *FR* 37958) as a category 2 candidate for listing. Category 2 comprises taxa for which information indicates that a proposal to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threats are not currently available to support proposed rules. A January 6, 1989, revised Animal Notice of Review (54 *FR* 554) retained this status for the Arkansas River shiner. Detailed information on the status of the species was first provided to the Service in 1989 by Pigg (1989). Additional information on the status of this species was obtained through a partial status survey by Larson *et al.* (1990). The Service subsequently prepared a status report on this species (U.S. Fish and Wildlife Service 1990). In the November 21, 1991, Animal Candidate Review for Listing as Endangered or Threatened Species (56 *FR* 58804), the Arkansas River shiner was reclassified as a category 1 candidate. Category 1 comprises taxa for which the Service has substantial information on biological vulnerability and threats to support proposals to list the taxa as endangered or threatened. Additional status survey information was provided in Larson *et al.* (1991) and Pigg (1991).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal "List of Endangered and Threatened Wildlife and Plants". A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Arkansas River basin population of the Arkansas River shiner (*Notropis girardi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Once abundant and widely distributed throughout the Arkansas River basin, the Arkansas River shiner now inhabits about 20 percent of its historic range. Navigation improvements on the Arkansas River by the U.S. Army, Corps of Engineers (Corps) began in Arkansas in 1832, 4 years before Arkansas gained statehood (Corps of Engineers 1989). Initially, construction projects generally consisted of small improvements, such as clearing and snagging operations, until passage of the River and Harbor Act in 1946 authorized construction of the McClellan-Kerr Navigation System from the Mississippi River upstream to Catoosa, Oklahoma. Project construction began in the 1950's and intensified during the 1960's. Project segments from the Mississippi confluence upstream to Fort Smith, Arkansas, were completed by 1969. By 1970, the channel had been extended up the Arkansas River as far as Muskogee, Oklahoma, and was essentially complete. The project included numerous bank stabilization and channel rectification projects, 17 locks and dams (12 in Arkansas), annual channel maintenance, and port facilities. Several of the locks and dams are multipurpose facilities, providing peak power generation. The Corps maintains a minimum channel depth of 3 meters (m) (9 feet (ft)) and minimum width of 76 m (250 ft). These modifications have eliminated suitable habitat and are presumably responsible for the extirpation of the Arkansas River shiner within the State of Arkansas and contributed to the decline of the species in Oklahoma. Buchanan (1976) failed to collect any Arkansas River shiners from the Arkansas River Navigation System in Arkansas, and fish collections between 1972 and 1988 from the Arkansas River near Ft. Smith, Arkansas also failed to produce any Arkansas River shiner specimens (Robison and Buchanan 1988). Arkansas River shiners were last observed within the Arkansas River downstream of Muskogee in 1985 (Pigg 1991).

Numerous multipurpose impoundments, including three mainstem reservoirs on the Arkansas River and four mainstem reservoirs on the Canadian River, have been constructed within the Arkansas River Basin. These impoundments have inundated, dewatered, or otherwise altered considerable sections of riverine habitat once inhabited by Arkansas River shiners. Inundation has eliminated Arkansas River shiner spawning habitat, isolated populations, and favored an increased abundance of predators. Water releases from impoundments may be infrequent or non-existent, resulting in dewatering of stream sections downstream of the reservoir. Where sufficient water is released to maintain downstream flows, the releases generally alter the natural flow regime for considerable distances downstream of the impoundment, establishing a stream environment unlike that which existed under pre-impoundment conditions. Physical changes resulting from altered flows may include modifications to water velocity, wetted perimeter (amount of streambed exposed to water at any given flow), water depth, streambed and bank erosion, and suspension and distribution of bed and bank sediments.

In 1952, the Arkansas River shiner was believed to inhabit the entire Arkansas mainstem in Kansas, but was already suspected to be declining due to the construction of John Martin Reservoir 10 years earlier on the Arkansas River in Bent County, Colorado (Cross *et al.* 1985). By 1960, the species had disappeared from the Arkansas River mainstem west of Wichita, Kansas, and was absent from the entire Kansas portion of the Arkansas mainstem by 1983 (Cross *et al.* 1985).

Arkansas River shiners were apparently abundant in the Arkansas River near Tulsa, Oklahoma, prior to construction of Keystone Reservoir in 1964 (Pigg 1991). Following the addition of hydropower at Keystone Dam in 1968, the resultant flow alterations severely depleted Arkansas River shiner populations. The Arkansas river shiner was last observed from the section of the Arkansas River between Keystone Reservoir and Muskogee, Oklahoma, in 1982. Kaw Reservoir, another Arkansas River mainstem impoundment, located upstream of Keystone Reservoir, became operational in 1976. In 1989, hydropower was added to Kaw Dam. Shiners were last

observed downstream of Kaw Reservoir in 1986 (Larson *et al.* 1991, Pigg 1991).

On the Canadian River, Lake Meredith and Eufaula Reservoir have impacted the Arkansas River shiner. Prior to completion of Eufaula Reservoir, Arkansas River shiners were abundant in the Canadian River between the proposed dam site and the Arkansas River (Pigg 1991). Arkansas River shiners have not been collected from this reach of the Canadian River since the reservoir became operational in 1964. The disappearance of Arkansas River shiners below Eufaula Reservoir has been attributed to rapid water level fluctuations occurring during hydropower generation and altered conditions favoring an abundant predatory fish population (Pigg 1991). Lake Meredith was constructed by the Bureau of Reclamation in 1965 and conservation storage is presently managed by the Canadian River Municipal Water Authority. Releases from Lake Meredith are infrequent to non-existent (Williams and Wolman 1984) and have considerably altered flows in the Canadian River downstream of the reservoir. Historically, discharge at Canadian, Texas, located 121 kilometers (km) (75 miles (mi)) below Lake Meredith, averaged 15.5 cubic meters per second (549 cubic ft per second (cfs)); however, following completion of the reservoir, annual discharge has averaged only 2.5 cubic meters per second (87.7 cfs) (Buckner *et al.* 1985). Principal sources of water to the Canadian River below Lake Meredith are sewage effluent, tributary inflow, and groundwater emergence.

Reduced flows below Lake Meredith have considerably altered the morphology of the Canadian River and have reduced the extent of suitable habitat for Arkansas River shiners. Stinnett *et al.* (1988) examined a 370 km (230 mi) stretch of the Canadian River and associated floodplain 72,843 hectares (179,995 acres) between the western Oklahoma border and the western Pottawatomie County line near Norman, Oklahoma. Quantification of wetland areas between 1955 and 1984 revealed that the amount of riverine wetlands (shoreline and open water) had decreased by about 50 percent. Sandbar acreage alone had been reduced by 54 percent. Wetland and associated floodplain changes were principally the result of hydrological modifications due to the influence of Lake Meredith (Stinnett *et al.* 1988). The lack of significant scouring flows permitted the encroachment of vegetation within the channel, reducing channel width by almost 50 percent since 1955. Although Arkansas River shiners persist in the Canadian River downstream of Lake Meredith, the reduction in available habitat has likely suppressed shiner populations. Habitat alterations associated with reduced flows downstream of Lake Meredith are considered to be a significant, ongoing threat to the continued existence of the Arkansas River shiner within the Canadian River.

Other mainstem impoundments within the historic range of Arkansas River shiner include Ute and Conchas reservoirs on the upper Canadian River, Optima and Canton reservoirs on the North Canadian River, and Great Salt Plains Reservoir on the Salt Fork of the Arkansas River. Arkansas River shiner populations persist only below Ute Reservoir (Larson *et al.* 1991, Pigg 1991).

Groundwater is an extremely important source of water in western Oklahoma, western Kansas, and the Texas panhandle (Stoner 1985, Texas Department of Water Resources 1984, Oklahoma Water Resources Board 1980, 1990). Withdrawals from western Oklahoma aquifers account for about 80 percent of the State's total groundwater usage (Oklahoma Water Resources Board 1990). Irrigation of croplands has diverted surface water and lowered groundwater tables throughout southwestern Kansas and northwestern Oklahoma. Water tables receded from 3 m (10 ft) to more than 30 m (100 ft) over much of southwestern Kansas during the period from 1950 to 1975 (Cross *et al.* 1983). Between 1955 and 1980, declines in water levels by as much as 31 m (102 ft) have been recorded in the Ogallala Aquifer in Oklahoma (Oklahoma Water Resources Board 1980). In 1960, there were about 400 groundwater wells in the Oklahoma panhandle; by 1965 the number had risen to 975; and in 1974, the number of wells had risen to 2,067 (Oklahoma Water Resources Board 1980). By 1988, there were an estimated 3,200 high capacity wells overlying the Ogallala Aquifer in western Oklahoma alone (Oklahoma Water Resources Board 1990). At present, rainfall and runoff contribute little recharge to the underlying aquifers. In Texas, withdrawals of groundwater in the Canadian River Basin were as much as 33 times higher than the annual natural recharge in 1980, and irrigation return flows in the Basin are negligible (Texas Department of Water Resources 1984). When groundwater is pumped faster than it is restored, water tables drop, channel seepage ceases, and streams cease to flow. Under these conditions, suitable habitat to support Arkansas River shiner populations is non-existent.

Surface water withdrawals constitute a small percentage of the total water used within the western sections of the historic range of the Arkansas River shiner, primarily because of the limited number of impoundments and elevated levels of chlorides. However, natural flows in the Cimarron River upstream of Waynoka, Oklahoma, are affected by several diversions for irrigation. Dewatering and reduced base flows because of groundwater and surface water withdrawals is considered a significant, ongoing threat to the Arkansas River shiner in southwestern Kansas, northwestern Oklahoma and the Texas panhandle (Larson *et al.* 1991, Cross *et al.* 1985).

Water quality in the Canadian River in Texas generally declines as the river flows eastward. The Canadian River traverses oil and gas producing areas and receives municipal sewage effluent and manufacturing return flows, all of which degrade water quality (Texas Department of Water Resources 1984). Water quality degradation is believed to have suppressed Arkansas River shiner populations within affected reaches of the Canadian River. Water quality within the Canadian River begins to improve as the river flows through the sparsely populated counties in western Oklahoma. Poor water quality in the North Canadian River near Oklahoma City and in the Arkansas River at Tulsa are also believed to have contributed to localized declines in Arkansas River shiner populations. The North Canadian River from western Oklahoma City downstream to Eufaula Reservoir is considered to be the most nutrient-enriched stream in Oklahoma (Pigg *et al.* 1992). The Arkansas River shiner has not been found in this section of the North Canadian River since 1975 (Pigg 1991).

The proposed Lake Meredith Salinity Control Project is designed to control brine seeping into the Canadian River from a brine aquifer in New Mexico. The project could have an effect on the quantity and quality of flow in the Canadian River between Ute Dam near Logan, New Mexico and Lake Meredith in Texas. The impacts of this project on Arkansas River shiner populations have not yet been determined. Arkansas River shiner populations in this 219 km (136 mi) reach of the Canadian River are isolated from other populations by Ute and Meredith reservoirs. Flow reductions in this reach could severely deplete, or possibly extirpate, these populations.

B. Overutilization for commercial, recreational, scientific, or educational

purposes. Though not selectively harvested as a bait species, the inadvertent collection of Arkansas River shiners during harvest of commercial bait species may limit population growth. While some harvest of bait species, either for commercial or personal consumptive uses, occurs in New Mexico and Texas, the greatest threat to Arkansas River shiner from overutilization occurs in the State of Oklahoma.

In 1985, the Cimarron and South Canadian rivers produced over 55 percent of the bait fish harvested in Oklahoma, providing over 20,846 kilograms (kg) (45,958 pounds (lbs)) of fish (Peterson 1986). Plains minnow (*Hybognathus placidus*), which may reach total lengths of 127 mm (5 in), was the primary species reported harvested by the commercial minnow dealers. In 1991, the Cimarron and South Canadian rivers produced over 50 percent of the bait fish harvested in Oklahoma, providing over 25,118 kg (55,376 lbs) of fish (Peterson 1992). Plains minnow was again reported to be the primary species harvested. Although the percent of the total poundage harvested from the Cimarron and South Canadian rivers has declined slightly since 1985, the amount, by weight, of fish harvested has increased by over 20 percent. Within the last 10 years (1980–81 to 1991), the percent of the total harvest taken from the South Canadian and Cimarron rivers has varied from 67 percent in 1982 (Peterson and Weeks 1983) to 46 percent in 1989 (Larson *et al.* 1991). The amount of fish taken varied from over 37,762 kg (83,252 lbs) in 1982 to 19,147 kg (42,213 lbs) in 1989. The lists of species harvested did not include Arkansas River shiners.

Larson *et al.* (1991) reported that there is no evidence that the species has been adversely affected by the commercial harvest of bait fish. The reported capture of predominantly large species (plains minnows) and the continued existence of the Arkansas River shiner in the South Canadian River, the drainage supporting the majority of the harvest, was the primary evidence used in arriving at this conclusion. Larson *et al.* (1991) suggested that slender-bodied fishes such as the Arkansas River shiner would constitute only a small percentage of the commercial harvest, assuming the commercial bait industry used large-mesh seines as the major mode of capture. However, other evidence indicates that the Arkansas River shiner, while perhaps not a highly sought commercial species, is being affected by the commercial bait industry.

The rapid establishment of the Arkansas River shiner in the Pecos River, presumably from the release of bait fish, indicates that a large number of fish were released in a single event. Otherwise, if Arkansas River shiners occur only occasionally in the commercial harvest, several releases over a short period of time would be required to ensure that a large enough population existed to facilitate natural reproduction. In either instance, the evidence would indicate that shiners may occasionally occur in commercial catches in fairly large numbers. The capture of four individuals in the North Canadian River in 1990 also suggests that Arkansas River shiners are occasionally being harvested by commercial bait dealers.

Lists of fish species reported captured by commercial bait dealers are not always accurate and likely fail to report the capture of Arkansas River shiners. Based on the large percentage of golden shiners (*Notemigonus crysoleucas*) reported captured by commercial bait dealers in 1989, Larson *et al.* (1991) believed the list to be suspect, since no locality was encountered in their collections where golden shiners comprised such a high proportion. In 1982, Peterson and Weeks (1983), stated that the river shiner (*Notropis blennius*) was the primary species harvested by commercial bait dealers in the seven river drainages for which they had data (South Canadian, North Canadian, Red, Salt Fork of Red, North Fork of Red, Salt Fork of Arkansas, and Cimarron rivers). However, the river shiner has not been recorded from the South Canadian, North Canadian, Salt Fork of Red, or North Fork of Red rivers (Miller and Robison 1973). Larson *et al.* (1991), in their survey for Arkansas River shiners, also did not report capturing a single river shiner from 128 sampling localities within the Arkansas River basin.

Information provided by the commercial bait industry cannot reliably be used as evidence to suggest that commercial bait harvest is not impacting Arkansas River shiner populations. The sheer numbers of fish collected from the South Canadian River would imply that Arkansas River shiners could constitute a considerable percentage of the by-catch taken during commercial harvest. While there is no conclusive evidence to suggest that commercial harvest has contributed to the decline of the Arkansas River shiner, take of this species during commercial bait harvest may be significant and suggests that the effect of this factor warrants further investigation.

C. *Disease or predation.* No studies have been conducted on the impact of disease or predation upon the Arkansas River shiner; therefore, the significance of these threats upon existing populations is unknown. There is no direct evidence to suggest that disease threatens the continued existence of the species. Disease is not likely to be a significant threat except under certain habitat conditions, such as crowding during periods of reduced flows, or episodes of poor water quality, such as low dissolved oxygen or elevated nutrient levels. During these events, stress reduces resistance to pathogens and disease outbreaks may occur. Parasites and bacterial and viral agents are generally the most common causes of mortality. Lesions caused by injuries, bacterial infections, and parasites often become the sites of secondary fungal infections.

Some predation of Arkansas River shiners by largemouth bass (*Micropterus salmoides*), green sunfish (*Lepomis cyanellus*), channel catfish (*Ictalurus punctatus*), and other species undoubtedly occurs, but the extent is unknown. Plains fishes have evolved under adverse conditions of widely fluctuating, often intermittent flows, high summer temperatures, high rates of evaporation, and high concentrations of dissolved solids. These conditions are not favored by most large predaceous fish and tend to preclude existence of significant populations of these species. However, alteration of historic flow regimes and construction of reservoirs have created favorable conditions for some predatory species such as white bass (*Morone chrysops*) and striped bass (*M. saxatilis*). State and Federal fish and wildlife management agencies, through efforts to develop sport fisheries in these reservoirs, have facilitated the expansion of some predatory species. The impact of predation is likely to be localized and insignificant, particularly where habitat conditions upstream of mainstem reservoirs are not favorable to the long-term establishment of large populations of predatory fish.

D. *The inadequacy of existing regulatory mechanisms.* The State of Kansas lists the Arkansas River shiner as a State endangered species. The Kansas Department of Wildlife and Parks has designated portions of the mainstem Cimarron, Arkansas, South Fork Ninnescah, and Ninnescah rivers as critical habitat for the shiner (Vernon Tabor, U.S. Fish and Wildlife Service, Kansas State Office, pers. comm., 1993). A permit is also required for public actions that have the potential to destroy listed individuals or their critical habitat. Subject activities include any publicly funded or State or federally assisted action, or any action

requiring a permit from any other State or Federal agency. Violation of the permit constitutes an unlawful taking, a Class A misdemeanor, and is punishable by a maximum fine of $2,500 and confinement for a period not to exceed one year (V. Tabor, pers. comm., 1993). Kansas does not permit the commercial harvest of bait fish from rivers and streams within the State.

The State of New Mexico lists the Arkansas River shiner as a State endangered species. This listing prohibits the taking of the Arkansas River shiner without a valid scientific collecting permit but does not provide habitat protection. The State of Oklahoma lists the Arkansas River shiner as a State threatened species, but, as in New Mexico, this listing does not provide habitat protection. The States of Arkansas and Texas provide no special protection for the species or its habitat.

While Kansas, New Mexico, and Oklahoma protect the Arkansas River shiner from take and/or possession, only Kansas addresses the problem of habitat destruction or modification. None of the States provide significant protection from the potential introduction of competitive species. Listing under the Act would provide additional protection and encourage active management through "Available Conservation Measures" discussed below.

E. *Other natural or manmade factors affecting its continued existence.* The overall trend in the status of this species is characterized by dramatic declines in numbers and distribution. The apparent isolation of self-sustaining populations of Arkansas River shiners to one river system renders the remaining populations extremely vulnerable to any natural or manmade factors that might further reduce population size. The occurrence of a single, catastrophic event, such as the introduction of competitive species, or a prolonged period of low or no flow, would significantly increase the likelihood of extinction.

The introduction and establishment of the Red River shiner, a species endemic to the Red River Drainage, into the Cimarron River in Oklahoma and Kansas has had a detrimental effect on the Arkansas River shiner (Cross *et al.* 1983, Felley and Cothran 1981). The Red River shiner was first recorded from the Cimarron River in 1976 (Marshall 1978). The Red River shiner has since colonized the Cimarron River and frequently may be a dominant component of the fish community (Cross *et al.* 1983, Felley and Cothran 1981). The morphological characteristics, population size, and ecological preferences exhibited by the Red River shiner suggest that competition for food and other essential life requisites occurs with Arkansas River shiners (Cross *et al.* 1983, Felley and Cothran 1981). The unintentional release of Red River shiners, or other potential competitors, into the Canadian River by anglers or the commercial bait industry is a potentially serious threat and could lead to decimation or extirpation of the remaining natural Arkansas River shiner populations.

The limited occurrence of Red River pupfish (*Cyprinodon rubrofluviatilis*) in the Canadian River drainage since 1969 (Pigg *et al.* 1984) indicates that the release of at least one Red River endemic has already occurred in this drainage. While the introduction of non-native fish does not fully account for the disappearance of Arkansas River shiners, particularly outside of the Cimarron River, competition with introduced species can have a significant adverse impact on Arkansas River shiner populations.

The reproductive characteristics and specialized spawning and early life-history requirements of this species intensify the effects of certain natural or manmade factors, such as drought. Successful reproduction of the Arkansas River shiner appears to require precise flow conditions conducive to breeding and embryonic development. Spawning is triggered, in part, by abrupt increases in stream flow during the late spring or summer (Cross *et al.* 1983, Moore 1944). Stream flows favorable to spawning must be sustained over at least a 24 hour period to ensure complete embryonic and larval development. As discussed under Factor A, suitable habitat conditions are becoming scarce and where conditions are not favorable, rapid population declines have occurred.

Declining populations of the Arkansas River shiner may also be due to poor survival of juveniles. Bestgen *et al.* (1989) observed that spawning in Arkansas River shiners appeared to be primarily limited to age class I individuals, based on an absence of age class I and older fish from collections made after the spawning period. The apparent extremely high post-spawning mortality observed in Arkansas River shiner populations in the Pecos River suggests that the reproductive contribution of individuals in age class II or older is very limited. Thus, the continued existence of Arkansas River shiner populations may be almost entirely dependent upon successful annual reproduction and subsequent recruitment of age class 0 (juvenile) individuals into the population. The loss of a single reproductive event/cycle would seriously reduce recruitment, and possibly lead to localized extinctions. The fragmentation of Arkansas River shiner habitat by impoundments intensifies the effects of failed reproduction by hindering repopulation following rapid declines or localized extinctions.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Arkansas River basin population of the Arkansas River shiner as endangered. Endangered status, which means that the species is in danger of extinction throughout all or a significant portion of its range, is appropriate for the Arkansas River shiner because of its significantly reduced range, including the apparent extirpation of the shiner in Arkansas, Kansas, and throughout much of its historic range in Oklahoma. Threatened status does not appear appropriate considering the extent of the species' population decline and the vulnerability of the remaining populations.

Critical Habitat

Section 4(a)(3) of the Act, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently determinable for this species. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Arkansas River shiners occur at scattered locations throughout the Canadian River. Specific habitat features, such as substrate composition, water depths, and water velocities, preferred by Arkansas River shiners are unknown and data explaining the distribution and abundance of Arkansas River shiners within a given segment of stream are lacking. Without this information, designation of critical habitat is not possible because the Service cannot adequately determine the precise constituent elements within specific areas that are essential to the survival and recovery of the Arkansas River shiner. The Service has initiated studies, funded under the provisions of Section 6(d) of the Act, which will determine and characterize the specific

physical habitat requirements of the Arkansas River shiner. Within 2 years from the date of publication of this proposed rule, the Service must designate critical habitat to the maximum extent prudent (50 CFR 424.17(b)(2)).

Available Conservation Measures

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

Section 7(a) of the Act 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)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A number of Federal agencies have jurisdiction and responsibilities potentially affecting the Arkansas River shiner, and Section 7 consultation may be required in a number of instances. Federal involvement is expected to include the Bureau of Reclamation's proposed Lake Meredith Salinity Control Project and Corps of Engineers' multi-purpose reservoir operations throughout the Arkansas River Basin. The Corps of Engineers will also consider the Arkansas River shiner in administration of Section 404 of the Clean Water Act. The U.S. Environmental Protection Agency will consider the Arkansas River shiner in the registration of pesticides, adoption of water quality criteria, and other pollution control programs. The U.S. Department of Transportation, Federal Highway Administration, will consider the effects of bridge and road construction at locations where known habitat may be impacted. The U.S. Department of Agriculture, Soil Conservation Service, will be required to consider the effects of structures installed under the Watershed Protection and Floodwater Prevention program. The U.S. Forest Service's management actions on the Cimarron and Kiowa National Grasslands may also require Section 7 consultation.

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

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103 (505/766–2914) and fax (505/766–8063).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor, Tulsa, Oklahoma (see ADDRESSES above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. 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

Bestgen, K.R., S.P. Platania, J.E. Brooks, and D.L. Propst. 1989. Dispersal and life history traits of *Notropis girardi* (Cypriniformes: Cyprinidae), introduced into the Pecos River, New Mexico. Am. Midl. Nat. 122(2):228–235.

Buchanan, T.M. 1976. An evaluation of the effects of dredging within the Arkansas River Navigation System, Volume V-the effects upon the fish population. Ark. Water Resour. Res. Cen. Publ. No. 47. Univ. Ark. Fayetteville. 277 pp.

Buckner, H.D., E. R. Carrillo, and H. J. Davidson. 1985. Water resources data-Texas Water Year 1984: Volume 1. Arkansas River Basin, Red River Basin, Sabine River Basin, Neches River Basin, Trinity River Basin, and Intervening Coastal Basins. U.S. Dept. Int., Geological Survey. Water-Data Rept. TX–84–1. Austin, TX. 485 pp.

Cross, F.B. 1970. Occurrence of the Arkansas River shiner, *Notropis girardi* Hubbs and Ortenburger, in the Red River System. Southwest. Nat. 14(3):370.

Cross, F.B. 1967. Handbook of fishes of Kansas. Univ. Kans. Mus. Nat. Hist. Misc. Publ. No. 45. 357 pp.

Cross, F.B., O.T. Gorman, and S.G. Haslouer. 1983. The Red River shiner, *Notropis bairdi* in Kansas with notes on depletion of its Arkansas River cognate, *Notropis girardi*. Trans. Kans. Acad. Sci. 86:93–98.

Cross, F.B., R.E. Moss, and J.T. Collins. 1985. Assessment of dewatering impacts on stream fisheries in the Arkansas and Cimarron Rivers. Univ. Kans. Mus. Nat. Hist. Lawrence. 161 pp.

Felley, J.D., and E.G. Cothran. 1981. *Notropis bairdi* (Cyprinidae) in the Cimarron River, Oklahoma. Southwest. Nat. 25:564.

Gilbert, C.R. 1978. *Notropis girardi* Hubbs and Ortenburger Arkansas River shiner. P. 268 *In:* D. S. Lee *et al.* Atlas of North American freshwater fishes. N. Carolina Biol. Surv. Publ. No. 1980–12. N. Carolina State Mus. Nat. Hist., Raleigh. 854 pp.

Hubbs, C.L., and A.I. Ortenburger. 1929. Further notes on the fishes of Oklahoma with descriptions of new species of Cyprinidae. Publ. Univ. Okla. Biological Surv. 1(2):17–43.

Larson, R.D., A.A. Echelle, and A.V. Zale. 1990. Life history and distribution of the Arkansas River shiner in Oklahoma. Job no. 1: Status of threatened and endangered fishes in Oklahoma June 1, 1989 through May 31, 1990. Annual Performance Rept., Federal Aid Proj. No. E–8–1. Okla. Dept. Wildl. Cons., Oklahoma City. 15 pp.

Larson, R.D., A.A. Echelle, and A.V. Zale. 1991. Life history and distribution of the Arkansas River shiner in Oklahoma. Job no. 1: Status of threatened and endangered fishes in Oklahoma June 1, 1989 through August 31, 1991. Final Rept., Federal Aid Proj. No. E–8. Okla. Dept. Wildl. Cons., Oklahoma City. 94 pp.

Marshall, C.I. 1978. The distribution of *Notropis bairdi* along the Cimarron River in Logan County, Oklahoma. Proc. Okla. Acad. Sci. 58:109.

Miller, R.J., and H.W. Robison. 1973. The fishes of Oklahoma. Okla. State Univ. Press, Stillwater. 246 pp.

Moore, G.A. 1944. Notes on the early life history of *Notropis girardi*. Copeia 1944:209–214.

Oklahoma Water Resources Board. 1990. Oklahoma water atlas. Okla. Water Res. Board Publ. 135. Oklahoma City, OK. 360 pp.

Oklahoma Water Resources Board. 1980. Oklahoma comprehensive water plan. Okla. Water Res. Board Publ. 94. Oklahoma City, OK. 248 pp.

Peterson, G.L. 1986. Annual report Commercial Fisheries Research and Development Act—January 1, 1986 through December 31, 1986. NMFS Proj. 2–410–R–3, Oklahoma Commercial Fishery Statistics. Okla. Dept. Wildl. Cons., Oklahoma City. 11 pp.

Peterson, G.L. 1992. Annual report Oklahoma commercial fishery statistics—January 1, 1992 through December 31, 1992. Federal Aid Proj. No. F–44–D–7. Okla. Dept. Wildl. Cons., Oklahoma City. 11 pp.

Peterson, G., and H. Weeks 1983. Final report Commercial Fisheries Research and Development Act—January 1, 1983 through December 31, 1983. NMFS Proj. 2–396–R–1, Oklahoma Commercial Fishery Statistics II. Okla. Dept. Wildl. Cons., Oklahoma City. n.p.

Pigg, J. 1991. Decreasing distribution and current status of the Arkansas River shiner, *Notropis girardi*, in the rivers of Oklahoma and Kansas. Proc. Okla. Acad. Sci. 71:5–15.

Pigg, J. 1989. The current status of the Arkansas River shiner, *Notropis girardi* in the Arkansas River Drainage of Oklahoma. Draft Rept. Okla. Dept. of Health, State Water Quality Laboratory, Oklahoma City. n.p.

Pigg, J., M.S. Coleman, and J. Duncan. 1992. An ecological investigation of the ichthyofauna of the North Canadian River in Oklahoma: 1976–1989. Proc. Okla. Acad. Sci. 72:21–32.

Pigg, J., W. Harrison, and R. Gibbs. 1984. Red River pupfish, *Cyprinodon rubrofluviatilis* (Fowler) in the Arkansas River Drainage in western Oklahoma. Proc. Okla. Acad. Sci. 64:48.

Robison, H.W., and T.M. Buchanan. 1988. Fishes of Arkansas. Univ. of Ark. Press, Fayetteville, AR. 536 pp.

Stinnett, D.P., R.W. Smith, and S.W. Conrady. 1988. Riparian areas of western Oklahoma: a case study of the Canadian River. Pp. 22–29 *In:* P.J. Stuber, Coord. Proceedings of the national symposium on protection of wetlands from agricultural impacts a compilation of papers and discussions presented at Colorado State University, Fort Collins, Colorado, April 25–29, 1988. U.S. Fish and Wildlife Service Biol. Rept. 88(16), Washington, D.C. 221 pp.

Stoner, J.D. 1985. Reported withdrawals and estimated use of water in Oklahoma during 1982. U.S. Geol. Surv. Water-Resources Invest. Rept. 85–4084, Geological Survey. Oklahoma City. 96.

Sublette, J.E., M.D. Hatch, and M. Sublette. 1990. The fishes of New Mexico. Univ. New Mexico Press. Albuquerque, NM. 393 pp.

Texas Department of Water Resources. 1984. Water for Texas-technical appendix, volume 2. Tex. Dept. Water Res. Austin, TX

U.S. Army Corps of Engineers. 1989. Water resources development by the U.S. Army Corps of Engineers in Arkansas. Southwestern Division, Dallas, TX. 76 pp.

U.S. Fish and Wildlife Service. 1990. Status report on Arkansas River shiner (*Notropis girardi*). Kansas State Office, Region 6, Manhattan, KS. 19 pp.

U.S. Fish and Wildlife Service. 1992. Pecos bluntnose shiner recovery plan. U.S. Fish and Wildlife Service, Region 2, Albuquerque, NM. 57 pp.

Williams, G.P., and M. G. Wolman. 1984. Downstream effects of dams on alluvial rivers. Geological Survey Professional Paper 1286. U.S. Department of the Interior, Washington, D.C. 81 pp.

Author

The primary author of this proposed rule is Ken Collins, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

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

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*	*	*
Shiner, Arkansas River.	Notropis girardi	U.S.A. (AR, KS, NM, OK, TX).	Arkansas River basin (AR, KS, NM, OK, TX).	E	.....	NA	NA
*	*	*	*	*	*	*	*

Dated: July 14, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–18924 Filed 8–2–94; 8:45 am]

BILLING CODE 4310–55–p

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 940685–4185; I.D. 072694A]

RIN 0648–AG74

Endangered and Threatened Species; Proposed Endangered Status for North and South Umpqua River Cutthroat Trout in Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; correction.

SUMMARY: In document 94–16577, published on July 8, 1994, (59 FR 35089), NMFS issued a proposed rule to list the Umpqua River cutthroat trout (*Oncorhynchus clarki*) as endangered under the Endangered Species Act of 1973 (ESA). A 30-day period for requesting a public hearing was published as ending on August 8, 1994. The correct period for requesting a public hearing is 45 days from the date of publication; therefore, the correct ending date is August 22, 1994.

DATES: Requests for a public hearing must be received by August 22, 1994.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Environmental and Technical Services Division, NMFS, Portland, OR (503/230–5430) or Marta Nammack, Protected Species Management Division, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (301/713–2322).

Dated: July 28, 1994.

Gary C. Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–18814 Filed 8–02–94; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 59, No. 148
Wednesday, August 3, 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

Forms Under Review by Office of Management and Budget

July 29, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Extension

• Federal Crop Insurance Corporation
Contract Changes
FCI–12–A
On occasion
Individuals or households; Farms; 40,362 responses; 30,272 hours
Bonnie L. Hart (202) 254–8393
• Federal Crop Insurance Corporation
Underwriting Questionnaire (Container Stock Only); Nursery Container Report; and Nursery Crop Insurance Inventory
FCI–544; FCI–545; and FCI–546
On occasion
Individuals or households; Farms; 150 responses; 625 hours
Bonnie L. Hart (202) 254–8393
• Federal Crop Insurance Corporation
Actual Production History Review Report
FCI–19–A (APH)
On occasion
Individuals or households; Farms; 400 responses; 400 hours
Bonnie L. Hart (202) 254–8393
• Federal Crop Insurance Corporation
Waiver To Transfer Segregation II and III—Peanuts To Quota Loan
FCI–513
On occasion
Individuals or households; Farms; 3,000 responses; 750 hours
Bonnie L. Hart (202) 254–8393
• Federal Crop Insurance Corporation
Certification Form
FCI–73
On occasion
Individuals or households; Farms; 1,000 responses; 2,000 hours
Bonnie L. Hart (202) 254–8393
• Federal Crop Insurance Corporation
Reduction and Yield Report
FCI–19–A (APH)
On occasion
Individuals or households; Farms; 200,000 responses; 50,000 hours
Bonnie L. Hart (202) 254–8393
• Federal Crop Insurance Corporation
Pre-Acceptance Perennial Crop Inspection Report
FCI–12–P
On occasion
Individuals or households; Farms; 2,200 responses; 2,200 hours
Bonnie L. Hart (202) 254–8393

New Collection

• Food and Nutrition Service
Early Childhood and Child Care Study
One-time only
Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions 12,718; responses; 11,959 hours
Jeffrey M. Wilde (703) 305–2116

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 94–18883 Filed 8–2–94; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 1994

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: This Notice sets forth the determination that the quantity of nonfat dry milk made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1994 is reduced to 1,500 metric tons.

FOR FURTHER INFORMATION CONTACT: Mary Chambliss, Director, Program Analysis Division, Office of the General Sales Manager, FAS, USDA, (202) 720–3573.

SUPPLEMENTARY INFORMATION: It has previously been determined that 60,000 metric tons of butter/butteroil and 10,000 metric tons of nonfat dry milk were available for donation under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1994.

On December 30, 1993, it was determined that 100,000 metric tons of corn and 30,000 metric tons of sorghum may be made available for donation under section 416(b) during fiscal year 1994. The purpose of this Notice is to inform the public that the previous determination regarding the quantity of nonfat dry milk available for donation under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1994 is reduced to 1,500 metric tons.

Determination

Accordingly, a total of 130,000 metric tons of grain and 61,500 metric tons of dairy products may be made available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended in fiscal year 1994. The total kinds and quantities of commodities that may be made available for donation are as follows:

Commodity	Quantity (metric tons)
Grains:	
Corn	100,000
Sorghum	30,000

Commodity	Quantity (metric tons)
Total	130,000
Dairy Products:	
Butter/Butteroil*	60,000
Nonfat Dry Milk	1,500
Total	61,500

*At least 34,000 metric tons must be butter.

Done at Washington, D.C., this 25th day of June 1994.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94-18874 Filed 8-2-94; 8:45 am]

BILLING CODE 3410-10-M

Privacy Act of 1974: Computer Matching Program for the Disqualified Recipient Subsystem—U.S. Department of Agriculture and State Welfare Agencies Administering the Food Stamp Program

AGENCY: Office of the Secretary, USDA.

ACTION: Third Notice of Computer Matching Programs for the Disqualified Recipient Subsystem—U.S. Department of Agriculture and State welfare agencies administering the Food Stamp Program.

SUMMARY: On June 16, 1993, (58 FR 33246) and again on November 29, 1993, (58 FR 62634), the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA) provided notice of its intent to conduct a computer matching program with all 50 States as well as the District of Columbia, Guam, and the Virgin Islands. Not all of the States were fully prepared to participate in the computer matching program at its inception and only those 28 States that had executed computer matching agreements were included under the first notice. The second notice announced the participation of an additional 12 States. This third notice announces the participation of the remaining 13 States in the computer matching program. Included are the States of Iowa, Kansas, Maine, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Ohio, Rhode Island, South Dakota, Texas, and Utah.

The matching program will enable State agencies to determine appropriate periods of disqualification from participation in the Food Stamp Program for intentional program violations. To assign appropriate periods of disqualification, State agencies will match data on individuals recently determined to have committed intentional program violations with an FNS-maintained, centralized data bank list of individuals previously disqualified. Then, based on the number of times an individual has been disqualified, an appropriate period of disqualification will be assigned for the latest violation.

The matching program will also enable State agencies to prevent the certification or detect the participation of individuals who are in a disqualified status. At their option, State agencies may match the FNS-supplied data against their records of applicants and/or recently-certified individuals to insure that those currently in a disqualified status do not participate. Matches will be conducted in accordance with written agreements between USDA and each of the State agencies.

This notice is required by Public Law No. 100-503, the Computer Matching and Privacy Protection Act of 1988. The information provided is in accordance with paragraph 6.c. of the Final Guidance Interpreting Pub. L. 100-503 issued by the Office of Management and Budget, 54 FR 25818 (June 19, 1989). A copy of this notice has been provided to the Committee on Government Operations, U.S. House of Representatives, the Committee on Governmental Affairs, U.S. Senate, and the Office of Management and Budget.

DATES: In accordance with section 2 of Pub. L. 100-503, the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a(o)(2)(B), the matching programs will begin no sooner than 30 days after the signed agreements are transmitted to the Committee on Government Operations, U.S. House of Representatives, the Committee on Governmental Affairs, U.S. Senate, and the Office of Management and Budget. This matching program will continue for 18 months, the maximum time period allowed under section 2 of Pub. L. 100-503, 5 U.S.C. 552a(o)(2)(C). At the end of that period, with the approval of the USDA Data Integrity Board, this matching program may be extended for an additional year without further notice.

ADDRESSES: Comments and inquiries should be addressed to: Cecilia Fitzgerald, Supervisor, State Management Section, State Administration Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 907, 3101 Park Center Drive, Alexandria, VA 22302, telephone (703) 305-2386.

SUPPLEMENTARY INFORMATION: Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, requires that individuals who intentionally violate Food Stamp Program regulations more than once be assigned increasingly longer periods of disqualification for each subsequent offense. To assign appropriate disqualification periods, State agencies must have access to information on individuals who have previously been disqualified in other jurisdictions as well as their own. Although Congress, in Pub. L. 97-35, did not specify a system for assuring State agencies access to information on disqualified individuals, it did require State agencies to report disqualification actions to FNS. Thus, to enable States to act on this information as Congress intended, FNS will make this information available to State agencies through the Disqualified Recipient Subsystem.

FNS will act as the central collection point for data on disqualified individuals, which States will then access through the Disqualified Recipient Subsystem. The data will include the name, social security number, date of birth, and sex of disqualified individuals. If data in the Disqualified Recipient Subsystem indicates that an individual had been disqualified previously, the information obtained from the Disqualified Recipient Subsystem will be verified before a new period of disqualification is assigned. If the information in the Disqualified Recipient Subsystem originated in another State, that State will be asked to verify the subject data. This procedure will also be followed before any action is taken to deny an individual's application or terminate an individual's participation based on a match with the Disqualified Recipient Subsystem.

Food Stamp Program regulations provide for notification and due-process rights for individuals adversely affected by computer match programs.

NAME OF PARTICIPATING AGENCIES:

Food and Nutrition Service, USDA, and the States of Iowa, Kansas, Maine, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Ohio, Rhode Island, South Dakota, Texas, and Utah.

PURPOSE:

To facilitate the Congressional mandate to increase the length of disqualifications from the Food Stamp Program for repeated instances of fraudulently obtaining Food Stamp Program benefits and to verify eligibility of applicants for Food Stamp Program benefits.

Authority: 7 U.S.C. 2015, the Food Stamp Act of 1977, as amended.

FILES TO BE USED IN THIS MATCHING PROGRAM ARE:

(1) The FNS-maintained file of State-provided disqualification information is entitled "Information on Persons Disqualified from the Food Stamp Program" and designated as USDA/FNS–5. This Privacy Act System of Records consists of standardized records containing identifying information (first name, middle initial, last name; social security number; date of birth; and sex) on individuals disqualified from the Food Stamp Program and information identifying the location, date(s), and length(s) of any disqualification determined and imposed.

(2) State agency food stamp recipient information files for each State, the District of Columbia, Guam, and the Virgin Islands.

INCLUSIVE DATES:

In accordance with section 2 of Pub. L. 100–503, 5 U.S.C. 552a(o)(2)(B) the Computer Matching and Privacy Protection Act of 1988, the matching programs will begin no sooner than 30 days after the signed agreements are transmitted to the Committee on Government Operations, U.S. House of Representatives, the Committee on Governmental Affairs, U.S. Senate, and the Office of Management and Budget. They will continue for 18 months, the maximum time period allowed under section 2 of Pub. L. 100–503, 5 U.S.C. 552a(o)(2)(C). At the end of that period, with the approval of the USDA Data Integrity Board, this matching program may be extended for an additional year without further notice.

PUBLIC COMMENTS OR INQUIRIES:

Comments and inquiries should be addressed to: Cecilia Fitzgerald, Supervisor, State Management Section, State Administration Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 907, 3101 Park Center Drive, Alexandria, VA 22302, telephone (703) 305–2386.

Signed at Washington, DC, on July 25, 1994.

Mike Espy,

Secretary.

[FR Doc. 94–18885 Filed 8–2–94; 8:45 am]

BILLING CODE 3410–30

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will be convened on Thursday, August 23, 1994, 10:00 a.m. to 2:00 p.m. at the Holiday Inn, 700 King Street, Wilmington, Delaware 19801. The purpose of the meeting is to review a draft report of the committee's factfinding meeting on implementation of the Americans With Disabilities Act in Delaware, receive reports on the status of the agency, and program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Emily George Morris, 302–674–0839, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 29, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–18920 Filed 8–2–94; 8:45 am]

BILLING CODE 6335–01–F–P

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will be held from 9:00 a.m. until 5:00 p.m. on Wednesday, August 31, 1994, and from 9:00 a.m. until 5:00 p.m. on Thursday September 1, 1994, at the Crown Sterling Suites, 425 So. 7th Street, Minneapolis, Minnesota 55415. The purpose of this meeting is to examine the resources devoted to local and Federal civil rights enforcement in Minnesota.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Karon Rogers, 612–661–4713, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8326). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 29, 1994.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 94–18921 Filed 8–2–94; 8:45 am]

BILLING CODE 6335–01–F–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade 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 section 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 August 31, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period
Antidumping Duty Proceedings	
Armenia: Titanium Sponge (A–831–803)	8/1/93–7/31/94

	Period
Australia: Corrosion-Resistant Carbon Steel Flat Products (A–602–803)	2/4/93–7/31/94
Azerbaijan: Titanium Sponge (A–832–803)	8/1/93–7/31/94
Belarus-baltic: Titanium Sponge (A–822–803)	8/1/93–7/31/94
Belgium: Cut-to-Length Carbon Steel Plate (A–423–805)	2/4/93–7/31/94
Belgium: Industrial Phosphoric Acid (A–423–602)	8/1/93–7/31/94
Brazil: Cut-to-Length Carbon Steel Plate (A–351–817)	2/4/93–7/31/94
Canada: Corrosion-Resistant Carbon Steel Flate Products (A–122–822)	2/4/93–7/31/94
Canada: Cut-to-Length Carbon Steel Plate (A–122–823)	2/4/93–7/31/94
Canada: Magnesium (A–122–814)	8/1/93–7/31/94
Estonia-Baltic: Titanium Sponge (A–477–803)	8/1/93–7/31/94
Finland: Cut-to-Length Carbon Steel Plate (A–405–802)	2/4/93–7/31/94
France: Corrosion-Resistant Carbon Steel Flat Products (A–427–808)	2/4/93–7/31/94
France: Industrial Nitrocellulose (A–427–009)	8/1/93–7/31/94
Georgia: Titanium Sponge (A–833–803)	8/1/93–7/31/94
Germany: Cold-Rolled Carbon Steel Flat Products (A–428–814)	8/18/93–7/31/94
Germany: Corrosion-Resistant Carbon Steel Flat Products (A–428–815)	2/4/93–7/31/94
Germany: Cut-to-Length Carbon Steel Plate (A–428–816)	2/4/93–7/31/94
Israel: Industrial Phosphoric Acid (A–508–604)	8/1/93–7/31/94
Italy: Granular Polytetrafluoro-ethylene Resin (A–475–703)	8/1/93–7/31/94
Italy: Tapered Roller Bearings, and Parts Thereof, Finished or Unfinished (A–475–603)	8/1/93–7/31/94
Japan: Acrylic Sheet (A–588–055)	8/1/93–7/31/94
Japan: Brass Sheet and Strip (A–588–704)	8/1/93–7/31/94
Japan: Cadmium (A–588–035)	8/1/93–7/31/94
Japan: Corrosion-Resistant Carbon Steel Flat Products (A–588–826)	2/4/93–7/31/94
Japan: Certain High-Capacity Pagers (A–588–007)	8/1/93–7/31/94
Japan: Granular Polytetrafluoro-ethylene Resin (A–588–707)	8/1/93–7/31/94
Kazakhstan: Titanium Sponge (A–834–803)	8/1/93–7/31/94
Korea: Cold-Rolled Carbon Steel Flat Products (A–580–815)	8/18/93–7/31/94
Korea: Corrosion-Resistant Carbon Steel Flat Products (A–580–816)	2/4/93–7/31/94
Kyrgyzstan: Titanium Sponge (A–835–803)	8/1/93–7/31/94
Latvia-Baltic: Titanium Sponge (A–449–803)	8/1/93–7/31/94
Lithuania: Titanium Sponge (A–451–803)	8/1/93–7/31/94
Mexico: Cut-to-Length Carbon Steel Plate (A–201–809)	2/4/93–7/31/94
Mexico: Gray Portland Cement and Clinker (A–201–802)	8/1/93–7/31/94
Moldova: Titanium Sponge (A–841–803)	8/1/93–7/31/94
Netherlands: Brass Sheet and Strip (A–421–701)	8/1/93–7/31/94
Netherlands: Cold-Rolled Carbon Steel Flat Products (A–421–804)	2/4/93–7/31/94
Poland: Cut-to-Length Carbon Steel Plate (A–455–802)	2/4/93–7/31/94
Romania: Cut-to-Length Carbon Steel Plate (A–485–803)	2/4/93–7/31/94
Russia: Titanium Sponge (A–821–803)	8/1/93–7/31/94
Spain: Cut-to-Length Carbon Steel Plate (A–469–803)	2/4/93–7/31/94
Sweden: Cut-to-Length Carbon Steel Plate (A–401–805)	2/4/93–7/31/94
Taiwan: Clear Sheet Glass (A–583–023)	8/1/93–7/31/94
Tajikistan: Titanium Sponge (A–842–803)	8/1/93–7/31/94
Thailand: Malleable Cast Iron Pipe Fittings (A–549–601)	8/1/93–7/31/94
The People's Republic of China: Petroleum Wax Candles (A–570–504)	8/1/93–7/31/94
The People's Republic of China: Sulfanilic Acid (A–570–815)	8/1/93–7/31/94
Turkey: Acetylsalicylic Acid (Aspirin) (A–489–602)	8/1/93–7/31/94
The United Kingdom: Cut-to-Length Carbon Steel Plate (A–412–814)	2/4/93–7/31/94
Turkmenistan: Titanium Sponge (A–843–803)	8/1/93–7/31/94
Ukraine: Titanium Sponge (A–823–803)	8/1/93–7/31/94
Ukraine: Uranium (A–823–802)	8/30/93–7/31/94
Uzbekistan: Titanium Sponge (A–844–803)	8/1/93–7/31/94
Venezuela: Certain Electrical Conductor Aluminum Redraw Rod (A–307–701)	8/1/93–7/31/94
Yugoslavia: Tapered Roller Bearings, and Parts Thereof, Finished or Unfinished (A–479–601)	8/1/93–7/31/94
Countervailing Duty Proceedings	
Belgium: Cut-to-Length Carbon Steel Plate (C–423–806)	12/7/92–12/31/93
Brazil: Cut-to-Length Carbon Steel Plate (C–351–818)	12/7/92–12/31/93
Canada: Alloy Magnesium (C–122–815)	1/1/93–12/31/93
Canada: Live Swine (C–122–404)	4/1/93–3/31/94
Canada: Pure Magnesium (C–122–815)	1/1/93–12/31/93
France: Corrosion-Resistant Carbon Steel (C–427–810)	12/7/92–12/31/93
Germany: Cold-Rolled Carbon Steel Flat Products (C–428–817)	8/18/93–12/31/93
Germany: Corrosion-Resistant Carbon Steel (C–428–817)	12/7/92–12/31/93
Germany: Cut-to-Length Carbon Steel Plate (C–428–817)	12/7/92–12/31/93
Isreal: Industrial Phosphoric Acid (C–508–605)	1/1/93–12/31/93
Korea: Cold-Rolled Carbon Steel Flat Products (C–580–818)	8/18/93–12/31/93
Korea: Corrosion-Resistant Carbon Steel Plate (C–580–818)	12/7/92–12/31/93
Malaysia: Extruded Rubber Thread (C–557–806)	1/1/93–12/31/93
Mexico: Cut-to-Length Carbon Steel Plate (C–201–810)	12/7/92–12/31/93
New Zealand: Low-Fuming Brazing Copper Rod and Wire (C–614–501)	8/1/93–7/31/94
Spain: Cut-to-Length Carbon Steel Plate (C–469–804)	12/7/92–12/31/93
Sweden: Cut-to-Length Carbon Steel Plate (C–401–804)	12/7/92–12/31/93

	Period
Thailand: Certain Circular Welded Steel Pipes and Tubes (C–549–501)	1/1/93–12/31/93
The United Kingdom: Cut-to-Length Carbon Steel Plate (C–412–815)	12/7/92–12/31/93
Venezuela: Certain Electrical Conductor Aluminum Redraw Rod (C–307–702)	1/1/93–12/31/93
Zimbabwe: Carbon Steel Wire Rod (C–796–601)	1/1/93–12/31/93
Suspension Agreements	
Japan: Erasable Programmable Read Only Memories (EPROMS) (C–588–505)	8/1/93–7/31/94

In accordance with sections 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, D.C. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Department'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 August 31, 1994. If the Department does not receive, by August 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: July 28, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–19072 Filed 8–2–94; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 072594C]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Bluefish Monitoring Committee, Coastal Migratory Committee, Law Enforcement Committee, and Large Pelagic/Shark Committee will hold a public meeting on August 16–18, 1994, at the Doubletree Hotel, Broad Street at Locust, Philadelphia, PA 19107; telephone: (215) 893–1600.

On August 16, the Bluefish Monitoring Committee will meet from 10:00 a.m. until 12:00 noon, and the Coastal Migratory Committee (with the Atlantic States Marine Fisheries Commission Bluefish Board) will meet from 1:30 p.m. until 5:00 p.m. On August 17, the Council will meet from 8:00 a.m. until 3:00 p.m. The Law Enforcement Committee and the Large Pelagic/Shark Committee will meet simultaneously from 3:00 p.m. until 4:00 p.m. On August 18, the Council will reconvene at 8:00 a.m. and is scheduled to adjourn at approximately noon.

The following topics will be discussed:

(1) Review stock assessment for bluefish;

(2) Prepare management recommendations for 1995 for bluefish;

(3) Possible adoption of squid, mackerel, butterfish specifications for 1995;

(4) Review obligations of Law Enforcement Committee;

(5) Review tuna Environmental Impact Statement;

(6) Committee reports; and

(7) Other fishery management matters.

The Council meeting may be lengthened or shortened based on the progress of the meeting. The Council may go into closed session to discuss personnel or national security matters.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901; telephone: (302) 674–2331.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331, at least 5 days prior to the meeting date.

Dated: July 28, 1994.

Joe P. Clem,

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

[FR Doc. 94–18816 Filed 8–2–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 072894B]

New England Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) and its Committees will hold public meetings on August 10–11, 1994, at the King's Grant Inn, Route 128 at Trask Lane, Danvers, MA; telephone: (508) 774–6800. The entities will consider actions affecting the New England fisheries in the exclusive economic zone (EEZ).

On August 10, at 1:30 p.m., the Council will convene its meeting with an update provided by the Chairman of the Northeast Mutispecies (Groundfish) Committee. Topics will include a review of the status of Georges Bank cod and yellowtail flounder as presented at

the NMFS-sponsored Stock Assessment Workshop; a review of haddock fishing under Amendment 6 to the Multispecies Fishery Management Plan (FMP); an update on the development of a whiting management regime; and a discussion of groundfish fishing in international waters under the provisions of Amendment 5 to the Multispecies FMP.

The Council's August 10 session will conclude with progress reports from the Council Chairman, Council Executive Director, NMFS Regional Director, Northeast Fisheries Science Center liaison, Mid-Atlantic Fishery Management Council liaison, representatives from the U.S. Department of State, U.S. Coast Guard, U.S. Fish and Wildlife Service, and the Atlantic States Marine Fisheries Commission.

Also on August 10, during the afternoon, the Atlantic Sea Scallop Committee will discuss various aspects of implementation of Amendment 4 to the Sea Scallop FMP. The Lobster Committee will report on progress made by area Effort Management Teams.

On August 11, the Council will convene at 8:30 a.m., to elect new officers for 1994–95.

Following elections on August 11, the Interspecies Committee will brief the Council on possible fleet-wide management objectives. The Monkfish Committee will discuss progress on the development of an FMP, in addition to the implementation of monkfish regulations by the New England States. There also will be an update on the reauthorization of the Magnuson Fishery Conservation and Management Act.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA; telephone: (617) 231–0422.

SUPPLEMENTARY INFORMATION: This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall, (617) 231–0422, at least 5 days prior to the meeting date.

Dated: July 28, 1994.

Joe P. Clem,

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

[FR Doc. 94–18815 Filed 8–2–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

July 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 4, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased for carryover.

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 65161, published on December 13, 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 Memorandum of Understanding dated October 6, 1993, 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

July 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 6, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on August 4, 1994, you are directed to amend further the directive dated December 6, 1993 to increase the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated October 6, 1993 between the Governments of the United States and the Sultanate of Oman:

Category	Adjusted twelve-month limit[1]
340/640	222,000 dozen.
341/641	166,500 dozen.
347/348	793,650 dozen.

[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. 94–18928 Filed 8–2–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

July 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 4, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, 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) 927–6719. 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 adjusted, variously,

for swing, special swing, special shift and carryforward used.

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 65347, published on December 14, 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

July 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 8, 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 Taiwan and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on August 4, 1994, you are directed to amend the directive dated December 8, 1993 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1991, as amended:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
225/317/326	33,411,306 square meters.
363	11,714,047 numbers.
611	2,952,700 square meters.
619/620	13,459,862 square meters.
Within Group I subgroup	
219	14,789,732 square meters.
361	1,329,634 numbers.
Sublevels in Group II	
336	122,967 dozen.
338/339	875,561 dozen.
340	1,220,196 dozen.
347/348	1,503,564 dozen of which not more than 1,224,567 dozen shall be in Categories 347–W/348–W [2].
433	14,054 dozen.
435	24,493 dozen.
442	42,668 dozen.
443	47,992 numbers.
444	70,922 numbers.
638/639	6,373,192 dozen.
640	1,003,272 dozen.
644	701,566 numbers.
647/648	5,318,688 dozen of which not more than 5,055,511 dozen shall be in Categories 647–W/648–W [3].
Within Group II subgroup	
351	399,918 dozen.
447/448	20,358 dozen.
636	352,112 dozen.
651	397,124 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.3020, 6210.40.2033, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–W: only HTS numbers 6204 12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2033, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[3] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.2040, 6203.49.2060, 6203.49.3030, 6210.40.1035, 6211.20.1525, 6211.20.3030 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

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. 94–18929 Filed 8–2–94; 8:45 am]

BILLING CODE 3510–DR–F

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1994 Correlation

July 28, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1994 Correlation.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1994) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the bilateral agreement program. The Correlation should be amended to include the following changes which were effective on July 1, 1994:

Changes in the 1994 Correlation
Add 6210.20.2030 (834)—Other garments of linen.
Replace 6210.20.2020 (334) with 6210.20.2040—Definition remains unchanged.
Add 6210.30.2030 (835)—Other garments of linen.
Replace 6210.30.2020 (335) with 6210.30.2040—Definition remains unchanged.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–18927 Filed 8–2–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Environmental Impact Statement (EIS) for the Construction of a Railroad By-Pass Between Masonville and Caskey, Kentucky

AGENCY: Department of the Army, DOD.

ACTION: Notice of intent.

SUMMARY: Fort Campbell, Kentucky, requires rail service to deploy rapidly throughout the world. The U.S. Army owns 17 miles of track from Fort Campbell to the town of Hopkinsville, and approximately three miles of track

in the town of Hopkinsville. Currently, a lengthy switching procedure is required to move a train, necessary during contingency operations and possibly during major exercises, to or from Fort Campbell. Fort Campbell cannot rapidly deploy the 101st Airborne Division and other units with the existing switching restrictions in Hopkinsville. The U.S. Army proposes to by-pass the city of Hopkinsville by purchasing land and constructing a six-mile track along a 100-foot wide corridor from the Army owned track near the town of Masonville to the CSX, Incorporated mainline near Caskey. The scope of work includes removing approximately seven miles of track and four bridges north of Masonville. The U.S. Army will reuse the rail, ties and ballast in the new six-mile track. The precise track terminus north of Masonville will be developed during the EIS process.

Proposed Alternatives

a. No action
b. Alternate rail corridors

Scoping

Comments received as a result of this notice will be used to assist the Army in identifying potential impacts to the quality of the human environment and potential alternatives to the proposed action. Individuals or organizations may participate in the scoping process by written comment or by attending a scoping meeting. The scoping meeting will be announced by public notice to federal, state, and local officials, interest groups, and individuals. The public notice will also be provided to the local media.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Mr. Keith Rogan, (502) 625–7012, CEORL-DL, P.O. Box 59, Louisville, KY 40201–0059.

Dated: July 27, 1994.

Raymond J. Fatz,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 94–18797 Filed 8–2–94; 8:45 am]

BILLING CODE 3710–08–M

Office of the Secretary of Defense

Privacy Act of 1974; Notice to Add a Record System

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Notice to add a record system.

SUMMARY: The Office of the Secretary of Defense proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on September 2, 1994, unless comments are received that would result in a contrary determination.

ADDRESS(ES): Send comments to Chief, Records Management and Privacy Act Branch, Washington Headquarter Services, Correspondence and Directives, Records Management Division, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg, OSD Privacy Act Officer at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) have been published in the **Federal Register** and are available from the address above.

A new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, was submitted on July 25, 1994, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated June 25, 1993 (58 FR 36075, July 2, 1993).

Dated: July 29, 1994.

Patricia Toppings

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DUSDA 05

SYSTEM NAME:

Human Radiation Research Review.

SYSTEM LOCATION:

Department of Defense Radiation Experiments Command Center, 6801 Telegraph Road, Alexandria, VA 22310–3398; and the Office of the Under Secretary of Defense for Acquisition and Technology, Assistant to the Secretary of Defense (Atomic Energy), 3010 Defense Pentagon, Washington, DC 20301–3010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who were or may have been the subject of tests involving ionizing radiation or other human-subject experimentation; individuals who have inquired or provided information to the Department of Energy Helpline or the Department of Defense Human Radiation Experimentation Command Center concerning such testing.

Military and DoD civilian personnel who participated in atmospheric nuclear testing between 1945 and 1962 or the occupation of Hiroshima and Nagasaki are already included in the Defense Nuclear Agency's Nuclear Test Personnel Review (NTPR) program and are not part of this effort. The Defense Nuclear Agency's system of records notice that covers the NTPR is HDNA 010, entitled Nuclear Test Participants. However, inquiries referred from the Helpline that later are determined to fall within this category will be included in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information in the system includes an individual's name, Social Security Number or service number, last known or current address, occupational information, dates and extent of involvement in an experiment, exposure data, medical data, medical history of subject and relatives, and other documentation of exposure to ionizing radiation or other agents.

The system contains information abstracted from historical records, and information furnished to the Department of Defense, Department of Energy or other Federal Agencies by affected individuals or other interested parties.

Records include human radiation experimentation conducted from 1944 to the present. However, experiments conducted after May 20, 1974 (the date of issuance of the Department of Health, Education and Welfare Regulations for the Protection of Human Subjects, 45 CFR part 46), may be covered by other systems of records.

Common and routine medical practices, such as established diagnostic and treatment methods involving incidental exposures to ionizing radiation are not included within this system.

Examples of such methods are panorex radiographs for dental evaluations and thyroid scans for the evaluation and treatment of hypo/hyperthyroidism.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, E.O. 12891 (January 15, 1994), E.O. 9397 (November 22, 1943).

PURPOSE(S):

For use by agency officials and employees, or authorized contractors, and other DoD components in the preparation of the histories of human radiation experimentation; to conduct

scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the exposure of individuals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system of records may be disclosed to officials and contract personnel of the Human Radiation Experimentation Interagency Working Group as well as other designated government agencies, for the purposes described above. These agencies are the National Aeronautics and Space Administration; Department of Justice; Department of Energy; Department of Health and Human Services; Department of Veterans Affair; the White House Advisory Committee; Central Intelligence Agency; and Office of Management and Budget.

The 'Blanket Routine Uses' published at the beginning of the Office of the Secretary of Defense's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, microfilm/fiche, computer magnetic tape disks, and printouts in secure computer facilities.

RETRIEVABILITY:

Records are retrieved by case number, name, study control number, Social Security Number, or service number.

SAFEGUARDS:

Access to or disclosure of information is limited to authorized personnel. Paper records filed in folders, microfilm/fiche and computer printouts are stored in areas accessible only by authorized personnel. Buildings are protected by security guards and intrusion alarm systems. Magnetic tapes are stored in a controlled area within limited access facilities. Access to computer programs is controlled through software applications that require validation prior to use.

RETENTION AND DISPOSAL:

Files will be retained permanently. They will be maintained in the custody of the command center until all claims have been settled and then transferred to the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Under Secretary of Defense of Acquisition and Technology, Assistant to the Secretary of Defense (Atomic Energy), 3010 Defense Pentagon, Washington, DC 20301–3010.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Director, Department of Defense Radiation Experiments Command Center, 6801 Telegraph Road, Alexandria, VA 22310–3398, or Under Secretary of Defense for Acquisition and Technology, Office of the Assistant to the Secretary of Defense (Atomic Energy), 3010 Defense Pentagon, Washington, DC 20310–3010.

Individual should provide full name, Social Security Number, or service number, and if known, case or study control number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Department of Defense Radiation Experiments Command Center, 6801 Telegraph Road, Alexandria, VA 22310–3398, or Under Secretary of Defense, Office of the Assistant to the Secretary of Defense (Atomic Energy), 3010 Defense Pentagon, Washington, DC 20301–3010.

Individuals should provide full name, Social Security Number, or service number, and if known, case or study control number.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information will be collected directly from individuals, as well as extracted from historical records to include personnel files and lists, training files, medical records, legal case files, radiation and other hazard exposure records, occupational and industrial accident records, employee insurance claims, organizational and institutional administrative files, and related sources. The specific types of records used are determined by the nature of an individual's exposure to radiation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 94–18909 Filed 8–2–94; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before September 2, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each

proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: July 28, 1994.

Mary R. Liggett,

Acting Director, Information Resources Management Service.

Office of Educational Research and Improvement

Type of Review: Existing
Title: Application for Educational Research Program: Field-Initiated Studies
Frequency: Annually
Affected Public: Individuals or households; State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
Reporting Burden:
Responses: 450; Burden Hours: 4,950
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This form will be used by State educational agencies to apply for funding under the Educational Research Field-Initiated Studies Program. The Department will use the information to make grant awards.

Type of Review: Existing
Title: Final Performance Report for Improving Access to Research Library Resources Program, HEA Title II–C
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 40; Burden Hours: 160
Recordkeeping Burden:
Recordkeepers: 40; Burden Hours: 40
Abstract: This form is needed to evaluate project performance under the discretionary grant program Improving Access to Research Library Resources, HEA Title II–C.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Part B, Individuals With Disabilities Education Act, Implementation of Free and Appropriate Public Education Requirement
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58; Burden Hours: 198,418
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This form is completed by States to give important information about children with disabilities receiving special education and related services. This information is used by the Department to monitor activities and report to Congress.

Office of Special Education and Rehabilitative Services

Type of Review: New
Title: Report of Anticipated Services Needed by Children and Youth with Disabilities Exiting the Educational System
Frequency: Every three years
Affected Public: State or local governments
Reporting Burden:
Responses: 10; Burden Hours: 12,925
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This collection requirement provides instructions and forms necessary for States to report the anticipated services needed by children and youth exiting the education system. It serves as the basis for distributing federal assistance, to improve transition planning, and Congressional reporting.

Type of Review: Extension
Title: Report of Children and Youth with Disabilities Receiving Special Education, Part B, Individuals with Disabilities Education Act
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58; Burden Hours: 15,196
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This collection requirement provides instructions and forms necessary for States to report the number of children with disabilities served under the Individuals with Disabilities Education Act—Part B receiving special education and related services. It serves as the basis for distributing federal assistance, monitoring, implementating and Congressional reporting.

Type of Review: Extension
Title: Report of Children and Youth with Disabilities Exiting Special Education During the 1994–95 School Year
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58; Burden Hours: 16,124
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This collection requirement provides instructions and a form necessary for States to report the setting in which children with disabilities served under Chapter 1 of Elementary and Secondary Education Act (State Operated Programs) receive special education and related services. The form satisfies reporting requirements and is used by the Office of Special Education Programs to monitor State Educational Agencies and for Congressional reporting.

Type of Review: New
Title: Infants and toddlers with Disabilities Served Who Would Have Been Eligible to be Counted Under Subpart 2 of Chapter 1 of Elementary and Secondary Education Act (ESEA) State Operated Programs (SOP)
Frequency: One-time
Affected Public: State or local governments
Reporting Burden:
Responses: 52; Burden Hours: 130
Recordkeeping Burden:
Recordkeepers: 0; Burden Hours: 0
Abstract: This collection requirement provides instructions and forms necessary for States to report the number of infants and toddlers (age birth through 2) served who would have been eligible to be counted under Subpart 2 of Chapter 1 of ESEA (SOP). It serves as the basis for distributing federal assistance.

[FR Doc. 94–18865 Filed 8–2–94; 8:45 am]
BILLING CODE 4000–01–M

Notice of Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Notice of proposed information collection request.

SUMMARY: The Acting Director, Information Resources Management Service, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

DATES: An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by August 5, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request

should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an emergency review is requested, the additional information to be requested in this collection is included in the section on "Additional Information" in this notice.

Dated: July 28, 1994.

Mary P. Liggett,

Acting Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Emergency

Title: Standards, Criteria, and Procedures Governing the Repayment and Consolidation of Loans Under the Direct Loan Program

Abstract: On August 10, 1993, the Student Loan Reform Act of 1993 (P.L. 103–66) was enacted. The legislation authorized the Federal Direct Student Loan Program to make loans beginning July 1, 1994. On July 1, 1994 the regulations implementing the Consolidation Loan Process were published. The repayment and consolidation rules satisfy the requirements needed for the first year of this program.

Additional Information: The U.S. Department of Education has requested an emergency review and approval from the Office of Management and Budget. ED was required by law to implement the Consolidation Loan Process by July 1, 1994. To prevent further delay in this statutory deadline, ED has requested approval by August 5, 1994. This will allow ED to provide the required forms to the borrowers by mid-August.

Frequency: On occasion

Affected Public: Individuals or household; non-profit institutions

Reporting Burden:

Responses: 62,068; Burden Hours: 22,278

Recordkeeping Burden:

Recordkeepers: 0; Burden Hours: 0

[FR Doc. 93–18866 Filed 8–2–93; 8:45 am]

BILLING CODE 4000–01–M

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting sponsored by the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: August 25, 1994, beginning at 9:00 a.m. and ending at 5:00 p.m.; and August 26, 1994, beginning at 8:30 a.m. and ending at 12:00 noon.

ADDRESSES: Harvard University, the Faculty Club, 20 Quincy Street, in Cambridge, Massachusetts 02138.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Room 4600, ROB–3, 7th & D Streets, S.W., Washington, D.C. 20202–7582, (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and an in-depth study of student loan simplification. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, the Congress also directed the Advisory Committee to conduct an evaluation of the Federal Direct Student Loan Program (FDSLP) and the Federal Family Education Loan Program (FFELP) and submit a report to Congress and the Secretary on not less than an annual basis on the operation of both programs.

The Advisory Committee will meet in Cambridge, Massachusetts on Thursday, August 25, 1994, from 9:00 a.m. to 5:00 p.m., and on Friday, August 26, from 8:30 a.m. to 12:00 noon.

The proposed agenda includes (a) a discussion on direct lending implementation; (b) a discussion session on evaluation of the Federal Direct Student Loan and Federal Family Education Loan programs for year two; (c) the Department of Education's plans for Phase II, Student Aid Reform; (d) an update on the delivery system; and (e) an Advisory Committee regulatory update and planning session for the upcoming year's agenda. Space is limited and you are encouraged to register early if you plan to attend. To register, please contact the Advisory Committee staff office at (202) 708–7439. The registration deadline is August 17, 1994.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Room 4600, 7th and D Streets, S.W., Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: July 29, 1994.

Dr. Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 94–18900 Filed 8–2–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Agency Information Collection Extensions

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Department of Energy has submitted three information collection packages to the Office of Management and Budget for renewal under the Paperwork Reduction Act of 1980, Pub. L. No. 96–511.

The packages cover management and procurement collections of information from management and operating contractors of the Department of Energy's Government-owned/contractor-operated facilities and offsite contractors. The information is used by Departmental management to exercise management oversight as to the implementation of applicable statutory and contractual requirements and obligations. The listing for each package contains the following information: (1) title of the information collection package; (2) current Office of Management and Budget control number; (3) type of respondents; (4) estimated number of responses; (5) estimated total burden hours, including recordkeeping hours, required to provide the information; (6) purpose; and (7) number of collections.

DATES AND ADDRESSES: Comments regarding the information collection pages should be submitted to the Office of Management and Budget Desk Officer at the following address no later than [30 days after publication in the **Federal Register**]. Department of Energy Desk Officer, Office of Management and Budget (OIRA), Room 3001, New Executive Office Building, Washington, DC 20503, (202) 395–3084. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the Office of Management and Budget Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the Department of Energy contact listed in this notice.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Mary Ann Wallace, Records Management Division (HR–422), Department of Energy, Washington, DC 20585, (301) 903–3524.

Package Title: Construction and Project Management.

Current OMB No.: 1910–0200.

Type of Respondents: Department of Energy management and operating contractors and offsite contractors.

Estimated Number of Responses: 13,307.

Estimated Total Burden Hours: 452,996.

Purpose: This information is required by the Department to ensure that construction and project management resources and requirements are managed efficiently and effectively and to exercise management oversight of Department of Energy contractors. The package contains 21 information and/or recordkeeping requirements.

Package Title: Personal Property.

Current OMB No.: 1910–1000.

Type of Respondents: Department of Energy management and operating contractors and offsite contractors.

Estimated Number of Responses: 3,857.

Estimated Total Burden Hours: 247,374.

Purpose: This information is required by the Department to ensure that personal property resources and requirements are managed efficiently and effectively and to exercise management oversight of Department of Energy contractors. The package contains 29 information and/or recordkeeping requirements.

Package Title: Real Property.

Current OMB No.: 1910–1600.

Type of Respondents: Department of Energy management and operating contractors, and offsite contractors.

Estimated Number of Responses: 492.

Estimated Total Burden Hours: 163,725.

Purpose: This information is required by the Department to ensure that real property resources and requirements are managed efficiently and effectively and to exercise management oversight of Department of Energy contractors. The package contains 10 information and/or recordkeeping requirements.

Issued in Washington, DC, on July 14, 1994.

Mary Ann Wallace,

Acting Director, Office of IRM Policy, Plans, and Oversight.

[FR Doc. 94–18918 Filed 8–2–94; 8:45 am]

BILLING CODE 6450–01–M

Kansas City Support Office, Buildings Energy Analysis Service; Notice of Solicitation of Grant Proposal.

AGENCY: U.S. Department of Energy.

SUMMARY: The U.S. Department of Energy (DOE), Kansas City Support Office (KCSO) is soliciting grant proposals to pursue innovative concepts to develop a viable process for utilizing engineering students in a buildings analysis program. The program will focus on a integrated (holistic) systems analysis and development of a management/recommissioning plan to facilitate the implementation of recommendations. The analysis will include the operations, maintenance, and restoration needs of heating, ventilating, air-conditioning, lighting, domestic water systems, and the energy accounting procedures currently being used. The project team will also implement a utility accounting system in cooperation with the participating building owner/operators to analyze historic and future utility usage. The target facilities will be schools and other public institutional buildings in the four state KCSO region. The program will pattern certain aspects after the DOE's Energy Analysis and Diagnostic Center (EADC) program but will emphasize measurement of results, institutional partnerships, funding mechanisms to perpetuate the process, training requirements and identification of public and private resources to assist clients in implementing the recommendations. The development of means to sustain the process, assurance of implementation of recommendations, and measurable results are key goals of the program. Projects shall be located in Federal Region VII consisting of the following states: Iowa, Kansas, Missouri, and Nebraska. The successful grantee will be expected to present the pilot program results in a round-table evaluation forum of appropriate stakeholders and governmental officials. Each proposal submitted will be reviewed and evaluated against established qualification and evaluation criteria. The DOE grant will not exceed $65,000. Cost sharing is not mandatory, but will be included in the evaluation criteria. Grant award is expected to be made by September 30, 1994.

DATES: The Solicitation for Financial Assistance Proposal, SFAP NO. PS–KCSO–94003, will be available after July 22, 1994. Requests for copies of the solicitation must be in writing to: Kirk Bond, Program Engineer, U.S. Department of Energy, Kansas City Support Office, 911 Walnut St., Suite 1411, Kansas City, Missouri 64106–2024. Applications must be received by 3:00 p.m. (local time), August 31, 1994.

ADDRESSES AND FURTHER INFORMATION: Kirk Bond, Program Engineer, (816) 426–7054 or JoAnn Timm, Contracting Officer, (816) 426–3116 or at U.S. Department of Energy, Kansas City Support Office, 911 Walnut St., Suite 1411, Kansas City, Missouri 64106–2024.

Issued in Golden, Colorado on: July 20, 1994.

John W. Meeker,

Chief, Procurement Team, GO.

[FR Doc. 94–18919 Filed 8–2–94; 8:45 am]

BILLING CODE 6450–01–M

Carlsbad Area Office; Waste Isolation Pilot Plant; Trespassing on DOE Property

AGENCY: Energy Department.

ACTION: Notice.

SUMMARY: The Department of Energy hereby designates an additional portion of the Waste Isolation Pilot Plant (WIPP) site near Carlsbad, New Mexico, an Off-Limits Area in accordance with 10 CFR Part 860, making it a federal crime under 42 U.S.C. 2278a for unauthorized persons to enter into or upon that part of the WIPP site. If unauthorized entry into or upon the designated portion of the site is into an area enclosed by a fence, wall, roof, or other standard barrier, conviction for such unauthorized entry may result in a fine of not more than $100,000 or imprisonment for not more than one year or both. If unauthorized entry into or upon the site is into an area not enclosed by a fence, wall, roof, or other standard barrier, conviction for such unauthorized entry may result in a fine of not more than $5,000.

FOR FURTHER INFORMATION CONTACT: George E. Dials, Manager, Carlsbad Area Office, P.O. Box 3090, Carlsbad, New Mexico 88221, Telephone (505) 234–7300.

SUPPLEMENTARY INFORMATION: The Waste Isolation Pilot Plant Land Withdrawal Act, Public Law 102–579, transferred jurisdiction over the WIPP site from the Secretary of the Interior to the Secretary of Energy and reserved the WIPP site for the use of the Secretary of Energy for the authorized activities associated with the purposes of WIPP. At this time, pursuant to Section 229 of the Atomic Energy Act of 1954, as amended (47 U.S.C. 2278a), Section 104 of the Energy Reorganization Act of 1974 (42 U.S.C. 5814), as implemented by 10 CFR Part 860 published in the **Federal Register** on July 9, 1975, (40 FR 28789, 28790), and Section 301 of the Department of Energy Organization Act (42 U.S.C. 7151), the Department of Energy hereby gives notice that a portion of the WIPP site is designated an Off-Limits Area and prohibits the unauthorized entry and the unauthorized introduction of weapons or dangerous materials, as provided in 10 CFR 860.3 and 860.4 into or upon that part of the WIPP site in Eddy County, New Mexico.

The portion of the WIPP site being designated in this notice as an Off-Limits Area includes those portions of the WIPP site previously designated as Off-Limits Areas (47 FR 38580, September 1, 1982; 48 FR 28715, June 23, 1983). A description of the portion of the WIPP site being designated at this time is as follows: A tract of land in Eddy County, New Mexico, being part of Sections 20, 21, 28, and 29, Township 22 South, Range 31 East, N.M.P.M., and being more particularly described as follows, to wit: Beginning at a point on the North line of said Section 20 which is S89° 57′ a distance of 1378.68′ from the Northwest corner of said Section 20; Thence S89° 57′ E a distance of 3900.00′ to the corner common to Sections 16, 17, 20, & 21, Thence N89° 51′E a distance of 3160.99′ to a point from which the corner common to Sections 15, 16, 21, & 22 bears N89° 51′E a distance of 2120.00 feet, Thence S00° 01′16″E a distance of 5279.97′ to a point on the line between Sections 21 & 28 from which the corner common to Sections 21, 22, 27, & 28 bears N89° 56′E a distance of 2118.71′ and the corner common to Sections 20, 21, 28, & 29 bears S89° 56′W a distance of 3160.63′, Thence continuing S00° 01′16″E a distance of 3697.74′ to a point from which the corner common to Sections 27, 28, 33, & 34 bears South 1580.0′ and East 2120.0′, Thence N89° 59′27″W a distance of 3159.63′ to a point on the line between Sections 28 & 29 from which the corner common to Sections 20, 21, 28, & 29 bears N00° 02′35″W a distance of 3693.55′ and the corner common to Sections 28, 29, 32, & 33 bears S00° 02′35″E a distance of 1580.51′, Thence continuing N89° 59′27″W a distance of 3897.93′ to a point from which the corner common to Sections 29, 30, 31, & 32 bears S00° 01′W 1580′ and N89° 59′W 1379.34′, Thence N00° 02′27″W a distance of 3696.32′ to a point on the line between Sections 20 & 29 from which the corner common to Sections 20, 21, 28, & 29 bears S89° 57′E a distance of 3898.21′ and the corner common to Sections 19, 20, 29, & 30 bears N89° 57′W a distance of 1381.13′, Thence continuing N00° 02′27″W a distance of 5275.39′ to the point of beginning, containing 1453.9 acres of land, more or less.

Notices stating the pertinent prohibitions of 10 CFR 860.3 and 860.4 and penalties of 10 CFR 860.5 will be posted at all entrances of said tract and at intervals along its perimeter as provided in 10 CFR 860.6.

Issued in Carlsbad, NM July 25, 1994.

George E. Dials,

Manager, Carlsbad Area Office.

[FR Doc. 94–18917 Filed 8–2–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. PL94–4–000]

Pricing Policy For New And Existing Facilities Constructed By Interstate Natural Gas Pipelines;

NOTICE OF PUBLIC CONFERENCE AND OPPORTUNITY TO FILE WRITTEN COMMENTS

July 28, 1994.

Take notice that the Commission will convene a public conference in the above-captioned proceeding to consider the methodologies to be used in setting rates for transportation service with regard to new and existing facilities constructed by interstate natural gas pipelines. The Commission also will be accepting written comments prior to the conference. The date and procedures for the conference will be established by a subsequent notice. Written comments may be filed within 60 days of the date of this notice.

I. Scope of Inquiry

Historically, when pipelines have sought to enlarge their facilities, the Commission had a preference for rolling-in the costs of the new construction into the pipeline's cost-of-service and establishing a single rate for both the existing customers and the expansion customers (those customers obtaining capacity as a result of the new facilities). The Commission found that rolled-in pricing would be appropriate when the new facilities were part of an integrated system and provided system-wide benefits.[1] When the new construction was not integrated into the pipeline's existing system, the Commission would approve incremental pricing in which a separate cost-of-service is established for the existing and expansion facilities, and the prior holders of capacity (existing shippers) and expansion shippers pay different rates.

The Commission, however, became concerned about the effect of rolling-in the costs of new construction that is integrated into the pipeline's existing system. The Commission was particularly concerned with the effects of expensive construction because using rolled-in rates could result in disproportionate costs being imposed on existing customers when compared with the benefits they receive from the

[1] *See* Trunkline Gas Company, 21 FPC 704 (1959), *aff'd*, Battle Creek Gas Company v. FPC, 281 F.2d 42 (D.C. Cir. 1960); Great Lakes Gas Transmission Limited Partnership, 45 FERC ¶ 61,237 (1988).

expansion.[2] The Commission was further concerned that rolling-in rates in this situation could conflict with its efforts to adopt rate designs that promote economic efficiency by causing the pipeline's existing customers to subsidize the rates paid by expansion customers. As a result of these concerns, the Commission, in its *Great Lakes* orders, required the pipeline to charge incremental prices for a system expansion based on a test in which the benefits to existing customers were weighed against the costs of rolling-in the facilities (commensurate benefits test).

In *TransCanada Pipelines Limited* v. *FERC*,[3] the court of appeals, however, remanded the Commission's determination to use incremental rates in *Great Lakes*. The court concluded that the Commission had not justified its focus on commensurate benefits in light of the Commission's past approach of examining whether the new facilities were integrated into existing facilities and whether the facilities provided system-wide benefits, qualitatively described. The court also expressed concern that the use of incremental pricing may result in undue discrimination because facility expansion is caused not only by the demands of the new customers, but by the continuing demands of the existing customers. [4]

The Commission has been moving towards greater reliance on market forces both in its rates and certificate policies. In Order Nos. 436[5] and 636[6], the Commission required pipelines to provide unbundled, open access transportation in order to promote greater efficiency and increased competition among pipelines and their customers, two goals that can be affected by the pricing policies used for new construction. In order to contribute to achieving these two goals, the Commission also required pipelines to institute capacity release mechanisms and to adopt flexible receipt and delivery point policies. In the competitive world of unbundled transportation, shippers have many more transportation options, and the prices shippers pay for transportation on different pipelines has become a critically important aspect of competition in the market. In the competitive capacity market created by Order Nos. 436 and 636, the development of consistent pricing policies is important both for pipelines and their customers, because they need to know the rates that will be charged in order to make appropriate decisions about the amount of capacity to build and to purchase.

The Commission is interested in undertaking a comprehensive evaluation of its current pricing policies to determine whether revisions are needed. One goal of this effort is to develop pricing policies for new construction that will properly reflect cost responsibility and that will further efficiency and competition in the market and promote the development of the industry. Another important goal is to identify how best to provide pipelines and their existing and future customers with as much certainty as possible about whether projects will be approved and the rates customers will be paying for capacity when pipelines expand. Unless pipelines and customers are aware of the rate implications of expansions, they cannot make informed decisions about the amount of capacity to build and to purchase.

As part of the inquiry into ways to provide greater certainty about project approvals and rates for new construction, the Commission is interested in reexamining its current certificate and rates policies for new construction. As a result of the increased reliance on market forces brought about by Order Nos. 436 and 636, the Commission has reevaluated its certificate policies to place greater reliance on the market. The Commission has established procedures under which pipelines can obtain construction certificates for projects that are not fully subscribed at the time of application. First, pipelines may apply for optional certificates for undersubscribed projects under which the pipelines are at risk for cost recovery. [7] Second, if pipelines apply for a traditional certificate and have not been able to demonstrate that the project will be fully subscribed under long term contracts, the Commission has permitted the construction to go forward by issuing certificates containing conditions under which the pipeline is placed at risk for unsubscribed capacity. [8] The Commission, however, has declined to issue at-risk certificates where companies have failed to demonstrate support for a significant amount of the projected capacity. [9]

The Commission's policy has been to determine whether to allow a rolled-in pricing methodology for new facilities when pipelines have sought to recover the costs for these facilities in proceedings under § 4 of the Natural Gas Act (NGA), rather than when the pipelines have sought certificate approval for construction under § 7 of NGA. However, when a pipeline seeks incremental pricing treatment, the Commission generally addresses this issue in the § 7 certificate proceeding where a new facility or service is first proposed. The Commission has not made rolled-in pricing determinations in certificate applications because, in § 7 certificate proceedings, the Commission is considering rates only for new service or customers and cannot change the rates of the pipeline's existing customers. [10] One effect of making rolled-in pricing determinations in § 4 rate proceedings is that the decision is made after the facilities are built and after the customers have determined whether to sign contracts for the facilities.

In a recent order in *Northwest Pipeline Corporation*, [11] the Commission sought to provide greater certainty about rate treatment by issuing a declaratory order in Northwest's certificate proceeding providing a preliminary determination of rate design methodology. Based on the information provided by Northwest in its application and in response to Commission data requests, the Commission found that rolled-in rate treatment would be appropriate in a subsequent § 4 rate filing to recover the

[2] See Great Lakes Gas Transmission Limited Partnership, 57 FERC ¶ 61,140 (1991) (Opinion No. 367), *reh'g denied*, 62 FERC ¶ 61,101 (1993), 57 FERC ¶ 61,141 (1991) (Opinion No. 368), *reh'g denied*, 62 FERC ¶ 61,102 (1993) *remanded*, No. 91-1380, (D.C. Cir. June 10, 1994), 1994 U.S. App. LEXIS 14190; and Southern Natural Gas Company, 51 FERC ¶ 61,296 (1990).

[3] No. 91-1380, (D.C. Cir. June 10, 1994), 1994 U.S. App. LEXIS 14190.

[4] The Commission will decide its position in the *Great Lakes* remand in concert with its consideration of the appropriate pricing policy to use generically in this proceeding.

[5] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (Oct. 18, 1985), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,665 (Oct. 9, 1985).

[6] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 Fed. Reg. 13,267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992).

[7] 18 CFR Part 157, Subpart E.

[8] *See, e.g.*, Arkla Energy Resources Company, 63 FERC ¶ 61,215 at 62,590 (1993).

[9] *See, e.g.*, Questar Pipeline Company, 67 FERC ¶ 61,145 (1994). *But see*, Petal Gas Storage Company, 64 FERC ¶ 61,190 (1993), in which the Commission issued a certificate approving operation of existing storage facilities to provide third party storage service at market-based rates, though the applicant, a newly formed company, had no executed contracts or binding precedent agreements.

[10] *See* Northern Natural Gas Company v. FERC, 827 F.2d 779 (D.C. Cir. 1987); Panhandle Eastern Pipe Line Company v. FERC, 613 F.2d 1120 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 889 (1980). The Commission could change existing customers' rates only by acting under § 5 of the NGA and finding that their rates are unjust and unreasonable.

[11] 59 FERC ¶ 61,289 (1992), *order on reh'g*, 68 FERC ¶ 61,037 (1994).

facility costs, provided, however, that Northwest could show in the § 4 rate proceeding that the expansion facilities would provide the system-wide benefits it alleged in the certificate application and that the rate impact of rolling-in the facilities would be approximately the same as, and not materially greater than, that projected by Northwest.

The Commission is interested in obtaining the industry's views on the extent of contractual support for a project that should be required before the Commission expends resources evaluating the project's rate and environmental aspects. The Commission is concerned about authorizing activities that will affect the environment or confer eminent domain powers on an applicant when the applicant offers no support (whether by way of contracts or precedent agreements) for its proposal. The Commission, however, also is aware that some applicants, particularly new entrants to the market, may not be able to obtain the financing needed to attract customers for their project without some indication by the Commission that the project ultimately may be approved and, if so, at what price capacity will be available.

Depending on the policy adopted for recovering expansion costs, the Commission is also interested in examining whether its current policy of making rolled-in rate determinations in § 4 rate proceedings may need to be revised. For example, if the Commission were to adopt a specific policy (such as always pricing on a rolled-in or incremental basis) or definitive criteria, the question of the proceeding (whether a § 7 certificate or a § 4 rate case) in which to make the determination could be less important, since pipelines and customers would know in advance how the facilities would be priced. However, if the Commission were to adopt more general criteria, such as a system-wide benefits or commensurate benefits test, the Commission may need to consider whether and how to revise its current policies on when and in what proceeding to make the determination.

The Commission is establishing this conference to obtain views from all facets of the gas industry on issues relating to the methods for recovering facility costs. The Commission discusses below some of the issues bearing on the determination of pricing methodologies. The Commission is interested in hearing the industry's views on these issues, as well as other issues related to facility cost recovery, in written submissions and in oral presentations at the conference.

II. Issues to be Considered

A. Benefits And Effects Resulting From The Adoption Of Rolled-in Or Incremental Pricing

The Commission is interested in receiving comments on the competitive effects of adopting rolled-in or incremental pricing as well as other effects resulting from the choice of pricing methodology. The following are some of the questions that will be considered.

1. Which pricing methodology better reflects cost responsibility and provides better market signals about the appropriate scale of construction? Will rolled-in pricing lead to overbuilding because the existing customers are contributing to the costs of construction? On the other hand, does rolled-in pricing better avoid piecemeal expansions, and higher overall costs, by permitting pipelines to build facilities to better serve future needs? Is Commission oversight through its certificate regulation sufficient to prevent overbuilding?

2. What is the effect of each pricing methodology on other national goals, such as promoting the use of natural gas or protecting the environment? For example, which methodology would better permit the market to make the appropriate fuel choice given environmental and other impacts of the choice?

3. Does the choice of pricing methodology have a significant effect on competition among pipelines? For example, does a new pipeline, whose prices reflect current construction costs, have difficulty competing against an existing pipeline that can roll-in new facilities costs? If so, should this be a regulatory concern?

4. Does the choice of pricing methodology have a significant effect on competition in the capacity release market? For example, does an incremental shipper, whose rates reflect the current cost of construction, have difficulty competing in the capacity release market with a shipper paying a pre-expansion rate?

5. Does the adoption of any pricing methodology better comport with a regulatory regime that relies on private contracts and market forces? For example, does the choice of pricing methodology affect business planning and the negotiation of long-term contracts? How important is long-term contracting to the industry?

6. Does charging shippers different prices for the same service under incremental pricing (vintage pricing) create economic distortions or undue discrimination, as raised by the Court in *TransCanada*? Commenters should consider the following questions.

a. Does vintage pricing create economic distortions and, if so, are such distortions greater or less than those associated with rolled-in pricing?

b. Should existing shippers be entitled to receive lower prices because they signed long-term contracts with the pipelines when prices were lower? Commenters should address the terms and conditions relating to rate increases that would exist in long term contracts in a competitive market for capacity. They also should address the prices existing shippers should pay when their contracts expire.

c. What price should a new shipper which acquires existing capacity (formerly priced at a pre-expansion rate) pay? For example, if an existing shipper exercises a contractual right to reduce its contract demand freeing capacity for a new shipper, should a new shipper pay the pre-expansion, the incremental, or some other rate for that freed-up capacity?

d. Are there methods of dealing with the vintage pricing issue? For example, should current shippers be able to release capacity prior to the expansion at up to the proposed incremental rate? If current shippers are willing to release some of their existing capacity prior to the expansion, the scale of the expansion could be reduced. Permitting current shippers to release capacity also would ensure that all shippers would make their capacity determinations based on incremental prices and that capacity would be allocated to those shippers valuing it the most.

B. What Pricing Methodology Or Test Should The Commission Adopt For New And Existing Facilities?

Given the economic effects of the potential choices, the Commission is interested in obtaining comments on the pricing methodology or methodologies that should be used. Comments should not be limited to the rolled-in or incremental methodologies used in the past, but should include potential alternative approaches, with a discussion of the benefits of each approach. If the Commission were to continue its case-by-case approach to determining pricing methodology, the Commission is interested in obtaining comments on the appropriate test that should be used in making this determination. The following are some questions to be considered.

1. What does the industry need in the way of new construction over the next decade (*e.g.*, expansion of facilities, access to new market or supply areas, replacement of old facilities,

connections between existing facilities to create greater flexibility) and how do these needs bear upon the methodology or methodologies used by the Commission to set rates for new construction?

2. Do changes in the industry warrant the adoption of a new approach to establishing pricing methodologies for new or existing construction? For example, are there relevant differences between current and past expansions in terms of the rate impact of the expansions or the customers served by the expansion (*e.g.*, all the pipeline's customers rather than a subset)? What effect does the advent of open access transportation and the unbundling of gas sales from transportation brought about by Order Nos. 436 and 636 have on the choice of pricing methodology?

3. To what extent should other aspects of rate design (*e.g.*, unbundling, mileage-based rate design, seasonal rate design, production area rate design, or market based rates) affect the Commission's policy on the choice between rolled-in and incremental rates?

4. Should the Commission continue to use general criteria, such as the extent of system-wide benefits, or should it adopt discrete policies or guidelines for determining the appropriate methodologies. The following are some possible options to be considered.

a. Different methodologies could be used depending on the type of construction, for example mainline expansions, laterals, extensions beyond the existing termination point, or facilities directly connected to certain customers.

b. Thresholds could be set for determining which methodology to apply, for example, rolling-in costs for facilities unless they would increase rates by more than a certain percentage.

c. Rates for expansion customers could be set at the higher of rolled-in or incremental rates.

5. Should the Commission consider options other than full rolled-in or incremental pricing of new facilities? The following are some options to be considered.

a. Rates for expansion customers could be set based on the sum of incremental costs and a share of pre-expansion costs to reflect the benefits expansion customers receive from existing facilities. The rates for existing shippers also could be adjusted to reflect benefits received from the expansion.

b. Rates could be set on an incremental basis, with the costs rolled-in after some specified period of time or rolled-in gradually over time at a pre-determined level each year.

c. Incremental rates could be used for the expansion customers, but as lower priced contracts for existing shippers expire, their capacity would be rolled-in to the expansion capacity, thus reducing the incremental rate.

d. Rolled-in rates could be used for expansions (or portions of expansions) built to serve existing markets and incremental rates for expansions (or portions of expansions) used to serve new markets.

6. If more general criteria are to be used in individual cases, what should the tests or criteria be? Among the issues to be considered are:

a. Should the Commission adopt a rebuttable presumption in favor of a particular pricing method and what test should be used to overcome the presumption?

b. Should the commensurate benefits test be used for approving rolled-in pricing or is it sufficient that existing shippers obtain positive benefits?

c. What are the advantages and disadvantages of each test, or is another formulation more appropriate?

d. Do benefits need to be measurable? What weight should be given to various criteria, and how should non-measurable criteria be valued?

7. How should the Commission handle multiple expansions, in particular when an initial, expensive addition makes subsequent additions less costly?

For example, pure incremental pricing could cause customers to seek to delay making commitments until the later, less expensive expansion in order to obtain lower rates, while rolled-in pricing could discourage construction of the less expensive expansion because rates would be above the incremental cost of the project.

a. Which of the options is preferable?

b. Are there methods that could avoid both problems?

c. Should the Commission adopt a policy under which the costs for expansions starting from a particular date are cumulated or "rolled-up" to yield an average expansion rate?

C. Should The Commission Revise Its Policies To Provide More Guidance On Construction Approvals And Rates In § 7 Certificate Proceedings?

The Commission is interested in reviewing its current policies relating to granting at-risk certificates and determining the rate methodology for new projects to determine if changes in these policies are needed. For example, if the Commission adopts more general policies for recovering the costs of new facilities, rather than a bright-line test, pipeline customers may need notice of the rates they will be paying prior to the completion of the § 4 proceeding in order to make better informed decisions about the amount of capacity for which to contract.

The Commission is interested in receiving comments on the following questions.

1. What pricing methodology is most consistent with the Commission's at-risk certificate policy?

a. Is there any reason to differentiate between at-risk construction and fully subscribed construction in terms of the pricing methodology used for facility cost recovery?

b. If rolled-in pricing is used, how should the at-risk condition be maintained?

c. In light of the Commission's at-risk policy, should the optional certificate regulations be continued?

2. What are the benefits or detriments of issuing preliminary determinations on certain aspects of a certificate application (such as environmental issues and rates)? Are preliminary determinations useful in dealing with economic aspects of a certificate proposal? What level of contractual or market support should be required to justify the issuance of a preliminary determination? What time limitations, if any, should the Commission impose on submission of supplemental evidence demonstrating contractual or market support?

3. Should the Commission make a distinction in granting preliminary determinations depending on whether: (a) Market-based rates are proposed; (b) the applicant is a new company; or (c) little or no new construction of facilities is involved? What other distinctions, if any, should be made?

4. What are the benefits and detriments of making pricing decisions in or coincident with certificate proceedings?

a. Should the Commission use the preliminary determination or declaratory order approach as in *Northwest*? If so, what should be the burden of proof, what procedures should be used, and how binding should the determination be on subsequent § 4 proceedings?

In particular, commenters should address whether to use abbreviated procedures to make the preliminary determination. For example, the more abbreviated the procedures used during the certificate proceeding, the more quickly the determination will be made. On the other hand, the use of abbreviated procedures may increase the risk that the full § 4 proceeding may

reveal problems or difficulties that were not apparent during the certificate examination. In other words, should the Commission provide certificate applicants with the choice of: (1) A fast-track procedure for applicants which wish to charge incremental rates, or which otherwise have no need for an up-front determination of the rolled-in rate treatment issue; or (2) a separate procedure for applicants which desire an up-front determination on rolled-in rate treatment and are willing to accept the likely evidentiary burdens as well as the additional time likely to process such an application? If so, how should these different tracks be designed?

b. Should the Commission exercise its § 5 authority in the certificate proceeding to establish rates for all customers?

c. Should the Commission require pipelines seeking rolled-in rate treatment to file a § 4 proceeding along with the certificate application?

Commenters should address whether the filing should be a limited § 4 filing examining only the expansion costs and the pricing methodology for these costs or whether it should be a full § 4 proceeding in which all the pipeline's costs are examined. Would a limited § 4 proceeding be appropriate when the pipelines agrees to file a full § 4 proceeding within a stipulated time frame?

d. Should the Commission be able to change the initial rate methodology adopted for facilities at a later point in time? Does changing methodologies upset the goal of providing rate certainty? What criteria should the Commission use in making such changes?

D. Implementation Issues Related To Use Of Incremental Rates

The Commission is interested in exploring a number of questions relating to the implementation of incremental rates.

1. How should the maximum rate for interruptible transportation be determined under incremental rates?

2. The Commission has a policy that all shippers have a right to use all receipt and delivery points within the firm transportation path to which the shipper is entitled or for which it is willing to pay.

a. How does the charging of different rates (in terms of an expansion shipper paying incremental rates and a non-expansion shipper paying pre-expansion rates) affect the flexible receipt and delivery point policy? Should non-expansion shippers have access to points on the expansion facilities? And, at what rate?

b. Should expansion shippers have access to points on the existing facilities? Is it equitable for existing non-expansion shippers, who pay a pre-expansion rate, to have access to receipt and/or delivery points in competition with expansion shippers paying a higher incremental rate at the same points?

3. Are there other administrative burdens on the industry or the Commission that would be occasioned by incremental rates? For example, pipelines now administer complex zone rate schedules. How much additional burden is created by incremental rates?

E. Questions Relating To Other Inquiries

The Commission anticipates that it will initiate two other inquiries in the near future to address: (1) The performance of the current Order No. 636 capacity release program and whether that program can be improved to make the present secondary market in pipeline capacity more efficient; and (2) the relationship between the Commission's open access transportation policies and the use of natural gas as a fuel for electric generation.

1. How do incremental rates, with different customers paying different rates, affect the current capacity release program and how should any problems or issues be handled? For example, what maximum rate should apply to shippers paying different rates?

2. If the Commission were to modify the current capacity release program (*e.g.*, by eliminating the price cap or by allowing releases outside of the pipeline's Electronic Bulletin Boards), would there be any effect that should be considered in deciding whether to apply rolled-in or incremental rates? Conversely, would the Commission's decision to use either rolled-in or incremental rates require modification of the Commission's regulations governing capacity release transactions? Or, will the secondary market, with or without modification, work equally well under either rate approach?

3. Would either rolled-in or incremental treatment of new facilities be most consistent with a policy designed to facilitate the use of natural gas for the electric generation and cogeneration market? Please provide specific examples to the extent available.

III. Comment and Conference Procedures

An original and 14 copies of comments on these issues should be filed with the Commission within 60 days after the date of this notice. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, and should refer to Docket No. PL94–4–000. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street, NE, Washington, DC 20426, during regular business hours. The Commission will issue a subsequent notice of the date for the public conference and the procedures regarding presentations by the public at the conference.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–18870 Filed 8–2–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. ST94–5251–000 et al.]

Valero Transmission, L.P.; Notice of Self-Implementing Transactions

July 28, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and Section 7 of the NGA and Section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to section 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to section 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to Section 284.142 of the Commission's Regulations and section 311(b) of the

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

NGPA. Any interested person may file a complaint concerning such sales pursuant to Section 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to Section 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to Section 284.222 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to Section 284.223 and a blanket certificate issued under section 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under section 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under section 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to section 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to section 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[FR Doc. 94–18833 Filed 8–2–94; 8:45 am]

BILLING CODE 6717–01–P

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	PART 284 SUBPART	EST. MAX. DAILY QUANTITY **	AFF. Y/A/N***	RATE SCH.	DATE COMMENCED	PROJECTED TERMINATION DATE
ST94-5251	VALERO TRANSMISSION, L.P.	NORTHERN NATURAL GAS CO.	05-02-94	C	20,000	N	I	04-21-94	INDEF.
ST94-5252	PANHANDLE EASTERN PIPE LINE CO.	CONSOLIDATED FUEL CORP.	05-02-94	G-S	75,000	N	I	03-01-94	04-30-98
ST94-5253	PANHANDLE EASTERN PIPE LINE CO.	EASTERN ILLINOIS UNIVERSITY	05-02-94	G-S	2,500	N	I	03-01-94	04-30-98
ST94-5254	IROQUOIS GAS TRANS. SYSTEM, L.P.	DIRECT GAS SUPPLY/IESCO, INC.	05-02-94	G-S	18,091	N	F	04-01-94	05-01-94
ST94-5255	IROQUOIS GAS TRANS. SYSTEM, L.P.	NEW ENGLAND POWER POOL CO.	05-02-94	G-S	30,056	N	F	04-01-94	05-01-94
ST94-5256	IROQUOIS GAS TRANS. SYSTEM, L.P.	PHIBRO OIL & GAS INC.	05-02-94	G-S	10,000	N	F	04-08-94	05-01-94
ST94-5257	SABINE PIPE LINE CO.	MIDCOAST ENERGY RESOURCES, INC.	05-02-94	B	60,000	N	F	04-01-94	INDEF.
ST94-5258	CNG TRANSMISSION CORP.	SOUTHERN CONNECTICUT GAS CO.	05-02-94	G-S	10,000	N	I	03-21-94	INDEF.
ST94-5259	CNG TRANSMISSION CORP.	MT. SINAI MEDICAL CENTER	05-02-94	G-S	5,000	N	I	04-02-94	05-30-94
ST94-5260	CNG TRANSMISSION CORP.	ASHLAND EXPLORATION	05-02-94	G-S	30,000	N	I	03-23-94	05-30-94
ST94-5261	CNG TRANSMISSION CORP.	EASCO ALUMINUM CORP.	05-02-94	G-S	3,000	N	I	04-02-94	05-30-94
ST94-5262	CNG TRANSMISSION CORP.	CHAMPION NATURAL GAS	05-02-94	G-S	2,000	N	I	03-24-94	05-21-94
ST94-5263	CNG TRANSMISSION CORP.	PUBLIC SERVICE ELECTRIC & GAS	05-02-94	G-S	95,000	N	I	04-02-94	05-30-94
ST94-5264	CNG TRANSMISSION CORP.	NGC TRANSPORTATION, INC.	05-02-94	G-S	75,000	N	I	04-13-94	12-31-94
ST94-5265	CNG TRANSMISSION CORP.	RIVER GAS CO.	05-02-94	G-S	9,037	Y	F	04-30-94	04-30-01
ST94-5266	CNG TRANSMISSION CORP.	COLUMBIA GAS OF PENNSYLVANIA, INC.	05-02-94	G-S	2,320	N	F	03-21-94	03-31-01
ST94-5267	VALERO TRANSMISSION, L.P.	KOCH GATEWAY PIPELINE CO.	05-02-94	C	6,000	N	I	04-19-94	INDEF.
ST94-5268	TRANSOK, INC.	ANR PIPELINE CO., ET AL.	05-02-94	C	50,000	N	F	04-01-94	04-01-98
ST94-5269	TRANSOK, INC.	ANR PIPELINE CO., ET AL.	05-02-94	C	10,000	N	F	04-01-94	04-01-95
ST94-5270	TRANSCONTINENTAL GAS P/L CORP.	STATOIL NORTH AMERICA, INC.	05-03-94	G-S	40,000	N	I	04-14-94	INDEF.
ST94-5271	TRANSOK, INC.	ANR PIPELINE CO., ET AL.	05-02-94	C	25,000	N	F	04-01-94	04-01-95
ST94-5272	TRANSOK, INC.	ANR PIPELINE CO., ET AL.	05-02-94	C	1,200	N	I	04-01-94	INDEF.
ST94-5273	LONE STAR GAS CO.	ARKLA ENERGY RESOURCES, ET AL.	05-03-94	C	50,000	N	I	04-01-94	INDEF.
ST94-5274	TENNESSEE GAS PIPELINE CO.	ASHLAND PETROLEUM	05-03-94	G-S	5,299	N	F	04-06-93	INDEF.
ST94-5275	TENNESSEE GAS PIPELINE CO.	PEOPLES NATURAL GAS CO.	05-03-94	G-S	1	N	I	04-06-94	INDEF.
ST94-5276	TENNESSEE GAS PIPELINE CO.	COASTAL GAS MARKETING CO.	05-03-94	G-S	5,000	N	F	04-15-93	INDEF.
ST94-5277	COLUMBIA GULF TRANSMISSION CO.	SEAGULL MARKETING SERVICES, INC.	05-03-94	G-S	15,000	N	F	04-05-94	10-31-94
ST94-5278	COLUMBIA GULF TRANSMISSION CO.	COAST ENERGY GROUP, INC.	05-03-94	G-S	35,000	N	I	04-19-94	INDEF.
ST94-5279	COLUMBIA GULF TRANSMISSION CO.	ALATENN ENERGY MARKETING CO., INC.	05-03-94	G-S	80,000	N	I	04-19-94	INDEF.
ST94-5280	COLUMBIA GAS TRANSMISSION CO.	PROVIDENCE GAS CO.	05-03-94	G-S	47,455	N	F	04-01-94	INDEF.
ST94-5281	NATURAL GAS P/L CO. OF AMERICA	UNITED STATES GYPSUM CO.	05-03-94	G-S	1,000	N	F	03-01-94	01-31-95
ST94-5282	FLORIDA GAS TRANSMISSION CO.	CARGILL FERTILIZER, INC.	05-03-94	G-S	4,795	N	I	04-01-94	INDEF.
ST94-5283	FLORIDA GAS TRANSMISSION CO.	TEXACO GAS MARKETING, INC.	05-03-94	G-S	25,000	N	I	04-01-94	INDEF.
ST94-5284	FLORIDA GAS TRANSMISSION CO.	CARGILL FERTILIZER, INC.	05-03-94	G-S	937	N	F	04-01-94	01-31-97
ST94-5285	FLORIDA GAS TRANSMISSION CO.	SWIFT ENERGY CO.	05-03-94	G-S	2,000	N	I	04-02-94	INDEF.
ST94-5286	U-T OFFSHORE SYSTEM	TEXACO GAS MARKETING, INC.	05-04-94	K-S	25,000	N	F	04-01-94	INDEF.
ST94-5287	U-T OFFSHORE SYSTEM	TORCH GAS, L.C.	05-04-94	K-S	100,000	N	I	04-02-94	INDEF.
ST94-5288	U-T OFFSHORE SYSTEM	TRANSCO GAS MARKETING CO.	05-04-94	K-S	6,070	N	F	04-01-94	08-09-94
ST94-5289	U-T OFFSHORE SYSTEM	SONAT MARKETING CO.	05-04-94	K-S	50,000	N	I	02-28-94	INDEF.
ST94-5290	HIGH ISLAND OFFSHORE SYSTEM	TORCH GAS, L.C.	05-04-94	K-S	35,000	N	I	04-01-94	INDEF.
ST94-5291	HIGH ISLAND OFFSHORE SYSTEM	TRANSCO GAS MARKETING CO.	05-04-94	K-S	6,100	N	F	04-01-94	08-09-94
ST94-5292	HIGH ISLAND OFFSHORE SYSTEM	MURPHY EXPLORATION & PRODUCTION CO.	05-04-94	K-S	200,000	N	I	12-21-93	INDEF.
ST94-5293	WILLIAMS NATURAL GAS CO.	BOYD ROSENE AND ASSOCIATES, INC.	05-04-94	G-S	20,000	N	I	05-01-94	INDEF.
ST94-5294	WILLIAMS NATURAL GAS CO.	CONAGRA, INC.	05-04-94	G-S	5,000	N	I	05-01-94	04-01-95
ST94-5295	WILLIAMS NATURAL GAS CO.	CONAGRA, INC.	05-04-94	G-S	1,200	N	F	05-01-94	05-01-95
ST94-5296	WILLIAMS NATURAL GAS CO.	BOYD ROSENE AND ASSOCIATES, INC.	05-04-94	G-S	5,000	N	I	05-01-94	09-30-98
ST94-5297	WILLIAMS NATURAL GAS CO.	WESTERN RESOURCES, INC.	05-04-94	G-S	30	N	I	03-31-94	10-01-94
ST94-5298	STINGRAY PIPELINE CO.	EASTEX GAS STORAGE & EXCHANGE	05-04-94	K-S	300,000	N	I	04-01-93	INDEF.
ST94-5299	NORTHERN ILLINOIS GAS CO.	ANR PIPELINE CO., ET AL.	05-04-94	G-HT	50,000	N	I	03-23-94	04-20-94

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	PART 284 SUBPART	EST. MAX. DAILY QUANTITY **	AFF. Y/A/N***	RATE SCH.	DATE COMMENCED	PROJECTED TERMINATION DATE
ST94-5300	COLORADO INTERSTATE GAS CO.	UNION PACIFIC FUELS, INC.	05-05-94	G-S	50,000	N	F	01-01-94	12-31-94
ST94-5301	EL PASO NATURAL GAS CO.	MOCK RESOURCES, INC.	05-05-94	G-S	10,000	N	I	04-07-94	INDEF.
ST94-5302	TENNESSEE GAS PIPELINE CO.	LONG ISLAND LIGHTING CO.	05-06-94	G-S	50,000	N	I	05-01-94	INDEF.
ST94-5303	TENNESSEE GAS PIPELINE CO.	NEW JERSEY NATURAL GAS CO.	05-06-94	G-S	10,588	N	I	05-01-94	INDEF.
ST94-5304	MIDWESTERN GAS TRANSMISSION CO.	WOODWARD MARKETING, INC.	05-06-94	G-S	800	N	F	05-01-94	INDEF.
ST94-5305	FLORIDA GAS TRANSMISSION CO.	AQUILA ENERGY MARKETING CORP.	05-06-94	G-S	50,000	N	I	04-05-94	INDEF.
ST94-5306	FLORIDA GAS TRANSMISSION CO.	MOBIL NATURAL GAS INC.	05-06-94	G-S	100,000	N	I	04-07-94	INDEF.
ST94-5307	KOCH GATEWAY PIPELINE CO.	ENRON GAS MARKETING, INC.	05-06-94	G-S	N/A	N	I	04-30-94	INDEF.
ST94-5308	KOCH GATEWAY PIPELINE CO.	TRANSCONTINENTAL GAS P/L CORP.	05-06-94	G	N/A	N	I	04-30-94	INDEF.
ST94-5309	KOCH GATEWAY PIPELINE CO.	SOUTH COAST GAS CO., INC.	05-06-94	G-S	18,210	N	F	04-15-94	04-01-97
ST94-5310	KOCH GATEWAY PIPELINE CO.	MIDCON GAS SERVICES CORP.	05-06-94	G-S	4,405	N	F	04-15-94	05-01-95
ST94-5311	KOCH GATEWAY PIPELINE CO.	KOCH GAS SERVICES CO.	05-06-94	G-S	304,000	A	F	04-15-94	04-01-95
ST94-5312	KOCH GATEWAY PIPELINE CO.	CITY OF GULF BREEZE	05-06-94	G-S	2,096	N	F	04-15-94	INDEF.
ST94-5313	KOCH GATEWAY PIPELINE CO.	PHILLIPS PETROLEUM CO.	05-06-94	G-S	N/A	N	I	04-30-94	INDEF.
ST94-5314	KOCH GATEWAY PIPELINE CO.	HADSON GAS SYSTEMS, INC.	05-06-94	G-S	N/A	N	I	04-15-94	INDEF.
ST94-5315	KOCH GATEWAY PIPELINE CO.	TRANS LOUISIANA GAS CO.	05-06-94	G-S	12,073	N	F	04-15-94	04-01-97
ST94-5316	KOCH GATEWAY PIPELINE CO.	TENNESSEE GAS PIPELINE CO.	05-06-94	G	N/A	N	I	04-30-94	INDEF.
ST94-5317	KOCH GATEWAY PIPELINE CO.	BADGER OIL CORP.	05-06-94	G-S	N/A	N	I	04-30-94	INDEF.
ST94-5318	KOCH GATEWAY PIPELINE CO.	AMAX OIL & GAS, INC.	05-06-94	G-S	N/A	N	I	04-30-94	INDEF.
ST94-5319	KOCH GATEWAY PIPELINE CO.	TRANSCO ENERGY MARKETING CO.	05-06-94	G-S	N/A	N	I	04-30-94	INDEF.
ST94-5320	KOCH GATEWAY PIPELINE CO.	CRESCENT GAS CORP.	05-06-94	G-S	N/A	N	I	04-30-94	INDEF.
ST94-5321	KOCH GATEWAY PIPELINE CO.	EXXON CORP.	05-06-94	G-S	N/A	N	I	04-30-94	INDEF.
ST94-5322	KOCH GATEWAY PIPELINE CO.	INTERNATIONAL PAPER CO.	05-06-94	G-S	16,125	N	F	04-30-94	08-28-94
ST94-5323	KOCH GATEWAY PIPELINE CO.	MG NATURAL GAS CORP.	05-06-94	G-S	N/A	N	I	04-30-94	INDEF.
ST94-5324	KOCH GATEWAY PIPELINE CO.	COAST ENERGY GROUP	05-06-94	G-S	N/A	N	I	04-15-94	INDEF.
ST94-5325	KOCH GATEWAY PIPELINE CO.	ASSOCIATED INTRASTATE PIPELINE CO.	05-06-94	G-S	12,000	N	F	04-15-94	01-01-95
ST94-5326	KOCH GATEWAY PIPELINE CO.	GULF GAS UTILITIES CO.	05-06-94	G-S	N/A	N	I	04-14-94	INDEF.
ST94-5327	STINGRAY PIPELINE CO.	CHEVRON USA, INC.	05-09-94	K-S	150,000	N	I	05-01-94	INDEF.
ST94-5328	STINGRAY PIPELINE CO.	NATURAL GAS P/L CO. OF AMERICA	05-06-94	K	100,000	Y	I	01-01-93	INDEF.
ST94-5329	NATURAL GAS P/L CO. OF AMERICA	AIG TRADING CORP.	05-09-94	G-S	50,000	N	I	11-24-93	INDEF.
ST94-5330	NATURAL GAS P/L CO. OF AMERICA	ASSOCIATED NATURAL GAS, INC.	05-09-94	G-S	40,500	N	F	03-01-94	03-31-95
ST94-5331	TRUNKLINE GAS CO.	HADSON GAS SYSTEMS, INC.	05-09-94	G-S	19,000	N	F	05-01-94	INDEF.
ST94-5332	TRUNKLINE GAS CO.	WESTCOAST GAS SERVICES (U.S.A.)	05-09-94	G-S	1,000	N	F	05-01-94	INDEF.
ST94-5333	TRUNKLINE GAS CO.	JAMES RIVER PAPER CO., INC.	05-09-94	G-S	2,500	N	F	05-01-94	INDEF.
ST94-5334	QUESTAR PIPELINE CO.	PACIFICORP	05-09-94	G-S	20,000	N	F	04-16-94	INDEF.
ST94-5335	QUESTAR PIPELINE CO.	BARRETT FUELS CORP.	05-09-94	G-S	581	N	F	05-01-94	09-30-94
ST94-5336	TEJAS GAS PIPELINE CO.	SABINE PIPELINE CO.	05-09-94	C	15,000	N	I	02-01-94	INDEF.
ST94-5337	TEXAS GAS TRANSMISSION CORP.	CITY OF BROWNSVILLE UTILITY BOARD	05-10-94	G-S	700	N	F	05-01-94	INDEF.
ST94-5338	TEXAS GAS TRANSMISSION CORP.	JACKSON UTILITY DIVISION	05-10-94	G-S	3,500	N	F	05-01-94	INDEF.
ST94-5339	COLUMBIA GAS TRANSMISSION CORP.	GENERAL MOTORS CORP.	05-10-94	G-S	4,500	N	F	04-01-94	INDEF.
ST94-5340	COLUMBIA GAS TRANSMISSION CORP.	LUKENS STEEL CO.	05-10-94	G-S	3,785	N	F	04-01-94	INDEF.
ST94-5341	COLUMBIA GAS TRANSMISSION CORP.	R. E. FOX & ASSOCIATES	05-11-94	G-S	N/A	N	N/A	05-01-94	INDEF.
ST94-5342	COLUMBIA GAS TRANSMISSION CORP.	CNG GAS SERVICES CORP.	05-11-94	G-S	N/A	N	N/A	05-01-94	INDEF.
ST94-5343	COLUMBIA GAS TRANSMISSION CORP.	AMGAS, INC.	05-11-94	G-S	N/A	N	N/A	05-01-94	INDEF.
ST94-5344	COLUMBIA GAS TRANSMISSION CORP.	INTERSTATE GAS MARKETING, INC.	05-11-94	G-S	47	N	F	05-01-94	INDEF.
ST94-5345	COLUMBIA GAS TRANSMISSION CORP.	HONDA OF AMERICA MANUFACTURING, INC.	05-11-94	G-S	17,680	N	F	05-01-94	INDEF.
ST94-5346	COLUMBIA GAS TRANSMISSION CORP.	ENRON ACCESS CORP.	05-11-94	G-S	50,000	N	F	05-01-94	10-31-94
ST94-5347	COLUMBIA GAS TRANSMISSION CORP.	MISSION GAS COMPANY, INC.	05-11-94	G-S	5,000	N	I	05-01-94	INDEF.
ST94-5348	COLUMBIA GAS TRANSMISSION CORP.	CON EDISON GAS MARKETING	05-11-94	G-S	150,000	N	I	05-01-94	INDEF.

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	PART 284 SUBPART	EST. MAX. DAILY QUANTITY **	AFF. Y/A/N***	RATE SCH.	DATE COMMENCED	PROJECTED TERMINATION DATE
ST94-5349	COLUMBIA GAS TRANSMISSION CORP.	TRISTAR GAS CO.	05-11-94	G-S	25,000	N	I	05-01-94	INDEF.
ST94-5350	COLUMBIA GAS TRANSMISSION CORP.	TRISTAR GAS CO.	05-11-94	G-ST	N/A	N	I	05-01-94	INDEF.
ST94-5351	SOUTHERN NATURAL GAS CO.	PEOPLES GAS SYSTEM INC.	05-11-94	G-S	25,202	N	F	05-01-94	04/04/30
ST94-5352	SOUTHERN NATURAL GAS CO.	FORD MOTOR CO.	05-11-94	G-S	1,192	N	F	05-04-94	05/31/94
ST94-5353	SOUTHERN NATURAL GAS CO.	KOCH GAS SERVICES	05-11-94	G-S	100,000	N	I	05-01-94	INDEF.
ST94-5354	SOUTHERN NATURAL GAS CO.	PROCTOR & GAMBLE PAPER PROD.	05-11-94	G-S	2,599	N	F	05-01-94	04-30-02
ST94-5355	SOUTHERN NATURAL GAS CO.	INTERNATIONAL PAPER CO.	05-11-94	G-S	2,016	N	F	05-02-94	04-30-02
ST94-5356	SOUTHERN NATURAL GAS CO.	CITY OF CORDELE	05-11-94	G-S	252	N	F	05-04-94	04-30-04
ST94-5357	SOUTHERN NATURAL GAS CO.	TEXICAN NATURAL GAS CO.	05-11-94	G-S	7,500	N	F	05-01-94	04-30-95
ST94-5358	SEA ROBIN PIPELINE CO.	SAMEDAN OIL CORP.	05-11-94	G-S	300,000	N	I	05-01-94	INDEF.
ST94-5359	SOUTH GEORGIA NATURAL GAS CO.	COASTAL GAS MARKETING CO.	05-11-94	G-S	20,000	N	I	01-26-94	INDEF.
ST94-5360	SOUTH GEORGIA NATURAL GAS CO.	CITY OF CUTHBERT	05-11-94	G-S	5,000	N	I	01-27-94	INDEF.
ST94-5361	SOUTH GEORGIA NATURAL GAS CO.	PROCTOR & GAMBLE PAPER PROD.	05-11-94	G-S	2,578	N	F	05-01-94	04-30-02
ST94-5362	SOUTH GEORGIA NATURAL GAS CO.	INTERNATIONAL PAPER CO.	05-11-94	G-S	2,000	N	F	05-02-94	04-30-02
ST94-5363	SOUTH GEORGIA NATURAL GAS CO.	PEOPLES GAS SYSTEM INC.	05-11-94	G-S	25,000	N	F	05-01-94	04-30-04
ST94-5364	NATIONAL FUEL GAS SUPPLY CORP.	PENNSYLVANIA GENERAL ENERGY CORP.	05-11-94	G-S	1,000	N	I	03-01-94	02-28-14
ST94-5365	NATIONAL FUEL GAS SUPPLY CORP.	SONAT MARKETING CO.	05-11-94	G-S	25,000	N	I	04-14-94	03-31-95
ST94-5366	NATIONAL FUEL GAS SUPPLY CORP.	NORTHERN UTILITIES, INC.	05-11-94	G-S	100,000	N	I	03-23-94	01-31-14
ST94-5367	NATIONAL FUEL GAS SUPPLY CORP.	BAY STATE GAS CO.	05-11-94	G-S	100,000	N	I	03-23-94	01-31-14
ST94-5368	NATIONAL FUEL GAS SUPPLY CORP.	NEW YORK STATE ELECTRIC & GAS CORP.	05-11-94	G-S	50,000	N	I	05-01-94	04-30-14
ST94-5369	CYPRESS GAS PIPELINE SYSTEM	COLUMBIA GULF TRANS. CO., ET AL.	05-12-94	C	100,000	N	I	04-09-94	INDEF.
ST94-5370	PANHANDLE EASTERN PIPE LINE CO.	COENERGY TRADING CO.	05-12-94	G-S	270,000	N	I	01-01-94	04-30-98
ST94-5371	PANHANDLE EASTERN PIPE LINE CO.	CENTRAL ILLINOIS LIGHT CO.	05-12-94	G-S	4,882	N	F	04-01-94	03-31-95
ST94-5372	MIDWESTERN GAS TRANSMISSION CO.	TENNECO GAS MARKETING CO.	05-12-94	G-S	10,000	N	F	05-01-94	INDEF.
ST94-5373	MIDWESTERN GAS TRANSMISSION CO.	H & N GAS, LTD.	05-12-94	G-S	6,436	N	F	05-04-94	INDEF.
ST94-5374	ONG TRANSMISSION CO.	TRANSOK-BRADLEY (NGPL)	05-12-94	C	50,000	N	I	05-01-94	INDEF.
ST94-5375	COLUMBIA GAS TRANSMISSION CORP.	MOUNTAINEER GAS CO.	05-12-94	G-S	70,000	N	I	04-01-94	INDEF.
ST94-5376	COLUMBIA GAS TRANSMISSION CORP.	MOUNTAINEER GAS CO.	05-12-94	G-S	3,500	N	F	04-01-94	INDEF.
ST94-5377	COLUMBIA GAS TRANSMISSION CORP.	MOUNTAINEER GAS CO.	05-12-94	G-S	71,107	N	F	04-01-94	INDEF.
ST94-5378	COLUMBIA GAS TRANSMISSION CORP.	AMGAS, INC.	05-12-94	G-S	10,000	N	I	05-01-94	INDEF.
ST94-5379	QUESTAR PIPELINE CO.	LUFF EXPLORATION CO.	05-13-94	G-S	525	N	I	02-01-94	INDEF.
ST94-5380	QUESTAR PIPELINE CO.	MOBIL NATURAL GAS, INC.	05-13-94	G-S	15,000	N	I	04-01-94	INDEF.
ST94-5381	PACIFIC GAS TRANSMISSION CO.	CITY OF BURBANK	05-13-94	G-S	4,700	N	F	04-01-94	INDEF.
ST94-5382	PACIFIC GAS TRANSMISSION CO.	WASHINGTON ENERGY GAS MARKETING CO.	05-13-94	G-S	100,000	N	I	04-09-94	INDEF.
ST94-5383	PACIFIC GAS TRANSMISSION CO.	ENRON GAS MARKETING, INC.	05-13-94	G-S	100,000	N	I	05-01-94	INDEF.
ST94-5384	NORAM GAS TRANSMISSION CO.	HOGAN CONSTRUCTION, INC.	05-13-94	G-S	100	N	F	05-01-94	INDEF.
ST94-5385	NORAM GAS TRANSMISSION CO.	TOWNSENDS OF ARKANSAS, INC.	05-13-94	G-S	554	N	F	05-01-94	INDEF.
ST94-5386	NORAM GAS TRANSMISSION CO.	CONAGRA, INC.	05-13-94	G-S	1,200	N	F	05-01-94	INDEF.
ST94-5387	NORAM GAS TRANSMISSION CO.	CLINTON GAS TRANSMISSION, INC.	05-13-94	G-S	400	N	F	05-01-94	INDEF.
ST94-5388	NORAM GAS TRANSMISSION CO.	RIVIANNA FOODS, INC.	05-13-94	G-S	757	N	F	05-01-94	04-30-95
ST94-5389	NORAM GAS TRANSMISSION CO.	ENERGY DEVELOPMENT CORP.	05-13-94	G-S	30,000	N	I	04-01-94	INDEF.
ST94-5390	NORAM GAS TRANSMISSION CO.	WILLAMETTE INDUSTRIES, INC.	05-13-94	G-S	700	N	F	05-01-94	INDEF.
ST94-5391	COLUMBIA GULF TRANSMISSION CO.	HESSE GAS	05-13-94	G-S	30,000	N	I	05-01-94	INDEF.
ST94-5392	COLUMBIA GULF TRANSMISSION CO.	STATOIL NORTH AMERICA, INC.	05-13-94	G-S	30,000	N	I	05-01-94	INDEF.
ST94-5393	COLUMBIA GULF TRANSMISSION CO.	GORDONSVILLE ENERGY L.P.	05-13-94	G-S	60,000	N	I	05-01-94	INDEF.
ST94-5394	COLUMBIA GULF TRANSMISSION CO.	COMMONWEALTH ATLANTIC L.P.	05-13-94	G-S	96,000	N	I	05-01-94	INDEF.
ST94-5395	WINNIE PIPELINE CO.	FLORIDA GAS TRANS. CO., ET AL.	05-16-94	C	200,000	N	F	01-01-94	INDEF.
ST94-5396	WINNIE PIPELINE CO.	NATURAL GAS P/L CO. OF AMER., ET AL.	05-16-94	C	20,000	N	I	05-01-93	INDEF.
ST94-5397	COLUMBIA GAS TRANSMISSION CORP.	ORANGE & ROCKLAND UTILITIES, INC.	05-13-94	G-S	67,100	N	F	04-01-94	INDEF.

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	PART 284 SUBPART	EST. MAX. DAILY QUANTITY **	AFF. Y/A/N***	RATE SCH.	DATE COMMENCED	PROJECTED TERMINATION DATE
ST94-5398	COLORADO INTERSTATE GAS CO.	UNIVERSAL RESOURCES CORP.	05-13-94	G-S	10,000	N	F	05-01-94	10-31-94
ST94-5399	COLORADO INTERSTATE GAS CO.	NGC TRANSPORTATION, INC.	05-13-94	G-S	15,000	N	F	05-01-94	10-31-94
ST94-5400	KOCH GATEWAY PIPELINE CO.	ENTEX, A DIVISION OF ARKLA, INC.	05-13-94	G-S	6,000	N	I	04-15-94	03-31-95
ST94-5401	TEJAS GAS PIPELINE CO.	DGS TRADING INC.	05-16-94	G-I	5,000	N	I	01-05-94	INDEF.
ST94-5402	LLANO, INC.	EL PASO NATURAL GAS CO.	05-17-94	C	50,000	N	I	04-04-94	INDEF.
ST94-5403	TENNESSEE GAS PIPELINE CO.	MOBIL NATURAL GAS INC.	05-17-94	G-S	7,000	N	F	05-03-94	INDEF.
ST94-5404	CHANDELEUR PIPE LINE CO.	HADSON GAS SYSTEMS, INC.	05-17-94	G-S	50,000	N	I	05-10-94	INDEF.
ST94-5405	VALERO TRANSMISSION, L.P.	NORTHERN NATURAL GAS CO.	05-17-94	C	20,000	N	I	05-01-94	INDEF.
ST94-5406	GULF ENERGY PIPELINE CO.	TRUNKLINE GAS CO.	05-17-94	C	15,000	N	I	03-01-94	INDEF.
ST94-5407	NATIONAL FUEL GAS SUPPLY CORP.	HUB SERVICES, INC.	05-17-94	G-S	500,000	Y	I	03-02-94	01-11-14
ST94-5408	GULF ENERGY PIPELINE CO.	TENNESSEE GAS PIPELINE CO.	05-17-94	C	300	N	I	05-03-94	INDEF.
ST94-5409	COLUMBIA GAS TRANSMISSION CORP.	1564 EAST LANCASTER AVENUE BUSINESS	05-18-94	G-ST	N/A	N	I	05-01-94	INDEF.
ST94-5410	NORTHERN NATURAL GAS CO.	CLAYTON ENERGY CORP.	05-18-94	G-S	25,000	N	I	03-23-94	INDEF.
ST94-5411	NORTHERN NATURAL GAS CO.	MINNEGASCO, A DIV. OF ARKLA, INC.	05-18-94	G-S	20,000	N	I	03-31-94	INDEF.
ST94-5412	NORTHERN NATURAL GAS CO.	E. D. KINCAID III/ CHARLTON HADDEN	05-18-94	G-S	500	N	I	04-14-94	INDEF.
ST94-5413	NORTHERN NATURAL GAS CO.	H & N GAS, LTD.	05-18-94	G-S	10,000	N	I	03-12-94	INDEF.
ST94-5414	NORTHERN NATURAL GAS CO.	INDUSTRIAL ENERGY APPLICATIONS, INC.	05-18-94	G-S	10,000	N	F	04-01-94	10-31-94
ST94-5415	NORTHERN NATURAL GAS CO.	AMOCO ENERGY TRADING CORP.	05-18-94	G-S	12,000	N	I	04-01-94	INDEF.
ST94-5416	NORTHWEST PIPELINE CORP.	NORTHWEST NATURAL GAS CO.	05-19-94	G-S	23,038	N	F	04-04-94	INDEF.
ST94-5417	NORTHWEST PIPELINE CORP.	BC GAS UTILITY LTD.	05-19-94	G-S	63,000	N	F	04-06-94	INDEF.
ST94-5418	NORTHERN NATURAL GAS CO.	HADSON GAS SYSTEMS, INC.	05-19-94	G-S	4,000	N	F	04-05-94	10-31-94
ST94-5419	NORTHERN NATURAL GAS CO.	LONE STAR GAS CO.	05-19-94	B	50,000	N	I	04-01-94	INDEF.
ST94-5420	LONE STAR GAS CO.	KOCH GATEWAY, ET AL.	05-19-94	C	30,000	N	I	04-19-94	INDEF.
ST94-5421	LONE STAR GAS CO.	KOCH GATEWAY, ET AL.	05-19-94	C	50,000	N	I	05-01-94	INDEF.
ST94-5422	K N INTERSTATE GAS TRANS. CO.	VESGAS CO.	05-19-94	G-S	5,000	N	I	03-11-94	INDEF.
ST94-5423	K N WATTENBERG TRANS. LTD. LIA.	ASSOCIATED NATURAL GAS, INC.	05-19-94	G-S	5,000	N	I	03-04-94	INDEF.
ST94-5424	K N INTERSTATE GAS TRANS. CO.	LOUISIANA LAND AND EXPLORATION CO.	05-19-94	G-S	5,000	N	F	04-01-94	11-01-94
ST94-5425	K N INTERSTATE GAS TRANS. CO.	K N GAS MARKETING, INC.	05-19-94	G-S	5,000	A	F	05-01-94	09-30-94
ST94-5426	TENNESSEE GAS PIPELINE CO.	KERR-MCGEE CORP.	05-20-94	G-S	5,000	N	F	04-27-94	INDEF.
ST94-5427	TENNESSEE GAS PIPELINE CO.	KERR-MCGEE CORP.	05-20-94	G-S	800	N	F	05-01-94	INDEF.
ST94-5428	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-20-94	G-S	40,000	N	I	04-20-94	03-31-96
ST94-5429	WILLISTON BASIN INTER. P/L CO.	PRAIRIELANDS ENERGY MARKETING, INC.	05-20-94	G-S	100,000	N	I	04-22-94	04-19-96
ST94-5430	SUPERIOR OFFSHORE PIPELINE CO.	BRIDGELINE GAS DISTRIBUTION CO.	05-20-94	B	1,000	N	I	03-01-94	INDEF.
ST94-5431	MIDWESTERN GAS TRANSMISSION CO.	HADSON GAS SYSTEMS INC.	05-23-94	G-S	20,000	N	F	05-01-94	INDEF.
ST94-5432	TENNESSEE GAS PIPELINE CO.	MG NATURAL GAS CORP.	05-23-94	G-S	1,220	N	F	05-02-94	INDEF.
ST94-5433	MIDWESTERN GAS TRANSMISSION CO.	CENERGY, INC.	05-23-94	G-S	5,000	N	I	05-13-94	INDEF.
ST94-5434	ENOGEX INC.	ARKLA ENERGY RESOURCES CO.	05-24-94	C	10,000	N	I	06-01-94	INDEF.
ST94-5435	ENOGEX INC.	NORTHERN NATURAL GAS CO.	05-24-94	C	50,000	N	I	05-07-94	INDEF.
ST94-5436	K N INTERSTATE GAS TRANS. CO.	TRANSOK, INC.	05-24-94	B	100,000	N	F	10-01-93	INDEF.
ST94-5437	K N INTERSTATE GAS TRANS. CO.	ANTHEM ENERGY CO., L.P.	05-24-94	G-S	100,000	N	F	10-01-93	INDEF.
ST94-5438	NORTHERN ILLINOIS GAS CO.	ANR PIPELINE CO., ET AL.	05-23-94	G-HT/G-ST	10,000	N	I	04-16-94	05-31-94
ST94-5439	NORTHERN ILLINOIS GAS CO.	ANR PIPELINE CO., ET AL.	05-23-94	G-HT/G-ST	1,000	N	I	04-13-94	05-31-94
ST94-5440	NORTHERN ILLINOIS GAS CO.	ANR PIPELINE CO., ET AL.	05-23-94	G-HT/G-ST	5,000	N	I	04-01-94	04-30-94
ST94-5441	NORTHERN ILLINOIS GAS CO.	ANR PIPELINE CO., ET AL.	05-23-94	G-HT/G-ST	20,000	N	I	04-15-94	05-31-94
ST94-5442	TEJAS GAS PIPELINE CO.	SABINE PIPELINE CO.	05-23-94	C	50,000	N	I	03-03-94	INDEF.
ST94-5443	TEJAS GAS PIPELINE CO.	CARGILL, INC.	05-23-94	G-I	50,000	N	I	03-12-94	INDEF.
ST94-5444	SABINE PIPE LINE CO.	TEXACO GAS MARKETING INC.	05-23-94	G-S	60,000	A	F	05-12-94	INDEF.
ST94-5445	SABINE PIPE LINE CO.	TEXACO GAS MARKETING INC.	05-23-94	G-S	50,000	A	F	05-01-94	INDEF.
ST94-5446	TRANSCONTINENTAL GAS P/L CORP.	GLOBAL PETROLEUM CORP.	05-24-94	G-S	20,000	N	I	05-01-94	INDEF.

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	PART 284 SUBPART	EST. MAX. DAILY QUANTITY **	AFF. Y/A/N***	RATE SCH.	DATE COMMENCED	PROJECTED TERMINATION DATE
ST94-5447	TRANSCONTINENTAL GAS P/L CORP.	MIDPAR, L.P.	05-24-94	G-S	10,000	N	I	05-01-94	INDEF.
ST94-5448	TRANSCONTINENTAL GAS P/L CORP.	NATIONAL GAS RESOURCES L.P.	05-24-94	G-S	180,000	N	I	05-01-94	INDEF.
ST94-5449	TRANSCONTINENTAL GAS P/L CORP.	CHESAPEAKE ENERGY CORP.	05-24-94	G-S	60,000	N	I	05-01-94	INDEF.
ST94-5450	TRANSCONTINENTAL GAS P/L CORP.	AURORA NAT. GAS & ASSOC. PROD.,L.C.	05-24-94	G-S	10,000	N	I	05-01-94	INDEF.
ST94-5451	TRANSCONTINENTAL GAS P/L CORP.	TEJAS GAS MARKETING CO.	05-24-94	G-S	360,000	N	I	05-01-94	INDEF.
ST94-5452	PANHANDLE EASTERN PIPE LINE CO.	MESA OPERATING CO.	05-24-94	G-S	7,600	N	I	04-26-94	04-30-99
ST94-5453	DELHI GAS PIPELINE CORP.	ANR PIPELINE CO., ET AL.	05-25-94	C	5,000	N	I	05-01-94	INDEF.
ST94-5454	DELHI GAS PIPELINE CORP.	ANR PIPELINE CO., ET AL.	05-25-94	C	750	N	I	05-01-94	INDEF.
ST94-5455	DELHI GAS PIPELINE CORP.	ANR PIPELINE CO., ET AL.	05-25-94	C	15,000	N	I	05-01-94	INDEF.
ST94-5456	ALGONQUIN GAS TRANSMISSION CO.	O & R ENERGY, INC.	05-25-94	G-S	100,000	N	I	05-02-94	INDEF.
ST94-5457	NATURAL GAS P/L CO. OF AMERICA	INTERENERGY GAS SERVICES CORP.	05-25-94	G-S	1,000	N	F	05-01-94	11/30/00
ST94-5458	TENNESSEE GAS PIPELINE CO.	NGC TRANSPORTATION INC.	05-25-94	G-S	1,250	N	F	05-14-94	INDEF.
ST94-5459	TENNESSEE GAS PIPELINE CO.	CATEX ENERGY INC.	05-25-94	G-S	10,000	N	F	05-01-94	INDEF.
ST94-5460	TENNESSEE GAS PIPELINE CO.	AMERICAN STEEL AND WIRE CORP.	05-25-94	G-S	1,506	N	F	05-01-94	INDEF.
ST94-5461	NORTHERN NATURAL GAS CO.	HOBBS PROCESSING CO.	05-25-94	G-S	100,500	Y	I	04-28-94	INDEF.
ST94-5462	NORTHERN NATURAL GAS CO.	CIBOLA CORP.	05-25-94	G-S	20,080	N	F	05-04-94	05-31-94
ST94-5463	NORTHERN NATURAL GAS CO.	NGC TRANSPORTATION, INC.	05-25-94	G-S	20,000	N	F	05-01-94	05-31-94
ST94-5464	NORTHERN NATURAL GAS CO.	NGC TRANSPORTATION, INC.	05-25-94	G-S	13,842	N	F	05-01-94	10-31-94
ST94-5465	NORTHERN NATURAL GAS CO.	AQUILA ENERGY MARKETING CORP.	05-25-94	G-S	700,000	N	I	04-20-94	INDEF.
ST94-5466	NORTHERN NATURAL GAS CO.	TEXAS UTILITIES FUEL CO.	05-25-94	B	100,000	N	I	04-27-94	INDEF.
ST94-5467	SOUTHERN NATURAL GAS CO.	PACKAGING CORPORATION OF AMERICA	05-25-94	G-S	605	N	F	05-11-94	04-30-02
ST94-5468	PACIFIC GAS TRANSMISSION CO.	COASTAL GAS MARKETING CO.	05-25-94	G-S	200,000	N	I	04-22-94	INDEF.
ST94-5469	PACIFIC GAS TRANSMISSION CO.	WASHINGTON ENERGY GAS MARKETING CO.	05-25-94	G-S	50,000	N	I	04-22-94	INDEF.
ST94-5470	TEXAS EASTERN TRANSMISSION CORP.	CARGILL, INC.	05-27-94	G-S	100,000	N	I	05-11-94	09-30-94
ST94-5471	TEXAS EASTERN TRANSMISSION CORP.	DOSWELL LIMITED PARTNERSHIP	05-27-94	G-S	50,000	N	I	05-01-94	04-30-94
ST94-5472	TEXAS EASTERN TRANSMISSION CORP.	PPG INDUSTRIES, INC.	05-27-94	G-S	10,598	N	I	05-18-94	09-30-94
ST94-5473	TEXAS EASTERN TRANSMISSION CORP.	ORANGE & ROCKLAND UTILITIES, INC.	05-27-94	G-S	10,836	N	F	05-01-94	10-31-12
ST94-5474	TEXAS EASTERN TRANSMISSION CORP.	NEW YORK STATE ELECTRIC & GAS CORP.	05-27-94	G-S	29,386	N	F	05-01-94	10-31-99
ST94-5475	PANHANDLE EASTERN PIPE LINE CO.	OXY USA INC.	05-27-94	G-S	40,000	N	F	05-01-94	10-31-94
ST94-5476	PANHANDLE EASTERN PIPE LINE CO.	ARCADIAN PARTNERS, LP	05-27-94	G-S	4,500	N	F	05-01-94	03-31-95
ST94-5477	PANHANDLE EASTERN PIPE LINE CO.	WARD GAS SERVICES, INC.	05-27-94	G-S	8,055	N	F	05-01-94	04-30-95
ST94-5478	PANHANDLE EASTERN PIPE LINE CO.	JAMES RIVER PAPER CO., INC.	05-27-94	G-S	2,500	N	F	05-01-94	03-31-99
ST94-5479	PANHANDLE EASTERN PIPE LINE CO.	JAMES RIVER PAPER CO., INC.	05-27-94	G-S	2,000	N	F	05-01-94	04-30-99
ST94-5480	PANHANDLE EASTERN PIPE LINE CO.	PEOPLES NATURAL GAS CO.	05-27-94	G-S	5,000	N	F	05-01-94	11-30-94
ST94-5481	PANHANDLE EASTERN PIPE LINE CO.	GEDI, INC.	05-27-94	G-S	5,000	N	F	05-01-94	10-31-94
ST94-5482	PANHANDLE EASTERN PIPE LINE CO.	AIG TRADING CORP.	05-27-94	G-S	300,000	N	I	05-01-94	03-31-04
ST94-5483	PANHANDLE EASTERN PIPE LINE CO.	COASTAL GAS MARKETING CORP.	05-27-94	G-S	20,774	N	F	05-01-94	05-31-94
ST94-5484	PANHANDLE EASTERN PIPE LINE CO.	ENOGEX SERVICES CORP.	05-27-94	G-S	1,790	N	F	05-06-94	11-30-94
ST94-5485	ONG TRANSMISSION CO.	ENOGEX (STAFFORD POINT)	05-26-94	C	30,000	N	I	04-27-94	INDEF.
ST94-5486	MIDWESTERN GAS TRANSMISSION CO.	TRANSOK GAS TRANSMISSION CO.	05-26-94	G-S	1,288	N	F	05-01-94	INDEF.
ST94-5487	MIDWESTERN GAS TRANSMISSION CO.	H & N GAS LTD.	05-26-94	G-S	10,000	N	F	05-01-94	INDEF.
ST94-5488	SOUTH GEORGIA NATURAL GAS CO.	PACKAGING CORP. OF AMERICA	05-26-94	G-S	600	Y	F	05-11-94	04-30-02
ST94-5489	TRANSCONTINENTAL GAS P/L CORP.	CORPUS CHRISTI INDUSTRIAL P/L CO.	05-26-94	B	100,000	N	I	04-26-94	INDEF.
ST94-5490	LONE STAR GAS CO.	ARKLA ENERGY RESOURCES, ET AL.	05-27-94	C	60,000	N	I	05-01-94	INDEF.
ST94-5491	WILLIAMS NATURAL GAS CO.	WILLIAMS GAS MARKETING CO.	05-27-94	G-S	16,304	A	I	05-01-94	11-01-94
ST94-5492	WILLIAMS NATURAL GAS CO.	NGC TRANSPORTATION, INC.	05-27-94	G-S	10,000	N	I	04-30-94	09-30-94
ST94-5493	WILLIAMS NATURAL GAS CO.	CABOT OIL CORP.	05-27-94	G-S	20,000	N	I	04-30-94	05-01-95
ST94-5494	NATURAL GAS P/L CO. OF AMERICA	TEXACO GAS MARKETING INC.	05-27-94	G-S	15,000	N	F	03-01-94	02-28-95
ST94-5495	GREAT LAKES GAS TRANSMISSION L.P.	NORTHERN STATES POWER CO. (WI)	05-27-94	G-S	11,250	N	F	05-01-94	03-31-10

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	PART 284 SUBPART	EST. MAX. DAILY QUANTITY **	AFF. Y/A/N***	RATE SCH.	DATE COMMENCED	PROJECTED TERMINATION DATE
ST94-5496	GREAT LAKES GAS TRANSMISSION L.P.	NORTHERN STATES POWER CO. (MN)	05-27-94	G-S	3,750	N	F	05-01-94	03-31-10
ST94-5497	GREAT LAKES GAS TRANSMISSION L.P.	NORTHERN STATES POWER CO. (WI)	05-27-94	G-S	4,000	N	F	05-01-94	10-31-97
ST94-5498	WILLISTON BASIN INTER. P/L CO.	PRAIRIELANDS ENERGY MARKETING, INC.	05-27-94	G-S	100,000	N	I	04-27-94	04-24-96
ST94-5499	WILLISTON BASIN INTER. P/L CO.	UTILITY-2000 ENERGY CORP.	05-27-94	G-S	80,000	N	I	04-29-94	03-31-96
ST94-5500	WILLISTON BASIN INTER. P/L CO.	PRAIRIELANDS ENERGY MARKETING, INC.	05-27-94	G-S	100,000	N	I	04-27-94	04-24-96
ST94-5501	WILLISTON BASIN INTER. P/L CO.	PRAIRIELANDS ENERGY MARKETING, INC.	05-27-94	G-S	100,000	N	I	04-27-94	04-24-96
ST94-5502	WILLISTON BASIN INTER. P/L CO.	PRAIRIELANDS ENERGY MARKETING, INC.	05-27-94	G-S	100,000	N	I	04-27-94	04-24-96
ST94-5503	WILLISTON BASIN INTER. P/L CO.	PRAIRIELANDS ENERGY MARKETING, INC.	05-27-94	G-S	100,000	N	I	04-27-94	04-24-96
ST94-5504	WILLISTON BASIN INTER. P/L CO.	PRAIRIELANDS ENERGY MARKETING, INC.	05-27-94	G-S	100,000	N	I	04-27-94	04-24-96
ST94-5505	WILLISTON BASIN INTER. P/L CO.	PRAIRIELANDS ENERGY MARKETING, INC.	05-27-94	G-S	100,000	N	I	04-27-94	04-24-96
ST94-5506	WILLISTON BASIN INTER. P/L CO.	PRAIRIELANDS ENERGY MARKETING, INC.	05-27-94	G-S	100,000	N	I	04-27-94	04-24-96
ST94-5507	WILLISTON BASIN INTER. P/L CO.	PRAIRIELANDS ENERGY MARKETING, INC.	05-27-94	G-S	100,000	N	I	04-27-94	04-24-96
ST94-5508	WILLISTON BASIN INTER. P/L CO.	PRAIRIELANDS ENERGY MARKETING, INC.	05-27-94	G-S	100,000	N	I	04-27-94	04-24-96
ST94-5509	IROQUOIS GAS TRANS. SYSTEM, L.P.	NEW ENGLAND POWER CO.	05-27-94	G-S	29,965	N	F	05-01-94	06-01-94
ST94-5510	IROQUOIS GAS TRANS. SYSTEM, L.P.	RENAISSANCE ENERGY (U.S.) INC.	05-27-94	G-S	4,936	N	F	05-01-94	06-01-94
ST94-5511	AMOCO GAS CO.	MG INTRASTATE GAS CORP.	05-27-94	G-HT	50,000	N	I	11-01-93	06-30-04
ST94-5512	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	05-31-94	C	50,000	N	I	05-01-94	INDEF.
ST94-5513	CHANNEL INDUSTRIES GAS CO.	TENNESSEE GAS PIPELINE CO., ET AL.	05-31-94	C	75,000	N	I	04-28-94	INDEF.
ST94-5514	CHANNEL INDUSTRIES GAS CO.	TRANSCONTINENTAL GAS P/L, ET AL.	05-31-94	C	50,000	N	I	05-01-94	INDEF.
ST94-5515	TEJAS GAS PIPELINE CO.	TRANSCONTINENTAL GAS P/L CORP.	05-31-94	C	300,000	N	I	03-29-94	INDEF.
ST94-5516	TEJAS GAS PIPELINE CO.	WESTERN GAS RESOURCES, INC.	05-31-94	G-I	200,000	N	I	04-01-94	INDEF.
ST94-5517	DELPHI GAS PIPELINE CORP.	NATURAL GAS P/L CO. OF AMER., ET AL.	05-31-94	C	6,000	N	I	05-03-94	INDEF.
ST94-5518	WESTAR TRANSMISSION CO.	EL PASO NATURAL GAS CO.	05-31-94	C	100,000	N	I	01-01-94	INDEF.
ST94-5519	WESTAR TRANSMISSION CO.	TRANSWESTERN PIPELINE CO.	05-31-94	C	100,000	N	I	01-01-94	INDEF.
ST94-5520	WESTAR TRANSMISSION CO.	WILLIAMS NATURAL GAS CO.	05-31-94	C	100,000	N	I	01-01-94	INDEF.
ST94-5521	COLUMBIA GULF TRANSMISSION CO.	TRISTAR GAS CO.	05-31-94	G-S	25,000	N	I	05-15-94	INDEF.
ST94-5522	COLUMBIA GULF TRANSMISSION CO.	MURPHY EXPLORATION & PRODUCTION CO.	05-31-94	G-S	100,000	N	I	05-15-94	INDEF.
ST94-5523	K N INTERSTATE GAS TRANS. CO.	TRISTAR GAS MARKETING CO.	05-31-94	G-S	20,000	N	I	05-04-94	INDEF.
ST94-5524	FLORIDA GAS TRANSMISSION CO.	PEOPLES GAS SYSTEM, INC.	05-31-94	B	11,151	N	I	05-01-94	INDEF.
ST94-5525	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5526	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5527	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5528	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5529	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5530	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5531	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5532	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5533	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5534	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5535	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5536	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5537	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5538	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5539	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5540	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5541	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5542	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5543	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5544	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	PART 284 SUBPART	EST. MAX. DAILY QUANTITY **	AFF. Y/A/N***	RATE SCH.	DATE COMMENCED	PROJECTED TERMINATION DATE
ST94-5545	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5546	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5547	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5548	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5549	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5550	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5551	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5552	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5553	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5554	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5555	WILLISTON BASIN INTER. P/L CO.	INTERENERGY CORP.	05-31-94	G-S	150,000	A	I	05-01-94	04-27-96
ST94-5556	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5557	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5558	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5559	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5560	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5561	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5562	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5563	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5564	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5565	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5566	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5567	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5568	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5569	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5570	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5571	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5572	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5573	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5574	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5575	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5576	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5577	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5578	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5579	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5580	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5581	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5582	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5583	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5584	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5585	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5586	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5587	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5588	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5589	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5590	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5591	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5592	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5593	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95

DOCKET NUMBER *	TRANSPORTER/SELLER	RECIPIENT	DATE FILED	PART 284 SUBPART	EST. MAX. DAILY QUANTITY **	AFF. Y/A/N***	RATE SCH.	DATE COMMENCED	PROJECTED TERMINATION DATE
ST94-5594	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5595	WILLISTON BASIN INTER. P/L CO.	KOCH HYDROCARBON CO.	05-31-94	G-S	10,000	A	I	05-01-94	04-30-95
ST94-5596	NATURAL GAS P/L CO. OF AMERICA	TEXACO GAS MARKETING, INC.	05-31-94	G-S	20,000	N	F	05-01-94	04-30-95
ST94-5597	PANHANDLE EASTERN PIPE LINE CO.	AMOCO ENERGY TRADING CORP.	05-31-94	G-S	125,000	N	I	05-01-94	04-30-98
ST94-5598	EL PASO NATURAL GAS CO.	NEW MEXICO NATURAL GAS, INC.	05-31-94	G-S	258	N	I	05-01-94	INDEF.
ST94-5599	EL PASO NATURAL GAS CO.	CNG PRODUCING CO.	05-31-94	G-S	154,500	N	I	05-01-94	INDEF.
ST94-5600	U-T OFFSHORE SYSTEM	BP GAS INC.	05-31-94	K-S	15,000	N	F	05-01-94	INDEF.
ST94-5601	U-T OFFSHORE SYSTEM	CNG PRODUCING CO.	05-31-94	K-S	24,000	N	F	05-01-94	INDEF.
ST94-5602	U-T OFFSHORE SYSTEM	COAST ENERGY GROUP	05-31-94	K-S	21,000	N	F	05-02-94	05-31-94
ST94-5603	U-T OFFSHORE SYSTEM	CATEX-VITOL GAS INC.	05-31-94	K-S	9,497	N	F	05-11-94	09-30-94
ST94-5604	U-T OFFSHORE SYSTEM	H&N GAS, LTD.	05-31-94	K-S	100,000	N	I	05-01-94	INDEF.
ST94-5605	U-T OFFSHORE SYSTEM	KOCH GATEWAY PIPELINE CO.	05-31-94	K-S	3,300	N	I	05-23-94	INDEF.
ST94-5606	TEXAS GAS GATHERING CO.	NATURAL GAS P/L CO. OF AMERICA	05-20-94	C	400	N	I	04-01-93	04-30-98
ST94-5607	TEXAS GAS GATHERING CO.	NATURAL GAS P/L CO. OF AMERICA	05-20-94	C	170	N	I	11-01-91	11-01-92

* NOTICE OF TRANSACTIONS DOES NOT CONSTITUTE A DETERMINATION THAT FILINGS COMPLY WITH COMMISSION REGULATIONS IN ACCORDANCE WITH ORDER NO. 436 (FINAL RULE AND NOTICE REQUESTING SUPPLEMENTAL COMMENTS, 50 FR 42,372, 10/10/85).

** ESTIMATED MAXIMUM DAILY VOLUMES INCLUDES VOLUMES REPORTED BY THE FILING COMPANY IN MMBTU, MCF AND DT.

*** AFFILIATION OF REPORTING COMPANY TO ENTITIES INVOLVED IN THE TRANSACTION. A "Y" INDICATES AFFILIATION, AN "A" INDICATES MARKETING AFFILIATION, AND A "N" INDICATES NO AFFILIATION.

[FR Doc. 94–18833 Filed 8–2–94; 8:45 sm]
BILLING CODE 6717–01–P

[Docket No. RP94–93–000]

K N Interstate Gas Transmission Co.; Notice of Informal Settlement Conference

July 28, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Tuesday, August 9, 1994, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., for the purpose of discussing settlement in the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Lorna J. Hadlock at (202) 208–0737 or Donald Williams at (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 94–18837 Filed 8–2–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP94–80–004]

National Fuel Gas Supply Corp.; Notice of Compliance Filingb

July 28, 1994.

Take notice that on July 25, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, tariff sheets set forth in Appendix A to National's compliance filing in its Ellisburg-Leidy Hub proceeding, with a proposed effective date of August 24, 1994.

National states that these tariff sheets are filed in compliance with the July 8, 1994, order of the Federal Energy Regulatory Commission, which require that National offer its Hub parking and imbalance resolution services on a stand-alone basis, establish a rate for its Hub Rate Schedule W–1 Fly-By service, and remove the cash reimbursement option from its Hub tariff sheets.

National states that a copy of this filing was posted pursuant to Section 154.16 of the Commission's Regulations and that copies of this filing were served upon the company's jurisdictional customers and upon the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such protest should be filed on or before August 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–18886 Filed 8–2–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP94–182–003]]

NorAm Gas Transmission Co., Notice of Compliance Filing

July 28, 1994

Take notice that on June 30, 1994, NorAm Gas Transmission Company (NorAm) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sub First Revised Sheet No. 4.3, and supporting workpapers, with an effective date of June 15, 1994.

NorAm states that the filing is being made in compliance with the Commission's "Order Denying Rehearing, Rejecting Motion for Stay, Accepting Compliance Filing Subject to Conditions, and Requiring Further Filing" issued June 15, 1994, in Docket Nos. RP94–182–001, RP94–182–002, and TM94–3–001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such protests should be filed on or before August 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,

Secretary.

[FR Doc. 94–18887 Filed 8–2–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP94–674–000]

Northern Natural Gas Co.; Notice of Request Under Blanket Authorization

July 28, 1994

Take notice that on July 25, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP94–674–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate existing receipt facilities as a delivery point for Western Gas Resources, Inc. (WGR), under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to specifically operate the delivery point to accommodate approximately 2,500 MMBtu per day and 10,000 MMBtu on an annual basis of natural gas at an estimated cost of $700 for delivery to WGR to use as fuel to restart its Benedum plant. Northern indicates that it will provide the service pursuant to currently effective transportation service agreements.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–18888 Filed 8–2–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP94–680–000]

Northern Natural Gas Co., Notice of Request Under Blanket Authorization

July 28, 1994.

Take notice that on July 22, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street,

Omaha, Nebraska 68124–1000, filed in Docket No. CP94–680–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a delivery point to Northwest Natural Gas Company, (Northwest) an LDC, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install a delivery point to Northwest, an LDC, in Slayton, Minnesota. It is stated that the total volumes proposed to be delivered are expected to result in an increase in Northern's peak day deliveries of 1,500 Mcf per day and 328,000 Mcf annually. It is also stated that the installation cost would be $204,000.

Any person or the Commissioner's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–18889 Filed 8–2–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–149–000]

Pacific Gas Transmission Co.; Notice of Technical Conference

July 28, 1994.

Take notice that pursuant to the Protective Order issued in this proceeding on July 19, 1994, a technical conference will be convened on Thursday, August 11, 1994, at 1:00 p.m., at the offices of the Federal Energy Regulatory Commission, Commission Meeting Room, 825 North Capitol Street, N.E., Washington, DC. At the technical conference, representatives of Decision Focus, Inc., Environmental Analysis, Inc. and DRI/McGraw-Hill will make presentations of computer models utilized to develop testimony and exhibits in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Betsy Carr at (202) 208–1240 or Russell Mamone at (202) 208–0744.

Lois D. Cashell,

Secretary.

[FR Doc. 94–18890 Filed 8–2–94; 8:45 am]

BILLING CODE 6717–01–M

Southeastern Power Administration; Proposed Power Marketing Policy for Georgia-Alabama-South Carolina, System of Projects

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Change of Public Comment Forum Dates and extension of comment period.

SUMMARY: On July 11, 1994, a Proposed Power Marketing Policy for the Georgia-Alabama-South Carolina System of Projects was published in the **Federal Register** (59 FR 35332) which contained dates for public comment forums and a deadline of September 16, 1994, for comments on the policy. Due to a delay in the publication of the Proposed Policy, the procedural time frame of 60 days between publication and the comment forums was not met. Therefore, new dates for the forums had to be set and the period for comments on the policy extended. All other facets of the Proposed Policy remain the same.

DATES: Written comments are now due on or before September 30, 1994. Public comment forums will be held in Columbia, South Carolina, on September 12, 1994, and in Atlanta, Georgia, on September 14, 1994.

The public comment forums will each begin at 10:30 a.m. at the following locations: September 12, 1994, Sheraton Hotel & Conference Center, 2100 Bush River Road, Columbia, South Carolina 29210; September 14, 1994, Sheraton Gateway Hotel, 1900 Sullivan Road, Atlanta, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mr. John A. McAllister, Jr., Administrator, Southeastern Power Administration, Department of Energy, 2 South Public Square, Samuel Elbert Building, Elberton, Georgia 30635, 706–281–9911.

Issued at Elberton, Georgia, July 25, 1994.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 94–18916 Filed 8–2–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–601; FRL–4874–5]

Rhone-Poulenc Ag. Co.; Notice of Reissuance of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is reissuing a pesticide petition (PP 8F3689) filed by the Rhone-Poulenc Ag Co. for the fungicide aluminum tris(*O*-ethylphosphonate) in or on pome fruit. EPA is reissuing the petition because more than 5 years have passed since the first notice of filing and the Agency believes this notice is necessary before it takes further action on the petition.

ADDRESSES: By mail, submit written comments 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 comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) 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(s) 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. Information on the proposed test and any written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM-22), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-305-5540.

SUPPLEMENTARY INFORMATION: This notice announces that EPA is reissuing

pesticide petition (PP) 8F3689, notice of which appeared in the **Federal Register** of October 20, 1988 (53 FR 41238). Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, submitted the petition to EPA under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) and proposed to amend 40 CFR 180.415 to establish a regulation to permit a tolerance of 10 parts per million (ppm) for residues of the fungicide aluminum tris(*O*-ethylphosphonate) in or on the raw agricultural commodity pome fruits. EPA is reissuing the notice of filing because more than 5 years have passed since the original notice and the Agency believes that reissuance of the notice is necessary before it takes further action on the petition. The proposed method of determining residues is gas chromatography.

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

Dated: July 19, 1994.

Lois Rossi,

Acting Deputy Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–18762 Filed 8–2–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 28, 1994

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 418–0214. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: None
Title: Application for Renewal of Ship Radio Station License
Form Number: FCC Form 405–S
Action: New collection
Respondents: Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)
Frequency of Response: On occasion reporting requirement or other: every 10 years
Estimated Annual Burden: 50,000 responses; .166 hours average burden per response; 8,300 hours total annual burden
Needs and Uses: FCC Form 405–S is used to renew a license authorization when there are no changes or only certain minor changes to administrative data. Data is used to update the existing database and to issue renewed licenses. [Previously this information was collected under FCC Form 405–B].

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 94–18856 Filed 8–2–94; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages

Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (46 U.S.C. § 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, amended:

Silversea Cruises, Ltd., 110 East Broward Blvd., Fort Lauderdale, Florida 33301
Vessel: Silver Cloud

Dated: July 28, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–18827 Filed 8–2–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

John Bollman; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 23, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. John Bollman, to acquire 26.18 percent of the voting shares of Lena Bancorp, Inc., Lena, Illinois, and thereby indirectly acquire Lena State Bank, Lena, Illinois.

Board of Governors of the Federal Reserve System, July 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-18855 Filed 8-2-94; 8:45 am]

BILLING CODE 6210-01-F

Hibernia Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Hibernia Corporation, New Orleans, Louisiana; to merge with Pioneer Bancshares Corporation, Shreveport, Louisiana, and thereby indirectly acquire Pioneer Bank & Trust Company, Shreveport, Louisiana.

In connection with this application, Applicant has also applied to acquired Zachary Taylor Life Insurance Company, Shreveport, Louisiana ("COMPANY"). COMPANY is a Louisiana corporation which maintains a license to engage in business as a life insurance company, but has not engaged in such activities since July 1, 1982, and will not engage in such activity pursuant to the terms of a commitment dated July 14, 1982, by Bancshares to the Federal Reserve Bank of Dallas (the "Commitment") without the prior written approval of the Federal Reserve Bank of Dallas. COMPANY does not presently actively engage in any business activity, and, in the event Applicant acquires all of the issued and outstanding shares of COMPANY pursuant to the Holding Company Merger, Applicant will honor the Commitment and will not cause or permit COMPANY to engage in any insurance or other business activity without the prior written approval of the Federal Reserve Bank of Atlanta.

Board of Governors of the Federal Reserve System, July 28, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-18854 Filed 8-2-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the regular monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, August 18, 1994 from 9:00 A.M. to 4:00 P.M. in room 7C13 of the General Account Office, 441 G St., N.W., Washington, D.C.

The agenda for the meeting includes discussions on (1) Revenue Recognition, (2) Future Claims issues, and (3) a Capital Charge Draft Discussion Memo.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Executive Staff Director, 750 First St., N.E., Room 1001, Washington, D.C. 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988)); 41 CFR 101–6.1015 (1990).

Dated: July 29, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–18867 Filed 8–2–94; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Committee on Vital and Health Statistics (NCVHS) Executive Subcommittee: Meeting

Pursuant to Pub. L. 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: NCVHS Executive Subcommittee.

Times and Dates: 9 a.m.–5 p.m., August 30, 1994; 9 a.m.–2 p.m., August 31, 1994.

Place: The Bavarian Inn, Route 1, Shepherdstown, West Virginia 25443.

Status: Open.

Purpose: The purpose of this meeting is for the Executive Subcommittee to review accomplishments, logistics, needs and work plans of NCVHS and individual subcommittees.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: July 27, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–18844 Filed 8–2–94; 8:45 am]

BILLING CODE 4163-18-M

Food and Drug Administration

[Docket No. 93D–0120]

Revised Procedural Guidance Document of the Advertising and Promotional Labeling Staff, Center for Biologics Evaluation and Research; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance document prepared by the Advertising and Promotional Labeling Staff (APLS) within the Office of Establishment Licensing and Product Surveillance (OELPS), Center for Biologics Evaluation and Research (CBER). This document revises the original procedural guide. FDA revised the guide to address comments received and also to address the submission of promotional materials for products reviewed under the regulations for accelerated approval.

ADDRESSES: Correspondence concerning advertising and promotion of biologic products from manufacturers or distributors of biologic products should be directed to the Advertising and Promotional Labeling Staff (HFM–202), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Persons

with access to INTERNET may request this document from "CBER—INFO@A1.CBER.FDA.GOV." or by calling the CBER FAX Information System at 301–594–1939 from a FAX machine with a touch tone phone attached or built in. Submit written requests for single copies of the APLS Procedural Guidance to the Congressional and Consumer Affairs Branch (HFM–12), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), 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. A copy of the APLS Procedural Guidance 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: Toni Stifano, Center for Biologics Evaluation and Research (HFM–202), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2084.

SUPPLEMENTARY INFORMATION: FDA is making available a revised APLS Procedural Guidance document. This document supersedes the APLS Procedural Guide that was announced in the **Federal Register** of August 9, 1993 (58 FR 42340). FDA revised the guide to address received comments and also to address requirements for the submission of promotional materials for products reviewed under the regulations for accelerated approval (21 CFR part 601 subpart E).

The APLS Procedural Guidance document details the approach that manufacturers and distributors should follow in submitting advertising and promotional material for review by CBER, and APLS' approach in the review and evaluation of this material. The APLS Procedural Guidance document also provides guidance on CBER's current interpretation of the regulation requiring the reporting of important proposed changes in the labeling, specifically promotional labeling, of biological products for which a license is in effect or for which an application for license is pending (21 CFR 601.12).

In general, the changes to the original procedural guide respond to requests for additional clarification and guidance in several areas involving biologic advertising and promotion. The term "significant amendment" has been changed throughout the document to "any supplement requiring a labeling change." A brief description of the types of supplements that would require a labeling change has also been added. The guide also contains information on advertising and promotional materials for products reviewed under the accelerated approval regulations (21 CFR part 601, subpart E). The revised procedural guide also addresses the submission for pre-review of "Coming Soon" advertising as part of the introductory campaign. FDA also clarifies when Part I versus Part II of the FDA form 2567 is used.

As with other procedural guidance documents, FDA does not intend this revised document to be all-inclusive. Alternative approaches may be warranted in specific situations, and certain aspects may not be applicable to all situations. If a manufacturer believes that a procedure described in this guidance document is inapplicable to a particular product and other procedures are appropriate for CBER's consideration, the manufacturer may wish to discuss the matter further with the agency to prevent expenditure of money and effort on activities that later may be determined to be unacceptable by FDA. CBER will continue to review advertising and promotional materials on a case-by-case basis.

This document does not bind FDA and does not create or confer any rights, privileges, or benefits on or for any person, but is intended merely for guidance.

Interested persons may submit to the Dockets Management Branch (address above) written comments on this guide. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and information should be identified with the docket number found in brackets in the heading of this document. The APLS Procedural Guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FDA will consider any comments received in determining whether additional revisions to the guide are warranted. FDA will announce the availability of any revised guidance statement in the **Federal Register**.

Dated: July 28, 1994.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 94–18845 Filed 8–2–94; 8:45 am]

BILLING CODE 4160–01–F

Food and Drug Administration

[Docket No. 94D–0259]

Draft "Points To Consider in the Manufacture and Testing Of Monoclonal Antibody Products For Human Use;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft points to consider (PTC) document entitled "Points to Consider in the Manufacture and Testing of Monoclonal Antibody Products For Human Use." The draft PTC document is intended to assist sponsors and investigators of monoclonal antibody (mAb) products intended for human use. This document revises a 1987 document entitled "Points to Consider (PTC) in the Manufacture and Testing of Monoclonal Antibody Products for Human Use." The updated version contains the general guidance from the Center for Biologics Evaluation and Research (CBER) regarding monoclonal antibody product development, including information to be submitted when filing an investigational new drug application (IND) and product license application (PLA).

DATES: Comments by October 3, 1994.

ADDRESSES: Submit written requests for single copies of the draft PTC document to the Congressional and Consumer Affairs Branch (HFM–12), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send two self-addressed adhesive labels to assist that office in processing your requests. Persons with access to INTERNET may request this document from "CBER—INFO@A1.CBER.FDA.GOV." The document may also be obtained by calling the CBER FAX Information System at 301–594–1939 from a FAX machine with a touch tone phone attached or built in. Submit written comments on the draft PTC document to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Two copies of any comments are to be submitted, except that individuals may submit one. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The draft PTC 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: Kathryn E. Stein, Center for Biologics Evaluation and Research, Office of Therapeutics Research and Review/ Division of Monoclonal Antibodies (HFM–555), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–402–4606.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft PTC document entitled "Points to Consider in the Manufacture and Testing of Monoclonal Antibody Products for Human Use." The draft PTC document reflects the considerable experience that has been gained through review of submissions since 1987 and discussions that have taken place at several national and international meetings. The draft PTC document provides a discussion of topics that should be considered in the development of monoclonal antibody products. At present, most monoclonal antibody (mAb) products are produced by hybridoma cell lines through immortalization of antibody-producing cells by chemically-induced fusion with myeloma cells. In some cases, additional fusions with other lines have created "triomas" and "quadromas." CBER anticipates an increase in recombinant and human antibodies in the future. The principles reviewed by the draft PTC document may be applied in general to all hybridoma and heterohybridoma generated products, regardless of species of origin.

The draft PTC document details the approach that sponsors and investigators should follow in product manufacturing and testing, preclinical and clinical studies, and the information to be provided for review and evaluation of clinical testing and licensing. The draft PTC document describes the characterization of purified, unmodified mAb which is essential for manufacturing control of product, determination of potency and stability, and development of an appropriate clinical development program. Special considerations for immunoconjugates (monoclonal antibodies conjugated with toxins, drugs, radionuclides or other agents) are addressed. The draft PTC document also details the considerations for combination products. Issues addressed in the draft PTC document include: (1) Quality control and product testing including cell line qualification; (2) lot-to-lot quality control monitoring of bulk lots and final product specifications; (3) stability of the product; and (4) quantitation and removal of a known contaminant. The draft PTC document also addresses issues related to manufacturing changes, including those made either during clinical development or subsequent to product approval. The draft PTC document discusses issues relating to: (1) Preclinical studies including *in vitro* testing for cross-reactivity; (2) preclinical pharmacology; (3) safety; and (4) toxicity testing. With respect to clinical studies, the draft PTC document discusses general study design for Phase 1, 2, and 3 studies, clinical considerations involved in immunogenicity, dosimetry, and imaging agents for cancer.

As with other PTC documents, FDA does not intend this draft PTC document to be all-inclusive and cautions that not all information may be applicable to all situations. The draft PTC document is intended to provide information and does not set forth requirements. The methods and procedures cited in the draft PTC document are suggestions. FDA anticipates that sponsors and investigators may develop alternative methods and procedures, and discuss them with FDA. CBER may find those alternative methods and procedures acceptable. FDA recognizes that advances will continue in the area of monoclonal antibodies and that this document may become outdated as those advances occur. This PTC document does not bind FDA and does not create or confer any rights, privileges, or benefits on or for any private person, but is intended merely for guidance.

Interested persons may submit written comments on the draft PTC document to the Dockets Management Branch (address above). FDA anticipates revising the draft PTC document periodically in response to comments received or to reflect advancements in monoclonal antibody therapies and products.

Dated: July 28, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–18846 Filed 8–2–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Prospective Grant of Exclusive License: Recombinant Virus Expressing Human Carcinoembryonic Antigen and Methods of Use Thereof

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a limited field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Applications Numbers 07/695,024 filed on May 6, 1991 and 07/879,649 filed on May 6, 1992 entitled "Recombinant Virus Expressing Human Carcinoembryonic Antigen and Methods of Use Thereof", to Therion Biologics Corporation, having a place of business in Cambridge, MA. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use would be limited to the use of recombinant vaccinia and/or swinepox viruses expressing carcinoembryonic antigen (CEA) gene or portions thereof with the aim of eliciting an immunogenic response.

The immune response *in vivo*, elicited after exposure to the recombinant virus would be directed against malignant cells expressing CEA. The purpose of the license is to develop vaccinia and/or swine pox virus based vaccines directed against cancers expressing CEA.

Requests for a copy of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Daniel R. Passeri, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301)-496–7735, ext. 244; Facsimile: (301) 402–0220. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: July 22, 1994.
Barbara M. McGarey,
Deputy Director, Office of Technology Transfer.
[FR Doc. 94–18826 Filed 8–2–94; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: John Tyburczy, Elko, NV, PRT–791283

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained at Shamwari Game Reserve, Newton Park, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: R.E. Hardberger, Little Rock, AR, PRT–792568

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. P.G.J. Louw at "Bankfontein", Springfontein, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: Chicago Zoological Park, Brookfield, IL, PRT–791571

The applicant requests a permit to import blood samples obtained from wild, captive held and captive-born specimens of Leadbeater's possums (*Gymnobelideus leadbeateri*) from Australia for DNA analysis to enhance the survival of the species.

Applicant: Lenny Salerno, Montville, NJ, PRT–792167

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) culled from the captive herd maintained by Mr. Pine Louw, "Bankfontein", Springfontein, Republic of South Africa, for the purpose of enhancement of survival of the species.

Applicant: University of Illinois, College of Veterinary Medicine, Urbana, IL, PRT–791956

The applicant requests an amendment to their current application to include the import of pituitary glands and placental tissues taken from Northern White rhinoceros (*Ceratotherium simum cottoni*) and Black rhinoceros (*Diceros bicornis*). Samples will be collected opportunistically from the carcasses of these animals as they become available throughout Zimbabwe for the purpose of scientific research aimed at the enhancement of survival of the species.

Applicant: Yerkes Regional Primate Research Center, Atlanta, GA, PRT–791281

The applicant requests a permit to export orangutan (*Pongo pygmaeus abelii*) and gorilla (*Gorilla gorilla gorilla*) tissues and organs obtained from captive-born and captive-held animals that died of natural causes to the University of Lund, Sweden, for genetic research aimed at the enhancement of survival of the species.

Applicant: Peregrine Fund, Inc., Boise, ID, PRT–792761

The applicant requests a permit to import up to 20 blood samples collected from wild Harpy Eagles (*Harpia harpyja*) in Venezuela for analysis to enhance the survival of the species.

Applicant: Peregrine Fund, Inc., Boise, ID, PRT–792762

The applicant requests a permit to import up to 20 blood samples to be collected from wild Harpy Eagles (*Harpia harpyja*) in Panama for analysis to enhance the survival of the species.

Applicant: The Cincinnati Zoo, Cincinnati, OH, PRT–792583

The applicant requests a permit to import 2 captive hatched Red-crowned cranes (*Grus japonensis*) and 4 captive hatched White-naped cranes (*Grus vipio*) from the Khinganski Nature Reserve, Russia, for propagation to increase the genetic diversity of both wild and captive populations to enhance the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: July 29, 1994.
Caroline Anderson,
Acting Chief, Branch of Permits, Office of Management Authority.
[FR Doc. 94–18907 Filed 8–2–94; 8:45 am]
BILLING CODE 4310–55–P

Bureau of Land Management

[OR–943–4210–06; GP4–230; OR–50500]

Notice of Public Meeting; Proposed Protective Withdrawal for Elk River Wild and Scenic Corridor; Oregon

AGENCY: Bureau of Land Management.
ACTION: Notice.

SUMMARY: This notice announces the schedule and agenda for a forthcoming public meeting that will provide an opportunity for public involvement regarding the Department of Agriculture, Forest Service's application for protective withdrawal for the Elk River Wild and Scenic Corridor in the Siskiyou National Forest.

EFFECTIVE DATE: September 21, 1994.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7162.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a public meeting will be held to provide an opportunity for public involvement regarding the application by the Department of Agriculture, Forest Service for a 20-year protective withdrawal as to 4,921 acres of National Forest System lands in Curry County, Oregon.

The meeting will begin at 7 p.m., Wednesday, September 21, 1994, at the Port Orford City Hall, 555 20th Street, Port Orford, Oregon. The agenda will include (1) an information briefing by the Bureau of Land Management; (2) an information briefing by the Forest Service; (3) oral statements by interested parties; and (4) a question and answer period.

The meeting is open to the public. Interested parties may make oral statements at the meeting and/or may file written statements with the Bureau of Land Management, Oregon State Office. Oral statements should be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management before any recommendation concerning the proposed land withdrawal is submitted to the Secretary of Interior for final action under the authority of Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

Dated: July 20, 1994.

William E. Bliesner,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–18806 Filed 8–2–94; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–706 (Preliminary)]

Canned Pineapple Fruit From Thailand

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Thailand of canned pineapple fruit,[2] provided for in subheading 2008.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On June 8, 1994, a petition was filed with the Commission and the Department of Commerce by Maui Pineapple Company, Ltd., Kahului, HI, and the International Longshoremen's and Warehousemen's Union, alleging that an industry in the United States is materially injured by reason of LTFV imports of canned pineapple fruit from Thailand. Accordingly, effective June 8, 1994, the Commission instituted antidumping investigation No. 731–TA–706 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 16, 1994 (59 FR 30951). The conference was held in Washington, DC, on June 29, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] For purposes of this investigation, canned pineapple fruit is defined as pineapple prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar (heavy) syrup added.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 25, 1994. The views of the Commission are contained in USITC Publication 2798 (July 1994), entitled "Canned Pineapple Fruit from Thailand: Investigation No. 731–TA–706 (Preliminary)."

By order of the Commission.

Issued: July 27, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–18895 Filed 8–2–94; 8:45 am]

BILLING CODE 7020–02–P

Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement; Expiration of Temporary Exclusion Order

In the matter of certain dielectric miniature microwave filters and multiplexers containing same. Investigation No. 337–TA–359.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) in the above-captioned investigation terminating the investigation on the basis of a settlement agreement. By its own terms, the temporary limited exclusion order issued in this investigation expired with the termination of the investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: On October 4, 1993, Space Systems/Loral, Inc. (SSL) filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 in the importation, the sale for importation, and the sale within the United States after importation of certain dielectric miniature microwave filters and multiplexers containing same. SSL's complaint alleged infringement of claims 1, 3, 7–11, and 14 of U.S. Letters Patent 4,489,293 (the '293 patent). The motion for temporary relief was limited to claims 1 and 14 of the '293 patent.

The Commission instituted an investigation into the allegations of SSL's complaint, provisionally accepted SSL's motion for temporary relief, and published a notice to that effect in the **Federal Register**. 58 FR 60877–78 (November 18, 1993). The notice named Com Dev Ltd. (Com Dev) of Ontario, Canada as the only respondent.

On March 17, 1994, the ALJ issued an ID finding that there was reason to believe that there is a violation of section 337 in the importation, sale for importation, or sale in the United States after importation of the accused miniature microwave filters. The Commission determined to modify the ID in one minor respect, and to affirm the ID in all other respects. On April 18, 1994, the Commission, having determined that temporary relief was warranted issued a limited temporary exclusion order directed against Com Dev. 59 FR 19210 (April 22, 1994).

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and § 210.53(h) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.53(h).

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

By order of the Commission.

Issued: July 25, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–18893 Filed 8–2–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–683 (Final)]

Fresh Garlic From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–683 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of

imports from the People's Republic of China (China) of fresh garlic, provided for in statistical reporting numbers 0703.20.0000, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9500 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: July 11, 1994.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of fresh garlic from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. section 1673b). The investigation was requested in a petition filed on January 31, 1994, by the Fresh Garlic Producers Association, consisting of the A&D Christopher Ranch, Gilroy, CA; Belridge Packing Co., Wasco, CA; Colusa Produce Corp., Colusa, CA; Denice & Filice Packing Co., Hollister, CA; El Camino Packing, Gilroy, CA; The Garlic Company, Shafter, CA; and Vessey and Company, Inc., El Centro, CA.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on September 15, 1994, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on September 28, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 16, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 21, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony *in camera*.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.22 of the Commission's rules; the deadline for filing is September 22, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.24 of the Commission's rules. The deadline for filing posthearing briefs is October 6, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 6, 1994. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: July 25, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–18894 Filed 8–2–94; 8:45 am]

BILLING CODE 7020–02–P

[1] For purposes of this investigation, "fresh garlic" is defined as all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing, used principally as a food product and for seasoning. Differences between grades are based on color, size, sheathing, and level of decay.

[Investigations Nos. 337–TA–148/169]

Commission Determination Denying Two Petitions for Modification of Exclusion Order and Request for Order Compelling Full Accounting

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

In the Matter of: Certain Processes for the Manufacture of Skinless Sausage Casing and Resulting Product

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny two petitions for modification of the limited exclusion order issued November 26, 1984, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International

Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3093.

SUPPLEMENTARY INFORMATION: On January 18, 1994, counsel for Viskase Corporation, successor in interest to complainant in the above-captioned investigation, filed a petition requesting, *inter alia*, modification of the limited exclusion order issued at the conclusion of the investigation. Specifically, the petition requested that the Commission extend the term of the limited exclusion order in order to remedy alleged violations of that order by Viscofan, S.A., respondent in the original investigation. On February 24, 1994, counsel for Teepak, Inc., also filed a petition requesting, *inter alia*, modification of that exclusion order to extend its term. The Commission determined to apply a revised procedure, similar to the procedure set forth in proposed final rule 210.76, published in the **Federal Register** on November 5, 1992 (57 FR 52830, 52883), to its consideration of the two petitions. The revised procedure provided that any person might file a response to the two petitions. Numerous requests for leave to file submissions beyond those provided for in the revised procedure were received by the Commission. The Commission denied those requests. In addition, an allegation concerning disclosure of confidential business information was made by counsel on behalf of Teepak. The Commission, having investigated the allegation, determined that no confidential business information was disclosed in the filings in this proceeding.

Having considered the petitions for modification, and the responses thereto, the Commission has determined to deny the petitions. The Commission will shortly issue its views regarding this matter.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337, 19 U.S.C. 1335), and section 211.57 of the Commission's Interim Rules of Practice and Procedure (19 CFR 211.57).

Copies of the Commission's Order and opinion, the petitions and responses thereto, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

By order of the Commission.

Issued: July 22, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–18897 Filed 8–2–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–658 (Final)]

Class 150 Stainless Steel Threaded Pipe Fittings from Taiwan

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation and emergency notice of cancellation of public hearing.

SUMMARY: On July 22, 1994, the Commission received a letter from counsel for petitioners in the subject investigation (Alloy Stainless Products Co., Totowa, NJ, and Capital Manufacturing Co., Columbus, OH) withdrawing their petition. Accordingly, pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR § 207.40(a)), the Commission has determined to terminate the antidumping investigation concerning class 150 stainless steel threaded pipe fittings from Taiwan (investigation No. 731–TA–658 (Final)). In addition, the Commission has determined to cancel its public hearing in this investigation, previously scheduled for July 26, 1994, and that no earlier announcement of this cancellation was possible.

EFFECTIVE DATE: July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–205–3181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. Information can also be obtained by calling the Office of Investigations' remote bulletin board system for personal computers at 202–205–1895 (N,8,1).

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission.

Issued: July 28, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–18896 Filed 8–2–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–3 (Sub-No. 117X)]

Missouri Pacific Railroad Company—Abandonment Exemption—in Saline County, KS

Missouri Pacific Railroad Company (MP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 0.60-mile portion of the Trigo Industrial Lead from milepost 490.6 (at the end of the line) to milepost 491.2, near Salina, in Saline County, KS.

MP 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 this 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 1105.12 (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 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 September 2, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to

[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 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 on environmental concerns is encouraged to file its

file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 15, 1994.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 23, 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: Joseph D. Anthofer, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

MP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 8, 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 becomes 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: July 28, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–18861 Filed 8–2–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau; Announcement of Competition for Grant Applications for the Nontraditional Employment for Women (NEW) Act Demonstration Programs for Fiscal Year 1994

AGENCY: Office of the Secretary, Women's Bureau, Labor.

ACTION: Notice.

SUMMARY: The National Office (Washington, D.C.) of the Women's Bureau, U.S. Department of Labor, announces the second year (Fiscal Year 1994) of competition to award up to six (6) grants to States for conducting demonstration projects which provides women with a wider range of training opportunities in nontraditional fields.

The Act established a four-year, $6 million demonstration program to assist States in the development of exemplary programs that train and place women in nontraditional occupations, with special emphasis on growth occupations with increased wage potential.

The Department of Labor is to award, from funds available under Title IV of JTPA, $1.5 million per year for Fiscal Years 1992, 1993, 1994 and 1995; as stated, up to six grants per year may be awarded to States. Six grants were awarded in Fiscal 1992; five grants were awarded in 1993.

DATES: Grant applications which request funding in FY 1994 must be received by close of business (4:45 p.m., Eastern Daylight Savings Time) October 14, 1994, or be postmarked by the U.S. Postal Service on or before that date. Applications received after the deadline will be considered to be nonresponsive and will not be reviewed.

ADDRESSES: A State's operating entity (as described in II. Eligibility Applicants, below), for JTPA interested in submitting a grant application for review under this competition must request in writing a copy of Solicitation for Grant Applications (SGA) #94–02 from the Office of Procurement Services, U.S. Department of Labor, 200 Constitution Avenue N.W., Room S–5220, Washington, D.C. 20210, Attention: Ms. Lisa Harvey. Please Note: *No telephone calls*, please. Only written requests which are delivered via the U.S. Postal Service or overnight courier service will be accepted.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Harvey, at the above address.

SUPPLEMENTARY INFORMATION:

I. Background

Improving women's employment opportunities and other employment related equity and social issues that promote women in the work force has been the driving force of the Women's Bureau since its inception in 1920. Within the Department of Labor, the Director serves as the policy advisor on women's issues to the Secretary and DOL agencies charged with improving the economic and workplace life of American workers. In fulfilling this responsibility, the Employment and Training Administration and the Bureau co-administer the Nontraditional Employment for Women Act (NEW), with the Bureau having responsibility for the demonstration program grants to States to promote higher wages for women through NTO job training and placement.

Grant Authority

The demonstration program grants are authorized under the NEW Act, Public Law 102–235, signed December 1991, effective July 1992. NEW amends the JTPA and, by reference, as subsequently amended by the Job Training Reform Amendments of 1992.

The NEW demonstration program grant awards are funded from Title IV of JTPA. (JTPA discretionary money is transferred to the Women's Bureau.) The funding is set at $1.5 million, annually, to make no more than six (6) awards for fiscal years 1992, 1993, 1994, and 1995.

First (1992) and Second (1993) Year NEW Awards

The first year of competition (Fiscal Year 1992) began September 1992 with the publication of the Solicitation for Grant Applications (SGA) #92–01 in the **Federal Register**. Thirty-eight proposals were received in response to the SGA. Both a WB/ETA technical review panel and an OASAM Office of Procurement Services cost review panel evaluated all proposals and was the basis for funding recommendations to the Secretary. On January 19, 1993, grants were awarded to the District of Columbia, Louisiana, Maryland, Texas, Washington, and Wyoming.

The second year of competition (Fiscal Year 1993) began in May 1993 with the publication of the Solicitation for Grant Applications (SGA) #93–03 in the **Federal Register**. Thirty-two proposals were received in response to the SGA. Both a WB/ETA technical review panel and an OASAM Office of Procurement Services cost review panel evaluated all proposals and was the basis for funding recommendations to the Secretary. On December 6, 1993, grants were awarded to California, Georgia, Illinois, Missouri and New Jersey.

II. Eligible Applicants

The State is the eligible applicant for a NEW demonstration grant award. The Governor of each State, as is the case with JTPA Titles II and III, is the recipient of awards under the NEW Act. Governors in turn designate an agency at the State level to administer JTPA for the State; that agency can apply for the NEW grants on behalf of the Governor and the State.

---

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.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

III. Funding Levels

The Department expects to make six awards to States, the maximum allowed under the NEW Act. Proposal (i.e., grant application) funding requests should average $225,000. The total funding level is $1.5 million.

In addition to costs, the Department will consider geographic diversity (distribution) in making grant awards.

IV. Demonstration Program Overview

This Solicitation for Grant Applications (SGA) is extended to States who are committed to the goals and objectives of NEW. It asks them to develop, enhance and implement demonstration and exemplary programs to train and place women in nontraditional occupations (NTOs). For women, NTOs are occupations where less than 25 percent of the persons employed in an occupation or field of work are women. NTOs are generally characterized by employment growth and the potential for above average earnings individualized for each local labor market.

The ultimate goal of the NEW Act is to increase the earnings of women and, thereby, the self-sufficiency of women and their families. To examine ways of accomplishing that goal, the New Act provides funding incentives in its demonstration and exemplary program grants. States shall develop and implement projects/programs that illustrate, by their example, effective ways to incorporate and sustain systemic change in the Job Training Partnership Act (JTPA) service delivery system—the Private Industry Councils' (PICs) procedures and programming—to promote the training and placement of women in NTOs to increase their employment and earnings.

States applying for funds may develop new initiatives or enhancements to existing job training programs and services. Grant funds are to develop and/or supplement, not supplant current funding to train and place women in NTOs.

Grant funds must not be used as "replacement" funds for activities that are currently funded through other Federal programs; i.e., JTPA or Carl Perkins Vocational * * * NEW grant funds can be used in addition to, but not instead of, other Federal funds to expand or enhance programs. Grantee projects serve as models and should be disseminated for replication throughout the JTPA systems and within other education, training and employment programs in the State.

States have completed the development of their second two-year Governor's Coordination and Special Services Plans (GCSSP). The GCSSP must include measurable goals for women in nontraditional training and placement, with particular attention to implementation through the JTPA system as required by NEW.

All States that apply for NEW grant funds must have and describe the measurable State goals for the implementation of training and placing women in NTOs to be responsive to this SGA.

In addition, a high priority will be given to State proposals that provide evidence (in measurable outcomes for women) of the State's prior and ongoing commitment to the goals and objectives of NEW to train and place women in local area-specific nontraditional employment with above average earnings. Such commitment can be measured, in part, from State proposals with (1) greater than average (15 percent of more) proportion of women's JTPA training for NTOs; (2) substantial employment placement rate (85 percent or greater); and (3) wage rates above the local average.

As required by the NEW Act's demonstration and exemplary programs legislation, the Women's Bureau will also consider the following:

(1) the level of coordination between the JTPA and other resources available for training women in nontraditional employment, i.e., Carl D. Perkins Vocational and Applied Technology Education Act, Intermodal Surface Transportation Efficiency Act (ISTEA), Department of Housing and Urban, etc., and other Federal, State and local job training resources;

(2) the extent of private sector involvement in the development and implementation of training programs under the JTPA;

(3) the extent to which the initiatives proposed by a State supplement or build upon existing efforts in a State to train and place women in nontraditional employment;

(4) the extent to which a State is prepared to disseminate information on its demonstration training programs, and

(5) the extent to which a State is prepared to produce materials that allow for replication of such State's demonstration training program.

A State's operating entity for JTPA (as described above in II. Eligible Applicants) interested in submitting a grant application for review under the FY 1994 competition should request a copy of SGA #94–02 from the Office of Procurement Services, U.S. Department of Labor, 200 Constitution Avenue N.W., Room S–5220, Washington, D.C. 20210, Attention: Ms. Lisa Harvey.

Signed at Washington, DC, this 28th day of July 1994.

Karen Nussbaum,

Director, Women's Bureau.

[FR Doc. 94–18852 Filed 8–2–94; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–049]

NASA Advisory Council (NAC), Minority Business Resource Advisory Committee (MBRAC), Small Disadvantaged Business Capability Determination and Enhancement Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee, Small Disadvantaged Business Capability Determination and Enhancement.

DATES: August 18, 1994, 9 a.m. to 4 p.m.

ADDRESSES: Sheraton Hartford Hotel, 315 Trumbull Street, Hartford, CT 06103.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, Room 9K70, 300 E Street, SW, Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review of Last Meeting and Action Items
—Recap of Subcommittee Activities and Accomplishments
—Chairwoman's Report
—Committee Members' Reports
—Current Issues
—Public Comments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: July 28, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–18898 Filed 08–02–94; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District, Fort Calhoun Station, Unit No. 1; Environmental Assessment and Finding of Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.36a(a)(2) regarding submission of the report of annual radioactive liquid and gaseous effluents released to unrestricted areas during the previous calendar year to the Omaha Public Power District (OPPD/the licensee), for the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the filing time requirements of 10 CFR 50.36a(a)(2) regarding the submission of the report of annual radioactive liquid and gaseous effluents released to unrestricted areas during the previous calendar year. By letter dated May 25, 1994, the licensee requested an exemption from 10 CFR 50.36a(a)(2) to allow the licensee to change the date specified in the technical specifications for submitting this report from March 1 to before May 1, starting in 1995. These reports are required by 10 CFR 50.36a(a)(2) to be submitted at intervals no greater than 12 months. Because of the change, the interval between the 1994 and the 1995 reports will be greater than 12 months.

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee to implement the new requirements of the draft Generic Letter regarding the new 10 CFR part 20 into its Technical Specification (TS) 5.9.4.a. The previous TS 5.9.4.a was based on the old requirement that the report be submitted within 60 days after January 1 of each year (March 1). Approval of the new TS will require this one time exemption to change the date of submission from March 1 to any date prior to May 1. This exemption will not affect the information required to be submitted for the time period the report covers (the previous calendar year's data); only the date the report is to be submitted would be changed.

Environmental Impacts of the Proposed Action

Our evaluation of the proposed exemption from 10 CFR 50.36a(a)(2) indicates that the granting of the exemption will not affect the information required to be submitted or the time period the report covers. Therefore, the Commission concludes that there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives will have either no environmental impact or will have a greater environmental impact. The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to this facility and would result in precluding the licensee from changing its TS to be consistent with the new 10 CFR part 20.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for the Fort Calhoun Station, Unit No. 1, dated August 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and consulted with the Nebraska State official. The State official had no comments regarding the NRC's proposed action.

Findings of No Significant Impact

The NRC staff has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated May 25, 1994, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland this 27th day of July 1994.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–18850 Filed 8–2–94; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 11, 1994, through July 22, 1994. The last biweekly notice was published on July 20, 1994 (59 FR 37060).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve 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. The basis for this proposed determination for each amendment request is shown below.

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 before action is taken. 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 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, 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 a hearing and petitions for leave to intervene is discussed below.

By September 2, 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 for the particular facility involved. 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 a 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 a 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 the 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 **(Project Director)**: 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is 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 for the particular facility involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: June 29, 1994

Description of amendment request: The proposed amendment will delete the requirement to perform alternate train testing to demonstrate that other, similar, safety-related components are operable when components are found, or made, inoperable in the safety injection, residual heat removal, and containment spray systems. The surveillance requirements, which the licensee refers to as accelerated testing requirements, affect the following components:

(a)Safety Injection (SI) pumps TS 3.3.1.2.b)

(b) Residual Heat Removal (RHR) Pumps (TS 3.3.1.2.c)

(c) SI and RHR flow paths (TS 3.3.1.2.e)

(d) Containment Spray (CS) (TS 3.3.2.2.a and b)

(e) CS flow paths (TS 3.3.2.2.c)

Basis for proposed no significant hazards consideration determination: 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. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability of an accident previously evaluated because the availability of the subject components will not be reduced and the design and performance of the components are not being changed. The subject components are provided to mitigate the consequences of analyzed accidents; therefore their availability has no bearing on the probability of occurrence of these accidents.

The proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated. This change deletes alternate train testing requirements which, if maintained, could result in loss of the safety function. Elimination of the requirements will serve to ensure that one train of safety equipment is always available to mitigate the consequences of an analyzed accident. The remaining surveillance requirements provide adequate assurance that the components will be operable when required. Therefore the consequences of previously evaluated accidents will not be increase.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated because these proposed changes do not introduce any new modes of operation or testing, and no physical changes are being made to the plant. Therefore no new or different kind of accident could be initiated by this amendment.

3. The proposed revisions do not involve a significant reduction in the margin of safety since the routine testing requirements that remain in the Technical Specifications provide adequate assurance that the components will be operable when needed. Since the elimination of this accelerated testing will decrease component wear and improve availability, the margin of safety should be increased. Since accelerated testing may still occur when component problems involve a potential common mode failure, margins of safety associated with the components' abilities to perform their design functions will not be affected. Therefore, 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.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: David B. Matthews

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: June 13, 1994

Description of amendment request: The proposed amendment would make several changes to the Administrative Controls in Section 6 of Technical Specifications (TS) for Byron and Braidwood stations. The proposed changes include: (1) a change to the submittal frequency of the Radiological Effluent Release Report, (2) a revision to the Shift Technical Advisor description, (3) clarification of the Shift Engineer's responsibilities, and (4) editorial changes. The references to the Semiannual Radiological Effluent Release Report are also revised in other sections of the TS.

Basis for proposed no significant hazards consideration determination: 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:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Section 6 of Technical Specifications do not affect any accident initiators or precursors and do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident.

The proposed changes are administrative in nature and provide clarification. These changes provide consistency with station procedures, programs, the Code of Federal Regulations, other Technical Specifications, and Standard Technical Specifications. These changes do not impact any accident previously evaluated in the UFSAR.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the design or operation of any system, structure, or component in the plant. There are no changes to parameters governing plant operation; no new or different type of equipment will be installed. The proposed changes are considered to be administrative changes. All responsibilities described in Technical Specifications for management activities will continue to be performed by qualified individuals.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes do not affect the margin of safety for any Technical Specification. The initial conditions and methodologies used in the accident analyses remain unchanged, therefore, accident analysis results are not impacted.

The proposed changes are administrative in nature and have no impact on the margin of safety of any Technical Specification. They do not affect any plant safety parameters or setpoints. The descriptions for the Shift Technical Advisor and Shift Engineer are clarified, however, include no reduction to their responsibilities.

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.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: July 6, 1994

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3/4.4.5, "Steam Generators," and the associated bases. Previously the NRC granted amendments to the TSs which authorized the use of selected steam generator sleeving processes. In authorizing use of the processes, the amendments cited references to specific NRC approved vendor technical reports, including revision number. The proposed changes reference the reports in generic terms as those that have been approved by the NRC, subject to limitations and restrictions as noted by the NRC staff. While the licensee will still have to request NRC approval for application of the technologies as referenced in vendor reports, the licenses will not have to be amended each time.

Basis for proposed no significant hazards consideration determination: 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. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Steam Generator section of Technical Specifications do not affect any accident initiators or precursors and do not alter the design assumptions for the systems or components used to mitigate the consequences of an accident. These changes are editorial changes to the requirements currently identified in the Technical Specifications. The requirements approved by the NRC will not be reduced by this request. The proposed change maintains the administrative controls necessary to ensure safe plant operation.

The original amendment requested tubesheet sleeves and tube support plate sleeves as an alternate tube repair method for Bryon and Braidwood Units 1 and 2. The steam generator sleeves approved for installation use the Westinghouse process (laser welded joints) or the Babcock & Wilcox Nuclear Technologies (BWNT) process of kinetically welded joints. The sleeve configuration was designed and analyzed in accordance with the criteria of Regulatory Guide (RG) 1.121 and the design requirements of Section III of the American Society of Mechanical Engineers (ASME) Code. Fatigue and stress analyses of the sleeved tube assemblies for both processes produced acceptable results documented in the current Westinghouse and BWNT Technical Reports. The proposed Technical Specifications change to allow the use of the current NRC approved laser welded or kinetically welded sleeving process does not adversely impact any other previously evaluated design basis accident or the results of these analyses. Therefore, the editorial changes to the referenced sleeving Technical Reports will not increase the probability of occurrence of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are considered to be administrative changes. All the requirements described in Technical Specifications "Acceptance Criteria" for the Steam Generators will continue to be implemented as described in the current Technical Reports.

Referencing the current Westinghouse or BWNT Sleeving Technical Reports currently approved by the NRC and subject to the limitations and restrictions as noted by the NRC, has no effect upon any design transient or accident analyses. The proposed changes do not affect the design or operation of any system, structure, or component in the plant. There are no changes to parameters governing plant operation and no new or different type of equipment will be installed.

The use of the proposed sleeving processes will not introduce significant or adverse changes to the plant design basis. Stress and fatigue analyses of the repair have shown the ASME Code and

RG 1.121 allowable values are met. Implementation of the currently approved laser welded or kinetically welded sleeving will continue to maintain the overall tube bundle structural integrity at a level consistent with that of the originally supplied tubing. Repair of a tube with a sleeve does not provide a mechanism which would result in an accident outside of the area affected by the sleeve. Any hypothetical accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing steam generator tube rupture accident analysis. The tube rupture accident analysis accounts for the installation of sleeves and the impact on current plugging level analyses. The sleeve design does not affect any other component or location on the tube outside of the immediate area repaired.

Thus, the possibility of a new or different type of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature and has no impact on the margin of safety of any Technical Specification. Specific technical reports are no longer referenced in Technical Specifications. An editorial change is made to TS referencing the current NRC approved vendor Technical Report, subject to the limitations and restrictions noted by the NRC. The initial conditions and methodologies used in the accident analyses remain unchanged.

The laser welded and kinetically welded sleeving repair of degraded steam generator tubes has been shown by analysis to restore the integrity of the tube bundle to its original design basis condition. The safety factors used in the design of sleeves for the repair of degraded tubes are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in steam generator design. The design of the tube sleeves has been verified by testing to preclude leakage during normal and postulated accident conditions. Installation of either type of vendor sleeve using the current approved process will continue to maintain the structural integrity of the steam generator tubes.

Thus, these changes do not involve a significant reduction in the 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.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: June 9, 1994

Description of amendment request: The proposed amendments would revise the LaSalle County Station, Units 1 and 2, Technical Specifications (TS), Appendix A, in order to facilitate implementation of the Thermal Limits portion of the General Electric Average Power Range Monitor (APRM)/Rod Block Monitor (RBM)/TS Improvement Program (ARTS).

Specifically, the proposed TS change will create power and flow dependent Minimum Critical Power Ratio (MCPR) and Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits, and other administrative changes.

Basis for proposed no significant hazards consideration determination: 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:

The proposed changes do not involve a significant increase in the probability or

consequences of an accident previously evaluated because:

The probability of an accident previously evaluated will not increase as a result of this change, because no changes to plant systems will occur. All changes are related to core monitoring software, and there will be no physical changes to equipment.

The consequences of an accident previously evaluated will not increase as a result of the proposed changes. The power- and flow-dependent MCPR and MAPLHGR limits incorporate sufficient conservatism so the safety limit MCPR [SLMCPR] (operating limit MCPR [OLMCPR] for automatic flow control) and the fuel thermal-mechanical limits will not be violated for any power and flow condition. Because these limits are protected during normal operation, the consequences of any transient will not increase with this change in limit definition. General Electric has verified in Attachment E that the introduction of Arts will not cause any change in the Licensing Basis PCT [Peak Centerline Temperature] resulting from a Loss-Of-Coolant Accident [LOCA], nor any change in the results satisfying the other LOCA acceptance criteria of 10 CFR 50.46 and Section 15.6.5 of NUREG-0800 (Standard Review Plan), which are: cladding oxidation, metal-water reaction (hydrogen generation), coolable geometry and long-term cooling.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because:

Since no physical changes to any plant system are occurring, there will be no new or different types of accidents created by this change. No interactions between equipment systems will be changed in any manner.

The proposed changes do not involve a significant reduction in a margin of safety because:

The power- and flow-dependent MCPR and MAPLHGR limits will sufficiently protect the SLMCPR (OLMCPR for automatic flow control) and the fuel thermal-mechanical limits at all power and flow conditions. The ARTS limits conservatively assure that all licensing criteria are satisfied without setdown of the flow referenced APRM scram and rod block trips. The limits were developed using NRC approved methods, and satisfy the same NRC approved criteria that the APRM setdown requirement does.

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.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Robert A. Capra

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 13, 1994

Description of amendment request: The requested amendments would allow the testing interval in Technical Specification Surveillance Requirement 4.6.2 for the air or smoke flow test through each containment spray header to be increased from 5 to 10 years. The licensee states that the proposed amendments are consistent with NRC staff guidance contained in NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements," and Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation." In addition, the amendments would also remove an obsolete footnote related to the Catawba Unit 1 first refueling. The licensee's application jointly addressed both its Catawba and McGuire Nuclear Stations. This notice addresses those aspects applicable only to the Catawba Station.

Basis for proposed no significant hazards consideration determination: 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:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. Increasing the surveillance interval of TS [Technical Specification] 4.6.2d from five to ten years will have no impact upon the probability of any accident, since the NS [containment spray] system is not accident initiating equipment. Also, since Catawba's... flow test histor[y] support[s] making the proposed change, system response following an accident will not be adversely affected. Therefore, the requested amendments will not result in increased accident consequences. Deletion of the obsolete footnote as indicated in the Catawba TS markup is purely an administrative change, and therefore will have no impact upon either the probability or consequences of any accident.

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the NS system is not accident initiating equipment. No new failure modes can be created from an accident standpoint. The plant will not be operated in a different manner. Deletion of the Catawba obsolete footnote has no bearing on any accident initiating mechanisms.

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. Plant safety margins will be unaffected by the proposed changes. The NS system will still be capable of fulfilling its required safety function, since plant operating experience supports the proposed change. Finally, the proposed amendments are consistent with the NRC position and guidance set forth in NUREG-1366 and Generic Letter 93-05. Deletion of the Catawba obsolete footnote will not result in any impact to plant safety margins.

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

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.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: July 13, 1994

Description of amendment request: The requested amendments would allow the testing interval in Technical Specification Surveillance Requirement 4.6.2 for the air or smoke flow test through each containment spray header to be increased from 5 to 10 years. The licensee states that the proposed amendments are consistent with NRC staff guidance contained in NUREG-1366, "Improvements to Technical Specifications Surveillance Requirements," and Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation." The licensee's application jointly addressed both its Catawba and McGuire Nuclear Stations. This notice addresses those aspects applicable only to the McGuire Station.

Basis for proposed no significant hazards consideration determination: 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:

Criterion 1

The requested amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated. Increasing the surveillance interval of TS [Technical Specification] 4.6.2d from five to ten years will have no impact upon the probability of any accident, since the NS [containment spray] system is not accident initiating equipment. Also, since... McGuire's flow test histor[y] support[s] making the proposed change, system response following an accident will not be adversely affected. Therefore, the requested amendments will not result in increased accident consequences. ...

Criterion 2

The requested amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the NS system is not accident initiating equipment. No new failure modes can be created from an accident standpoint. The plant will not be operated in a different manner. ...

Criterion 3

The requested amendments will not involve a significant reduction in a margin of safety. Plant safety margins will be unaffected by the proposed changes. The NS system will still be capable of fulfilling its required safety function, since plant operating experiences supports the proposed change. Finally, the proposed amendments are consistent with the NRC position and guidance set forth in NUREG-1366 and Generic Letter 93-05. ...

Based upon the preceding analyses, Duke Power Company concludes that the requested amendments do not involve a significant hazards consideration.

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.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: December 8, 1993, as supplemented April 20, 1994.

Description of amendment request: The amendments would revise Technical Specification (TS) 3.4 to address the need to bypass automatic initiation of the Emergency Feedwater (EFW) system when the main feedwater pump discharge pressure is below actuation setpoint during startup and shutdown in order to prevent inadvertent actuation. The proposed amendment is in response to NRC Inspection Report 50-269, 50-270, 50-287/90-30 (Inspector Followup Item 90-30-02), which determined that the existing TSs regarding initiation circuitry for the EFW system were inadequate. The amendments would also delete operability requirements for the Emergency Condenser Cooling Water (ECCW) system. The licensee determined that the ECCW system is not required to remove decay heat following any design basis event.

Basis for proposed no significant hazards consideration determination: 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) [The amendment request would not] involve a significant increase in the probability or consequences of an accident previously evaluated.

Each accident analysis addressed within the Oconee FSAR [Final Safety Analysis Report] has been examined with respect to changes proposed within this amendment request. The design basis of the Emergency Feedwater (EFW) System is to supply feedwater to the steam generators in the event Main Feedwater is lost. The EFW system provides the required flow rate to cool the RCS [reactor coolant system] down to the point at which the Decay Heat Removal System is designed to operate. The EFW system is also designed to cool the RCS following a small break LOCA [loss of coolant accident]. Changes included within this amendment request are provided to clarify requirements for the operability of EFW. Specifically, theses changes clarify that automatic initiation circuitry due to low main feedwater pump discharge pressure or low hydraulic oil pressure may be bypassed when the reactor is shutdown to prevent inadvertent actuation. In addition, these changes provide that if an EFW pump is inoperable due only to the inoperability of automatic initiation, cooldown to below 250°F is not necessary after the reactor is shutdown. Accident analysis for the loss of main feedwater, and subsequent initiation of EFW, assumes initial conditions of the reactor at full power operation. The utilization of criticality for this specific automatic initiation circuitry to be operable ensures the EFW system is operated within the boundaries of design basis for Oconee while also providing a reasonable margin to prevent inadvertent actuation. It is not possible to place this automatic initiation circuitry in service prior to exceeding 250°F because the main feedwater pump discharge pressure is well below the initiation setpoint at this value. Manual initiation circuitry operability is required prior to exceeding an RCS temperature of 250°F. This change only clarifies existing configuration and control for the Oconee units and does not increase the probability or consequences of any accident previously evaluated.

This change also removes the requirement for Emergency Condenser Cooling Water (ECCW) System operability for the removal of decay heat using the secondary systems. The ability to provide flow through the condenser from the ECCW system is a preferred method for decay heat removal. However, this mode of operation is not necessary to prevent or mitigate any accident previously evaluated. The primary success path for decay heat removal following loss of station power events, and thus loss of normal CCW flow, is the use of the turbine driven EFW pump providing flow to the steam generators and heat removal via the main steam safety relief valves to the atmosphere. Analysis has shown that sufficient inventory exists in secondary systems, as limited by Technical Specification 3.4.4, to provide for decay heat removal.

Therefore, this proposed change deletes the requirement for ECCW for secondary systems decay heat removal. The probability or consequences of any design basis accident are not increased by this change. As such, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) [The amendment request would not] create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

Changes included within this amendment request are provided to clarify existing requirements for operability of the EFW System and remove the requirement for ECCW flow through the condenser for decay heat removal. Operation of Oconee units in accordance with these Technical Specifications will not create any failure modes not bounded by previously evaluated accidents. Previously evaluated accidents assume an initial condition of power operation for loss of main feedwater events. Providing for automatic initiation prior to criticality ensures operation within the bounds of design analysis. Previously evaluated accidents also assume the removal of decay heat, following loss of normal CCW flow, to be via the main steam safety relief valves to the atmosphere which eliminates the need for ECCW operability. Consequently, this change will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

(3) [The amendment request would not] involve a significant reduction in a margin of safety.

The design basis of the EFW system is to supply feedwater to the steam generators in the event Main Feedwater is lost. By providing clarification that manual initiation circuitry is operable prior to exceeding an RCS temperature of 250°F and automatic initiation circuitry, due to low main feedwater discharge pressure or low hydraulic oil pressure, is operable prior to criticality, there is no significant reduction in the margin of safety associated with this amendment request. The ECCW system is designed to provide a means to remove decay

heat without a loss of secondary side inventory. However, analysis has shown that sufficient secondary side inventory exist, as specified by Technical Specification 3.4.4, to provide for coping with loss of station power events. Furthermore, even though this method of decay heat removal is desirable, Oconee PRA [probabilistic risk assessment] studies do not model the loss of ECCW for accident precursors since it is not required and margins of safety are not reduced if it is not available. Changes included within this amendment request clarify existing requirements for the operability of secondary system for decay heat removal based on previously evaluated accidents. As such, all margins of safety are preserved. Therefore, there will be no reduction in any 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.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 200 17th Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Duquesne Light Company, et al., Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 2, 1994

Description of amendment request: The proposed amendment would revise Technical Specification (TS) sections 3.4.6.1 and 3.4.6.2 related to reactor coolant system (RCS) operational leakage and leakage detection instrumentation. The proposed amendment would revise the TSs to be in accordance with the standard TSs in NUREG-1431 in so far as the plant-specific design will allow. The proposed changes relate to the limiting conditions for operation and the surveillance requirements for the four primary instruments used to detect RCS leakage. Changes are also proposed for the index and definition sections. A new TS, section 3/4.5.4, is proposed to address reactor coolant pump seal injection flow.

Basis for proposed no significant hazards consideration determination: 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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of occurrence of a previously evaluated accident, i.e., loss of coolant accident (LOCA), is not increased because the ability of the plant operators to detect RCS leakage and take appropriate corrective action is not changed. The proposed change will continue to ensure that diverse means for detecting extremely small leaks are available to plant operators. In addition, the proposed amendment does not change the operational leakage limits. The seal injection flow limit is not affected by this proposed change. Due to these three factors, the probability of occurrence of a LOCA is not increased. The consequences of an accident previously evaluated are not significantly increased because the proposed changes do not affect the ability of the various safety systems to perform their intended function. The leakage detection monitors do not initiate any automatic function to mitigate the consequences of a LOCA. They provide an early indication of RCS leakage. The operational leakage limits are not affected by this proposed change and they do not initiate any automatic function to mitigate the consequences of a LOCA. The proposed change to the seal injection flow requirement will continue to ensure that ECCS flow will be as assumed in the accident analyses.

Therefore, based on the continued ability of the leakage detection monitors and independent monitoring capabilities to detect extremely small leaks, the fact that this proposed amendment does not change the operational leakage limits, the seal injection flow limit is not affected by this proposed change, and that the proposed changes do not affect the ability of the various safety systems to perform their intended functions, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not change the plant configuration in a way which introduces a new potential hazard to the plant. Since design requirement[s] continue to be met and the integrity of the RCS pressure boundary is not challenged, no new failure mode has been created. As a result, an accident which is different than any already evaluated in the Updated Final Safety Analysis Report (UFSAR) will not be created due to this change.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed change does not involve a significant reduction in a margin of safety since the operational leakage limits will not be affected. Continued plant operation will not be permitted if operational leakage exceeds the current technical specification limits. The operational leakage limits establish limits which ensure that any RCS leakage does not compromise safety. The protection of the RCS pressure boundary from degradation and the core form [from] inadequate cooling, in addition to preventing the accident analyses radiation release assumptions from being exceeded, is the main purpose of the operational leakage limits. The ability to detect and quantify operational leakage allows plant operators to perform actions to place the plant in a safe condition when leakage rate indicates possible RCS pressure boundary degradation. The proposed change will continue to ensure that diverse measurement means are available to provide the plant operators with an early indication of extremely small RCS leakage. Therefore, [the change is] allowing action to be taken to place the plant in a safe condition when RCS leakage indicates possible RCS pressure boundary leakage.

The proposed addition of the separate seal injection specification will not change the flow limit on seal injection. The new specification will continue to ensure that seal injection flow is limited. This will ensure that sufficient flow to the reactor core is provided during accident conditions. The proposed elimination of the Mode 4 applicability, for seal injection flow specification, will not involve a significant reduction in the margin of safety since high seal injection flow is less critical as a result of the lower initial RCS pressure and decay heat removal requirements in Mode 4.

Therefore, this proposed change does 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.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Walter R. Butler

Entergy Operations Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 6, 1994

Description of amendment request: The proposed admendment would revise the technical specifications (TSs) by relocating the seismic and meteorological monitoring instrumentation and their associated requirements from the TSs to the Waterford 3 updated final safety analysis report and plant procedures pursuant to the NRC final policy statement on TSs improvements for nuclear power reactors. The final policy

statement was published in the Federal Register on Thursday, July 22, 1993.

Basis for proposed no significant hazards consideration determination: 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:

The proposed change relocates Seismic and Meteorological Monitoring Instrumentation requirements from the TS to licensee controlled documents consistent with the NRC Policy Statement on Technical Specification Improvements. Criterion 1 of the Policy Statement indicates that the TS should include installed instrumentation that is used to detect, and indicate in the control room, a significant abnormal degradation of the reactor coolant pressure boundary. This criterion is intended to ensure that the TS control those instruments specifically installed to detect excessive reactor coolant system leakage. This criterion is not interpreted to include instrumentation used to detect precursors to reactor coolant pressure boundary leakage (e.g., loose parts monitor, seismic instrumentation, valve position indicators). Combustion Engineering and the NRC have previously determined that relocating Seismic and Meteorological Monitoring Instrumentation requirements from the TS does not affect any material condition of the plant that could directly contribute to causing or mitigating the effects of an accident.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will not involve any design change or modification to the plant. The proposed change will not alter the operation of the plant or the manner in which it is operated. Any subsequent change to the Seismic or Meteorological Monitoring Instrumentation requirements will undergo a review in accordance with the criteria of 10 CFR 50.59 to ensure that the change does not involve an unreviewed safety question.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will relocate Seismic and Meteorological Monitoring Instrumentation requirements from the TS to licensee controlled documents subject to the criteria of 10 CFR 50.59. The proposed change will have no adverse impact on any protective boundary or safety limit.

Therefore, the proposed change will 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.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 22, 1994

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) to change three plant protection system (PPS) trip setpoints to be consistent with the current setpoint/uncertainty methodology being implemented at Waterford 3. The change adjusts the affected TSs values in a more conservative direction.

Basis for proposed no significant hazards consideration determination: 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:

Implementing the proposed change will not affect any design basis accident. The revised trip and actuation setpoints are based upon the same analytical limits that form the basis for the current trip and actuation setpoints. The design basis for each trip and actuation setpoint was verified to be consistent with the appropriate accident analyses as part of the process of revising the PPS setpoint analysis. The proposed changes in trip and actuation setpoints are all in the conservative (away from the analytical limits) direction. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any previously analyzed accident.

Plant operation and the manner in which the plant is operated will not be altered as a result of implementing the proposed change since no new system or design change is being implemented. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The current safety margins of the affected trip setpoints and allowable values is preserved by the proposed change. This is assured by retaining the current analytical limit for the affected parameters. Since the analytical limits are not affected and the total channel uncertainty is increased, the margin of safety for the affected trip setpoints and allowable values is preserved. Therefore, the proposed change will 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.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: June 22, 1994

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) to replace the generic control room outside air intake (CROAI) radiation alarm/trip setpoint (less than or equal to 2x background) with a specific setpoint (less than or equal to 4.09E-5). The new setpoint is based on radioactive material concentrations in the control room not exceeding the derived air concentrations (DAC) occupational values listed in 10 CFR Part 20, Appendix B, Table 1, Column 3.

Basis for proposed no significant hazards consideration determination: 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:

The proposed change replaces the current CROAI radiation monitor alarm/trip setpoint of less than or equal to 2x background with a fixed value independent of background radiation. The new setpoint will continue to provide protection to plant personnel such that occupational radiation exposure is maintained within the limits of 10 CFR 20 during normal plant operation, anticipated operational occurrences or design basis accidents.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change will replace the generic CROAI radiation monitor alarm/trip setpoint with a setpoint derived from a site-specific calculation. The proposed change will not alter the operation of the plant or the manner in which it is operated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will replace the current CROAI radiation monitor setpoint with a new setpoint that will ensure occupational radiation exposure will not exceed the DAC limits of 10 CFR 20. The proposed change has no adverse impact on protective boundaries, safety limits, or margin of safety.

Therefore, the proposed change will 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.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 19, 1994

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications by relocating cycle-specific parameter limits from the Technical Specifications to the Core Operating Limits Report (COLR). Presently, the parameter limits for Turkey Point Units 3 and 4 are calculated using NRC-approved methodologies. These limits are evaluated for every reload cycle and may be revised by a license amendment as appropriate, to reflect changes to cycle-specific variables.The curves to be relocated include (a) TS Figure 3.1-2, Rod Bank Insertion Limits versus Thermal Power curve, and (b) TS Figure 3.2-2, K(Z) Normalized $F_Q(Z)$ as a Function of Core Height curve.

Basis for proposed no significant hazards consideration determination: 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) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The removal of cycle-specific Rod Bank Insertion limits and the K(Z) curve from the Turkey Point Units 3 and 4 Technical Specifications is administrative in nature and has no impact on the probability or consequences of any Design Bases Event (DBE) occurrences which was previously evaluated. The determination of the Rod Bank Insertion limits and K(Z) curve will be performed using methodology approved by the NRC and poses no significant increase in the probability or consequences of any accident previously evaluated.

The Rod Bank Insertion limits and K(Z) curve will be evaluated every cycle to ensure proper compliance with the Updated Final Safety Analysis Report (UFSAR). These limits will be evaluated in accordance with 10 CFR §50.59, which ensures that the reload will not involve an increase in the probability of occurrences or consequences of an accident previously evaluated. 10 CFR §50.59 (2) states that a proposed change involves an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased. Consequently, since any change to the reload core design analysis must be evaluated relative to the more restrictive evaluation criterion of 10 CFR §50.59, then operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The removal of the Rod Bank Insertion limits and K(Z) curve from the Technical Specifications is administrative in nature and has no impact, nor does it contribute in any way to the possibility of a new or different kind of accident from any accident previously evaluated. No new accident scenarios, failure mechanisms or limiting single failure events are introduced as a result of the proposed change.

The generation of the Rod Bank Insertion limits and K(Z) curve will be performed using NRC-approved methodology and are submitted to the NRC, as a revision to the COLR, to allow the NRC staff to trend. The Technical Specifications will continue to require operation within the core operating limits and appropriate actions will be taken if these limits are exceeded.

10 CFR §50.59 permits a licensee to make changes in the facility as described in the safety analysis report without prior Commission approval, provided that the proposed changes does not involve an unreviewed safety question. 10 CFR §50.59 (2) states that a proposed change involves an unreviewed safety question (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created. Consequently, since any change to the reload core design analysis must be evaluated relative to the more restrictive evaluation criterion of 10 CFR §50.59, then operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The margin of safety is not affected by the removal of the Rod Bank Insertion limits and K(Z) curve from the Technical Specifications. The methodology for the reload core design analysis have been approved by the NRC and does not constitute a significant reduction in the margin of safety.

The supporting Technical Specification values are defined by the accident analyses which are performed to conservatively bound the operating conditions defined by the Technical Specifications. The development of the limits for future reloads will continue to conform to the methodology described in NRC approved documentation. In addition, each future reload will involve a 10 CFR 50.59 review to assure that operation of the units within the cycle specific limits will not involve a reduction in a margin of safety. 10 CFR §50.59 (2) states that a proposed change involves an unreviewed safety question (iii) if the margin of safety as defined in the basis for any technical specification is reduced. Consequently, since any change to the reload core design analysis must be evaluated relative to the more restrictive evaluation criterion of 10 CFR §50.59, then operation of the facility in accordance with the proposed amendments would 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 50.92(c) are satisfied.Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Victor M. McCree, Acting

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 19, 1994

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications and its associated BASES, which address the maximum allowed reactor thermal power operation with inoperable main steam safety valves (MSSVs). Westinghouse issued Nuclear Safety Advisory Letter (NSAL) 94-001 which notified the licensee of a deficiency in the basis of the Turkey Point Technical Specification 3/4.7.1, which allows the plant to operate at reduced power levels with a specified number of MSSVs inoperable. This amendment request corrects the allowable power level with inoperable MSSVs.

The licensee also proposed changes to the TS 3.7.1.1 applicability statement to indicate that, for mode 3 only, the actions are required when the Reactor Trip System breakers are in the closed position and the Control Rod Drive System is capable of rod withdrawal.

Basis for proposed no significant hazards consideration determination: 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) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The new power range neutron flux high setpoint values will ensure that the secondary side steam pressure will remain below 110 percent of the design value following a Loss of Load/Turbine Trip event, when one or more main steam safety valves (MSSVs) are declared inoperable. The proposed change will not impact the classification of the Loss of Load/Turbine Trip event as a Condition II probability event (faults of moderate frequency) per ANSI - N18.2, 1973. Accordingly, since the new power range neutron flux setpoints will maintain the capability of the MSSVs to perform their pressure relief function associated with a Loss of Load/Turbine Trip event, there will be no effect on the probability or consequences of an accident previously evaluated.

In addition, the proposed change to the applicability statement of TS 3.7.1.1, will not effect the probability or consequences of an accident previously evaluated, since the proposed plant condition with the reactor trip breakers open and the rod control system not capable of withdrawing rods is an analyzed safe shutdown condition.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to the configuration or method of operation of any plant equipment, and no new failure modes have been defined for any plant system or component. The new power range neutron flux high setpoints will maintain the capability of the MSSVs to perform their pressure relief function to ensure the secondary side steam design pressure is not exceeded following a Loss of Load/Turbine Trip event. Therefore, since the function of the MSSVs is unaffected by the proposed changes, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

In addition, the proposed change to the applicability statement of TS 3.7.1.1, will not create the possibility of a new or different kind of accident from any accident previously evaluated, since the proposed plant condition with the reactor trip breakers open and the rod control system not capable of withdrawing rods is an analyzed safe shutdown condition.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications [do] not involve a significant reduction in a margin of safety. The algorithm methodology used to calculate the new power range neutron flux high setpoints is conservative and bounding since it is based on a number of inoperable MSSVs per loop; i.e., if only one MSSV in one loop is out of service, the applicable power range setpoint would be the same as if one MSSV in each loop were out of service. Another conservatism with the algorithm methodology is with the assumed minimum total steam flow rate capability of the operable MSSVs. The assumption is that if one or more MSSVs are inoperable per loop, the inoperable MSSVs are the largest capacity MSSVs, regardless of which capacity MSSVs are actually inoperable. Therefore, since the power range neutron flux setpoints calculated for the proposed changes using the algorithm methodology are more conservative and ensure the secondary side steam design pressure is not exceeded following a Loss of Load/Turbine Trip event, this proposed license amendment will not involve a significant reduction in a margin of safety.

In addition, the proposed change to the applicability statement of TS 3.7.1.1, does not involve a significant reduction in a margin of safety, since the proposed plant condition with the reactor trip breakers open and the rod control system not capable of withdrawing rods is an analyzed safe shutdown condition.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Victor M. McCree, Acting

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: July 19, 1994

Description of amendment request: The licensee proposes to change Turkey Point Units 3 and 4 Technical Specifications (TS) by revising Surveillance Requirements 4.8.1.1.2e. and 4.8.1.1.2f., to delete the specific reference in the TS of the American Society for Testing and Materials (ASTM) testing standard being used to meet TS testing requirements. The Emergency Diesel Generator (EDG) fuel oil TS Surveillance Requirements will be replaced with a requirement to test the EDG fuel oil in accordance with the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program.

The licensee proposes the addition of ACTION statements g. and h. of TS 3.8.1.1 to address the required action in the event the diesel fuel oil does not meet the Diesel Fuel Oil Testing Program limits.

Basis for proposed no significant hazards consideration determination: 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) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Technical Specifications will permit the Technical Specification required testing of Emergency Diesel Generator (EDG) fuel oil in accordance with the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program. The proposed change will permit FPL to use more recent editions of the American Society for Testing and Materials (ASTM) standards currently listed in Technical Specification Surveillance Requirements 4.8.1.1.2e. and 4.8.1.1.2f. Prior to changing the Diesel Fuel Oil Testing Program, the proposed change will be evaluated pursuant to Title 10 Code of Federal Regulations §50.59 (10 CFR §50.59), "Changes, tests, and experiments." Title 10 CFR §50.59 permits a licensee to make changes in the procedures as described in the safety analysis report without prior Commission approval, provided that the proposed changes [do] not involve an unreviewed safety question.

Title 10 CFR §50.59(a)(2) states that a proposed change involves an unreviewed safety question (i) if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased. Consequently, since any change to the Diesel Fuel Oil Testing Program, including the ASTM standard or ASTM edition standard to be used to evaluate EDG fuel oil acceptability, the change must be evaluated relative to the more restrictive evaluation criterion of 10 CFR §50.59, then operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated. The EDG fuel oil TS Surveillance Requirements will be

replaced with a requirement to test the EDG fuel oil in accordance with the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program.

ACTION statement g. of TS 3.8.1.1 is added to address the required action in the event the new fuel oil properties do not meet the Diesel Fuel Oil Testing Program limits. A failure to meet the API gravity, kinematic viscosity, flash point or clarity limits is cause for rejecting the new fuel oil prior to the addition to the Diesel Fuel Oil Storage Tanks, but does not represent a failure to meet the Limiting Condition for Operation (LCO) of TS 3.8.1.1, since the new fuel oil has not been added to the storage tanks. Provided these new fuel oil properties are met subsequent to the addition of the new fuel oil to the storage tanks, 30 days is provided to complete the analyses of the other fuel oil properties specified in Table 1 of ASTM-D975-81, except sulfur which may be performed in accordance with ASTM-D1552-79 or ASTM-D2622-82. In the event the other new fuel oil properties specified in Table 1 of ASTM-D975-81 are not met, ACTION statement g. of TS 3.8.1.1 provides an additional 30 days to meet the Diesel Fuel Oil Testing Program limits. This additional 30 day period is acceptable because the fuel oil properties of interest, even if they are not within limits, would not have an immediate effect on EDG operation.

ACTION statement h. of TS 3.8.1.1 is added to address the required action in the event the stored fuel oil total particulates does not meet the Diesel Fuel Oil Testing Program limits. Fuel oil degradation during long term storage shows up as an increase in particulate, due mostly to oxidation. The presence of particulate does not mean the fuel oil will not burn properly in a diesel engine. The frequency for performing surveillance on stored fuel oil is based on stored fuel oil degradation trends which indicate that particulate concentration is unlikely to change significantly between surveillances.

Prior to changing the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program, FPL will need to determine if the proposed program change is at least as, if not more, effective, in detecting unsatisfactory fuel oil. The EDGs will thus continue to function as designed and the probability or consequences of previously evaluated accidents will be unaffected.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications will permit the Technical Specification required testing of Emergency Diesel Generator fuel oil using more recent editions of the American Society for Testing and Materials standards listed in Technical Specification Surveillance Requirements 4.8.1.1.2e. and 4.8.1.1.2f. Prior to changing the edition of the previously approved ASTM standard being used to evaluate the EDG fuel oil, the proposed edition standard will be evaluated pursuant to 10 CFR §50.59, "Changes, tests, and experiments." Title 10 CFR §50.59 permits a licensee to make changes in the procedures as described in the safety analysis report without prior Commission approval, provided that the proposed changes does not involve an unreviewed safety question. Title 10 CFR §50.59(a)(2) states that a proposed change involves an unreviewed safety question (ii) if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created. Consequently, since any change to the edition of the ASTM standard to be used to evaluate EDG fuel oil acceptability must be evaluated relative to the more restrictive evaluation criterion of 10 CFR §50.59, then operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

ACTION statement g. of TS 3.8.1.1 is added to address the required action in the event the new fuel oil properties do not meet the Diesel Fuel Oil Testing Program limits. A failure to meet the API gravity, kinematic viscosity, flash point or clarity limits is cause for rejecting the new fuel oil prior to the addition to the Diesel Fuel Oil Storage Tanks, but does not represent a failure to meet the Limiting Condition for Operation (LCO) of TS 3.8.1.1, since the new fuel oil has not been added to the storage tanks. Provided these new fuel oil properties are met subsequent to the addition of the new fuel oil to the storage tanks, 30 days is provided to complete the analyses of the other fuel oil properties specified in Table 1 of ASTM-D975-81, except sulfur which may be performed in accordance with ASTM-D1552-79 or ASTM-D2622-82. In the event the other new fuel oil properties specified in Table 1 of ASTM-D975-81 are not met, ACTION statement g. of TS 3.8.1.1 provides an additional 30 days to meet the Diesel Fuel Oil Testing Program limits. This additional 30 day period is acceptable because the fuel oil properties of interest, even if they are not within limits, would not have an immediate effect on EDG operation.

ACTION statement h. of TS 3.8.1.1 is added to address the required action in the event the stored fuel oil total particulates [do] not meet the Diesel Fuel Oil Testing Program limits. Fuel oil degradation during long term storage shows up as an increase in particulate, due mostly to oxidation. The presence of particulate does not mean the fuel oil will not burn properly in a diesel engine. The frequency for performing surveillance on stored fuel oil is based on stored fuel oil degradation trends which indicate that particulate concentration is unlikely to change significantly between surveillances.

Prior to changing the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program, FPL will need to determine if the proposed program change is at least as, if not more, effective, in detecting unsatisfactory fuel oil. Since the proposed changes do not involve a change in the design of any plant system or component, and since the proposed changes will need to evaluate the effect of any ASTM standard edition change on the level of EDG reliability, the change proposed will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications will permit the Technical Specification required testing of Emergency Diesel Generator (EDG) fuel oil using more recent editions of the American Society for Testing and Materials (ASTM) standards listed in Technical Specification Surveillance Requirements 4.8.1.1.2e. and 4.8.1.1.2f. Prior to changing the edition of the previously approved ASTM standard being used to evaluate the EDG fuel oil, the proposed edition standard will be evaluated pursuant to 10 CFR §50.59, "Changes, tests, and experiments." Title 10 CFR §50.59 permits a licensee to make changes in the procedures as described in the safety analysis report without prior Commission approval, provided that the proposed changes [do] not involve an unreviewed safety question. Title 10 CFR §50.59(a)(2) states that a proposed change involves an unreviewed safety question (iii) if the margin of safety as defined in the basis for any technical specification is reduced. Consequently, since any change to the edition of the ASTM standard to be used to evaluate EDG fuel oil acceptability must be evaluated relative to the more restrictive evaluation criterion of 10 CFR §50.59, then operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

ACTION statement g. of TS 3.8.1.1 is added to address the required action in the event the new fuel oil properties do not meet the Diesel Fuel Oil Testing Program limits. A failure to meet the API gravity, kinematic viscosity, flash point or clarity limits is cause for rejecting the new fuel oil prior to the addition to the Diesel Fuel Oil Storage Tanks, but does not represent a failure to meet the Limiting Condition for Operation (LCO) of TS 3.8.1.1, since the new fuel oil has not been added to the storage tanks. Provided these new fuel oil properties are met subsequent to the addition of the new fuel oil to the storage tanks, 30 days is provided to complete the analyses of the other fuel oil properties specified in Table 1 of ASTM-D975-81, except sulfur which may be performed in accordance with ASTM-D1552-79 or ASTM-D2622-82. In the event the other new fuel oil properties specified in Table 1 of ASTM-D975-81 are not met, ACTION statement g. of TS 3.8.1.1 provides an additional 30 days to meet the Diesel Fuel Oil Testing Program limits. This additional 30 day period is acceptable because the fuel oil properties of interest, even if they are not within limits, would not have an immediate effect on EDG operation.

ACTION statement h. of TS 3.8.1.1 is added to address the required action in the event the stored fuel oil total particulates [do] not meet the Diesel Fuel Oil Testing Program limits. Fuel oil degradation during long term storage shows up as an increase in particulate, due mostly to oxidation. The presence of particulate does not mean the fuel oil will not burn properly in a diesel

engine. The frequency for performing surveillance on stored fuel oil is based on stored fuel oil degradation trends which indicate that particulate concentration is unlikely to change significantly between surveillances.

Prior to changing the Turkey Point Units 3 and 4 Diesel Fuel Oil Testing Program, FPL will need to determine if the proposed program change is at least as, if not more, effective, in detecting unsatisfactory fuel oil. Since the proposed changes will require a safety evaluation to assure that the reliability of the EDGs using fuel oil tested in accordance with the different ASTM standard edition maintains the current margin of safety, the proposed changes do not involve a 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 50.92(c) are satisfied.Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Victor M. McCree, Acting

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: April 28, 1994

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3/4.8.1.1, "AC Sources Operating," and the associated TS Bases for demonstrating the operability of the diesel generators (DGs), based upon three NRC guidelines:

A. Generic Letter (GL) 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation."

1. Delete from TS action statement a the requirement to test the DGs in the event of an inoperable offsite circuit.

2. Eliminate from TS action statement b the need to test the operable DG if the other DG became inoperable due to an inoperable support system or an independently testable component in addition to the existing provision excluding preplanned preventive maintenance or testing. Furthermore, ifthe operable DG must be tested, it would be tested within 8 hours (rather than 24 hours) unless the absence of any potential common mode failure for the remaining DG is demonstrated.

3. Also eliminate from TS action statement c the need to test the operable DG if the other DG became inoperable due to an inoperable support system or an independently testable component in addition to the existing provision excluding preplanned preventive maintenance or testing. In addition, the operable DG would not have to be tested if the absence of any potential common mode failure for the remaining DG is demonstrated. A reference to TS action statement a would be deleted because of the proposed change to TS action statement a described above.

4. Eliminate from TS action statement e the need to test the DGs when two offsite circuits are inoperable.

5. Revise TS 4.8.1.1.2.g.2 to allow the DG to be gradually loaded, as opposed to a fast loading of 60 seconds or less to an indicated value of 6100-7000 kw. This change would extend gradual loading of DGs (that GL 93-05 recommends for routine monthly surveillance) to the 6-month surveillance.

B. Regulatory Guide (RG) 1.9, Revision 3, "Selection, Design, Qualification, and Testing of Emergency Diesel Generator Units Used as Class 1E Onsite Electric Power Systems at Nuclear Power Plants," (insofar as this guide relates to reducing DG stress and wear due to testing and the elimination of certain reporting requirements).

1. Incorporate into TS 4.8.1.1.2.a.4 the provision to perform routine monthly testing by gradually accelerating the DG to operating speed, rather than requiring the DG to attain rated voltage and frequency within 11.4 seconds. As a direct result of this proposed change, TS action statements b, c, and f would be revised to reference TS 4.8.1.1.2.g.1 instead of TS 4.8.1.1.2.a.4 in the event that an operable DG must be tested when the other DG is inoperable. This has the effect of requiring the operable DG to be fast-started for testing pursuant to the action statement.

2. In TS 4.8.1.1.2.h.7, separate the 24-hour endurance run from the hot restart test. As a result, create new TS 4.8.1.1.2.h.8 to require the hot restart test. The DG would be operated for a minimum of 2 hours at a load of 6800-7000 kw, and the DG would be shut down. Within 5 minutes of shutdown, the DG would be restarted and required to attain rated voltage and frequency within 11.4 seconds. Delete existing TS footnote u (which provides for reperforming the hot restart test without repeating the 24-hour endurance test) which is no longer required. Renumber existing TSs 4.8.1.1.2.h.8, .9, .10, .11, and .12 to accommodate the addition of new TS 4.8.1.1.2.h.8.

3. Delete TS 4.8.1.1.3, "Reports." (This is also in accordance with the Improved Technical Specifications, Revision 0, dated September 28, 1992).

4. In TS 4.8.1.2, "A. C. Sources Shutdown," delete the reference to deleted TS 4.8.1.1.3.

C. NUMARC 87-00, Revision 1, "Guidelines and Technical Bases for NUMARC Initiatives Addressing Station Blackout at Light Water Reactors," (insofar as it relates to the test frequency for a problem DG). Specifically, TS Table 4.8-1, "Diesel Generator Test Schedule," would be revised to incorporate the test schedule of Section D.2.4.4 of Appendix D to NUMARC 87-00, Revision 1. Under the proposed schedule, testing pursuant to TS 4.8.1.1.2.a would be conducted monthly provided the number of valid failures in the last 25 demands for a given DG is no more than 3. If the number of valid failures is 4 or more, testing would be conducted at least once per 7 days (but at intervals of no less than 24 hours) until 7 consecutive failure-free starts from standby conditions and load-run demands have been performed. Note that both NUMARC 87-00, Revision 1, and RG 1.9, Revision 3, use and define the terms "start demand, start failure, load-run demand, and load-run failure" rather than the old RG 1.108 terminology of valid tests. In fact, Section D.2.4.4 of Appendix D to NUMARC 87-00 refers to the last 25 "demands" rather than tests. Therefore, the proposed change to TS Table 4.8-1 would count valid failures in terms of demands rather than valid tests. The criteria for determining the number of valid failures and demands would be in accordance with RG 1.9, Revision 3.

Basis for proposed no significant hazards consideration determination: 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. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes affect the required actions in response to inoperable offsite and onsite ac sources, surveillance requirements for the emergency diesel generators, and reporting requirements for diesel generator failures. The proposed changes are based on the recommendations of Regulatory Guide 1.9, Revision 3, NUMARC 87-00, Revision 1, and Generic Letter 93-05. They are expected to result in improvements in diesel generator testing and failure reporting and reduce diesel generator aging due to excessive testing. As such, the

proposed changes should result in improved diesel generator reliability, thereby providing additional assurance that the diesel generators will be capable of performing their safety function. Therefore, the proposed changes will not significantly increase the probability or consequences of any accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes affect the action and surveillance requirements for the onsite and offsite ac sources. Accordingly, the proposed changes do not involve any change to the configuration or method of operation of any plant equipment, and no new failure modes have been defined for any plant system or component nor has any new limiting failure been identified as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes are based on existing regulatory guidance. Under the proposed changes, the emergency diesel generators will remain capable of performing their safety function, and the effects of aging on the diesel generators will be reduced by eliminating unnecessary testing. Therefore, 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.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Esquire, Troutman Sanders, Nations Bank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308-2210.

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, Docket No. 50-320, Three Mile Island Nuclear Station, Unit No. 2, (TMI-2), Dauphin County, Pennsylvania

Date of amendment request: October 9, 1991.

Description of amendment request: *Facility Operating License No.* DPR-73, a possession only license for the TMI-2 facility, held by General Public Utilities Nuclear Corporation (GPU Nuclear), expires November 4, 2009. The proposed amendment would extend the expiration date of

Facility Operating License No. DPR-73 for TMI-2 to April 19, 2014. No other changes to the license or the Technical Specifications are proposed.

The TMI-2 facility is currently in long term storage. GPU Nuclear, the licensee, has named this storage period Post Defueling Monitored Storage or PDMS. The licensee plans to maintain TMI-2 in PDMS until Three Mile Island Nuclear Station Unit No. 1 (TMI-1) permanently ceases operation, at which time both TMI-1 and TMI-2 will be decommissioned simultaneously. The TMI-1 Operating License expires on April 19, 2014.

Basis for proposed no significant hazards consideration determination: 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:

10 CFR 50.92 provides the criteria which the Commission uses to perform a No Significant Hazards Consideration. 10 CFR 50.92 states that an amendment to a facility license involves No Significant Hazards if 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.

The proposed modification of the expiration date of the TMI-2 License does not involve any physical changes to the facility. All that is involved is an extension of the time TMI-2 would be in a monitored storage condition. Based on this, GPU Nuclear concludes that the proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. Accident evaluations for PDMS are provided in the PDMS Safety Analysis Report (SAR) and the PDMS Final Programmatic Environmental Impact Statement, Supplement 3 (PEIS) dated August 1989. These documents evaluated monitored storage of TMI-2 for extended periods of time and provide for surveillances to ensure monitored storage conditions are appropriately maintained. The PDMS PEIS specifically evaluated monitored storage until 2014. No evaluated accident has a probability or consequence that are increased significantly during the period 2009 to 2014 over the period before 2009. Therefore, it can be concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. As previously stated, the act of modifying the expiration date of the TMI-2 License does not involve any physical changes to the facility and therefore, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety during PDMS. The surveillances identified in the PDMS SAR will be performed to ensure that the facility is maintained in the condition defined by the SAR. These conditions and surveillances will continue to apply during the extended license. Therefore, there will not be a reduction in the margin of safety.

Based on the above analysis, it is concluded that the proposed changes involve No Significant Hazards Consideration as defined by 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601 Harrisburg, Pennsylvania 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, D.C. 20037

NRC Project Director: Seymour H. Weiss

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 30, 1994

Description of amendment request: The proposed amendment would clarify the requirement for the audit of conformance to Technical Specifications, delete the requirement for Safety Committee oversight of the Emergency Plan and Security Plan and allow designation by the Plant Superintendent signature authority for procedure approval.

Basis for proposed no significant hazards consideration determination: 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:

)The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. No physical changes will result from this amendment. These changes revise audit requirements and procedure approval requirements. The subject audits will still be performed to provide assurance of conformance to the requirements, and the procedures will still receive adequate technical reviews by the cognizant departments while relieving the Plant Superintendent-Nuclear of the administrative burden of signing each procedure revision.

2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical changes will result from this amendment. These changes revise audit requirements and

procedure approval requirements. The subject audits will still be performed to provide assurance of conformance to the requirements, and the procedures will still receive adequate technical reviews by the cognizant departments while relieving the Plant Superintendent-Nuclear of the administrative burden of signing each procedure revision.

3) The proposed amendment does not involve a significant reduction in a margin of safety. No physical changes will result from this amendment. These changes revise audit requirements and procedure approval requirements. The subject audits will still be performed to provide assurance of conformance to the requirements, and the procedures will still receive adequate technical reviews by the cognizant departments while relieving the Plant Superintendent-Nuclear of the administrative burden of signing each procedure revision.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, 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.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 30, 1994

Description of amendment request: The proposed amendment would add Operability Requirements, Limiting Conditions for Operations (LCO) and Surveillance Requirements for the Control Building Chillers.

Basis for proposed no significant hazards consideration determination: 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) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated because the requested revisions do not affect any FSAR analysis involving these systems.

The proposed revision only adds LIMITING CONDITIONS for OPERATION (LCO) and Surveillance Requirements (SR) for the Control Building Chillers. These additions will provide assurance that the affected systems will be OPERABLE when required.

2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because there is no equipment or design change associated with this change. The proposed amendment only adds LCOs and SRs for the Control Building Chillers.

3) The proposed amendment will not involve any reduction in a margin of safety. The safety function of the Control Building Chillers is to remove the design basis heat load under all normal and emergency conditions. The addition of LCOs and SRs for the Control Building Chillers ensures they will be OPERABLE when required.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, 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.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: June 30, 1994

Description of amendment request: The proposed amendment would modify the surveillance testing of the Emergency Service Water (ESW) system by deleting the flow rate test and the requirement to test the pumps each week when river water temperature exceeds 80°F and by adding a surveillance regarding the Cedar River (Ultimate Heat Sink) water temperature.

Basis for proposed no significant hazards consideration determination: 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) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. No physical changes will result from this amendment. The ESW system will still maintain its ability to support various safety related equipment which is designed to mitigate the consequences of certain accidents and transients. These safety related systems play no part in the probability of these accidents or transients occurring. Since the ESW system will continue to fully support the cooling requirements of the safety related equipment which mitigate the consequences of certain accidents and transients, this amendment will not affect the consequences of these accidents and transients. The re-analysis of the component heat loads assumed worst case conditions and involved conservative assumptions. Our continuing program for monitoring heat exchanger performance, which was established in response to Generic Letter 89-13, "Service Water System Problems Affecting Safety-Related Equipment," will continue to verify that the individual components are capable of performing their design function. Therefore, the proposed amendment does not involve a change in the probability or consequences of an accident previously evaluated.

2) The proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated. The safety function of the ESW system is unchanged. The revised flow requirements for the system have been established using conservative assumptions and worst case heat loads and are appropriately documented in the FSAR and plant procedures. This amendment will result in no physical changes to the ESW system and therefore, will not affect its ability to continue to provide reliable cooling water. Consequently, the proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3) The proposed amendment will not reduce the margin of safety. The re-analysis of the ESW flow rate requirements and component heat loads was performed using conservative assumptions and maximum component heat loads. The actual operation of the ESW system will not be changed. Any degradation of ESW pump performance would be detected by the IST program which requires quarterly testing of these pumps and monitoring of the pump's differential pressure and flow. Deleting the requirement to perform the surveillance each week when river water temperature exceeds 80°F will not reduce the margin of safety because even at a river water temperature of 95°F, the required ESW flow to supply all the branches is well below the normal system flow rate of approximately 1100 gpm. Deleting the weekly surveillance will eliminate unnecessary testing of the ESW pumps, thereby reducing wear on the pumps. Adding a surveillance requirement for river water temperature will formalize the recording of water temperature every hour to assure acceptable ESW performance.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, 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.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: John N. Hannon

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: June 30, 1994

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.2.7.1, "Primary Coolant System Pressure Isolation Valves." Specifically, TS Table 3.2.7.1, "Primary Coolant System Pressure Isolation Valves," would be revised to add Shutdown Cooling System (SCS) check valves 38-165, 166, 167, 168, 169, 170, 171, and 172 each with a maximum allowable leakage rate of less than or equal to 0.375 gpm. The proposed amendment would add the check valves in lieu of replacing the SCS isolation valves with ones that are 10 CFR Part 50, Appendix J, Type C air testable. The added check valves would provide high pressure/low pressure interfaces between the high pressure Reactor Coolant System and the low pressure Core Spray System. The addition of the check valves will allow utilization of the Core Spray System as a seal water system for sealing the Shutdown Cooling isolation valves as permitted by Section III.C.3 of 10 CFR Part 50, Appendix J.

Basis for proposed no significant hazards consideration determination: 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:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change requires the addition of Primary Coolant System pressure isolation valves for the prevention of an intersystem LOCA [loss-of-coolant accident]. The proposed addition does not affect operation of either the Shutdown Cooling or Core Spray Systems. These changes do not alter any accident initiators or precursors and therefore does not affect the probability of a previously evaluated accident.

Testing these valves in accordance with Specification 3.2.7.1 provides assurance that the Core Spray System will not be damaged by an overpressurization event which could lead to potential loss of integrity of the system and subsequent release of radioactivity. Thus, the addition of the valves would not increase the consequences of any accident. Therefore, the operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed addition of Primary Coolant System pressure isolation valves, although a physical change, does not alter the initial conditions used for any design basis accident. The check valves provide the high pressure/low pressure isolation between the Reactor Coolant and Core Spray Systems. These valves will be subject to leak rate testing in accordance with Specification 3.2.7.1. This ensures that an intersystem LOCA is prevented. The proposed change has no effect on operation of either the Shutdown Cooling or Core Spray Systems. Therefore, the design capabilities of these systems are not challenged in a manner previously assessed so as to create the possibility of a new or different kind of accident. Accordingly, operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed change which requires the addition of Primary Coolant System pressure isolation valves, ensures proper isolation of a high pressure/low pressure interface between the Reactor Coolant and Core Spray Systems. The pressure isolation valves will be leak tested in accordance with Specification 3.2.7.1. This provides assurance that the Core Spray System will not be damaged by an overpressurization event and will not result in loss of integrity of the system. Thus, the results of any event previously analyzed remains unchanged. Therefore, the operation of Nine Mile Point Unit 1, in accordance with the proposed amendment will 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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Michael L. Boyle

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 18, 1994

Description of amendment request: The proposed change will revise the current surveillance frequency which verifies area temperature limits at least once per 12 hours. The revised surveillance requirement will verify area temperature limits at least once per 7 days when the data-logger alarm is operable, or at least once per 12 hours when the data-logger alarm is inoperable.

Basis for proposed no significant hazards consideration determination: 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:

...The proposed change does not involve an SHC [significant hazards consideration] because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change reduces the frequency at which area temperature monitoring must be verified when the temperature data-logger alarm function is operable. For conditions where the temperature data-logger alarm function is inoperable, the frequency at which normal ambient temperature is verified remains unchanged. In addition, the proposed change does not affect any system, equipment, or component credited in any previous accident evaluation, any environmental qualification or post-accident profiles. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not alter or affect the design, function, failure mode, or operation of the plant. There is no change to the way in which the plant is operated and, therefore, no increase in the probability of plant operation with any area temperature outside of its limits. Therefore, this change does not create the possibility of a new or different kind of accident from those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change does not challenge or affect the performance of any of the protective boundaries, revise temperature limits in the technical specifications, or perform any modifications that would increase the likelihood of technical specification temperature limits being exceeded. The proposed change requires the data-logger alarm function to be operable in order to relax the surveillance frequency. This alarm function provides continuous monitoring that would detect temperature excursions prior to the current surveillance which does not credit operability of the data-logger alarm function. Also, the proposed change does not increase the interval for which temperatures could exceed technical specification limits. Therefore, the proposed change does not cause a reduction in the 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.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 30, 1994

Description of amendment request: The proposed change revises the Technical Specifications to change the trip setpoint for the 4kV bus undervoltage relay (for the grid degraded voltage) from its current value of [greater than or equal to] 3710 volts to its new setting of [greater than or equal to] 3730 volts.

Basis for proposed no significant hazards consideration determination: 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:

...The proposed change does not involve an SHC [significant hazards consideration] because the change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves the modification of the undervoltage relay setpoint from 3710V to 3730V. The protection provided by this system in unaffected and is still in accordance with the guidance provided in NRC Branch Technical Position PSB-1. This refinement increases the Technical Specification minimum trip setpoint for the degraded voltage relays on the 4kV safety buses. It does not detrimentally affect the safe operation of the plant, nor does this proposed modification increase the probability or consequences of an accident previously evaluated. The actual trip setpoints of the subject relays do not require any changes and are currently conservatively set at 3745V. The allowable value of [greater than or equal to] 3706V remains unchanged. This slightly higher than required setting was chosen by NNECO to provide added margin should an undervoltage condition be present. This higher setting will not cause more actuations of the ESF [engineered safety feature] systems.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The undervoltage protection system is provided to address the concerns identified in NRC Branch Technical Position PSB-1 by providing a scheme to detect the loss of offsite power at the class 1E buses, and a second level of undervoltage protection to protect class 1E equipment. The change in the setpoint will not affect the ability of this circuitry to detect a loss of offsite power or to respond to an undervoltage condition.

Since the equipment will operate as previously described in the FSAR [Final Safety Analysis Report], and there are no physical plant modifications required (the current setting at the undervoltage relay is 3745V), the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

These relays do not cause a loss of offsite power, nor do they cause a degraded voltage condition. These relays react to conditions that have been placed upon the Plant. In the event that a degraded voltage condition exists on the 4kV safety buses, alarms in the control room alert the operators of this condition. In addition, the Connecticut Valley Electric Exchange (CONVEX), the system dispatch center for generation and VAR/voltage control, is aware of the minimum voltage requirements for the three nuclear plants at the Millstone station and has a minimum target switchyard voltage of 345kV. Under normal operation conditions the switchyard voltage would have to degrade below 328kV before one of the 4kV safety buses would start to enter the degraded voltage level and trip the degraded voltage circuit. These administrative controls help preclude a degraded voltage condition on the 4kV safety buses prior to actuation of the degraded voltage protection circuits.

The proposed change of the 4kV degraded voltage minimum trip setpoint to 3730V from 3710V will not result in any physical relay setting change. The existing trip setting for the 4kV degraded voltage relays have been conservatively set at 3745V, while the existing allowable value remains unchanged at 3706V.

The response times or actuation logic of the degraded voltage protection circuit remains unaffected, therefore revising the trip setpoint value in the Technical Specifications will not involve a significant reduction in the 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.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment requests: January 29, 1993, as revised June 15, 1994.

Description of amendment requests: The proposed amendments would change core exit thermocouple action statements.

Basis for proposed no significant hazards consideration determination: 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. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the post accident monitoring equipment is to display unit variables that provide information required by the control room operators during accident situations and as such help limit the consequences of an accident. The proposed changes, which will allow continued plant operation with less than four core exit thermocouples per core quadrant, have no impact on the probability of an accident because they are only used in response to accident situations.

Continued plant operation with the core exit thermocouple system in the degraded condition as allowed by the proposed core exit thermocouple action statements would not affect the operators ability to monitor for inadequate core cooling following an accident. At least two core exit thermocouples would be operable per core quadrant, a minimum of four thermocouples would be available in the center region of the core and at least one thermocouple would be available in each quadrant of the outside core region. The smaller size of the Prairie Island core, and therefore higher density of thermocouples per unit of core area, provides additional assurance that core exit temperatures can be adequately monitored with a reduced number of core exit thermocouples.

Alternate means of monitoring for inadequate core cooling would also be available. These include the reactor vessel water level indication system, the subcooling margin monitors and wide range reactor coolant system temperature.

The combination of the remaining operable core exit thermocouples and the alternate monitoring capability will ensure that the operators ability to identify inadequate core cooling in a timely manner and take appropriate corrective action will not be

impaired, and therefore; the proposed changes will have no significant impact on the consequences of an accident.

The core exit thermocouples perform no active role in the mitigation of an accident. Their inoperability will not affect the operability of any engineered safety features equipment or that equipments ability to mitigate the consequences of an accident.

Therefore, for the reasons discussed above, the proposed changes will not significantly affect the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no new failure modes or mechanisms associated with the proposed changes. The proposed changes do not involve any modification of plant equipment or any changes in operational limits. The proposed changes only modify the requirements for instrumentation used to monitor plant parameters during an accident. The core exit thermocouples are passive monitoring devices, their failure or inoperability cannot result in a plant accident of any kind.

Therefore, for the reasons discussed above, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated, and the accident analyses presented in the Updated Safety Analysis Report will remain bounding.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Continued plant operation with the core exit thermocouple system in the degraded condition as allowed by the proposed core exit thermocouple action statements would not affect the operators ability to monitor for inadequate core cooling following an accident. At least two core exit thermocouples would be operable per core quadrant, a minimum of four thermocouples would be available in the center region of the core and at least one thermocouple would be available in each quadrant of the outside core region. The smaller size of the Prairie Island core, and therefore higher density of thermocouples per unit of core area, provides additional assurance that core exit temperatures can be adequately monitored with a reduced number of core exit thermocouples.

Alternative means of monitoring for inadequate core cooling would also be available. These include the reactor vessel water level indication system, the subcooling margin monitors and wide range reactor coolant system temperature.

The combination of the remaining operable core exit thermocouples and the alternate monitoring capability will ensure that the operators ability to identify inadequate core cooling in a timely manner and take appropriate corrective action will no be impaired.

Therefore, for the reasons discussed above, the proposed changes will not result in any reduction in the plant's 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 requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: L. B. Marsh

PECO Energy Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 30, 1994

Description of amendment request: This amendment would relocate selected recirculation and control rod block instrumentation setpoints from Technical Specifications (TS) Table 3.3.6-2, and Section 3/4.4.1 to the Core Operating Limits Report (COLR), thereby revising TS Section 6.9.1.9 to document relocation of these items into the COLR.

Basis for proposed no significant hazards consideration determination: 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. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The TS change proposed is the relocation of the recirculation pump Motor-Generator (MG) set mechanical and electrical stop and control rod block recirculation flow upscale trip setpoint values to the COLR. No physical plant equipment change is proposed. The TS requirements for the setpoints and the associated surveillance requirements remain unchanged. Only the location of the setpoint values will be changed. The subject setpoint values will become cycle depend[e]nt and will be determined by NRC approved methods, as are the balance of setpoints and thermal limits found in the COLR. However, the subject setpoint values are not modified as part of this TS change.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The TS changes proposed are the relocation of the recirculation pump MG set mechanical and electrical stop and control rod block recirculation flow upscale trip setpoint values to the COLR. No physical plant equipment change is part of the proposed TS changes. The TS LCOs and surveillance requirements remain unchanged. The only change proposed is the relocation of the subject setpoint values as noted above. These setpoint values have been determined in accordance with previously NRC approved methods and assure sufficient operating margins in accordance with existing core design methodology. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The following TS BASES were reviewed for potential reduction in the margin of safety:

3/4.2 Power Distribution Limits
3/4.3.6 Control Rod Block Instrumentation
3/4.4.1 Recirculation System

The margin of safety, as defined in the TS BASES, will not be reduced. The proposed TS changes do not affect existing accident analyses or design assumptions, nor do they impact any safety limits of the plant, since they are administrative in nature.

Therefore, the proposed TS changes do not involve a 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.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: June 23, 1994

Description of amendment request: This amendment will change the Technical Specification 4.0.5 for each unit to reflect NRC's policy with respect to relief requests for the inservice inspection programs. Specifically, the change would clarify the fact that relief requests for impracticable testing or surveillance requirements can be implemented prior to the Commission approval of such requests.

Basis for proposed no significant hazards consideration determination: 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. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature in that the changes eliminate any possibility of misinterpretation of the ASME Code requirements that allow for a utility to submit relief requests to the Commission within one year and allows for the implementation of these request[s] prior to Commission review and approval. The relief requests are based on and provide for alternative testing based on industry practice that provides an equivalent level of quality and safety as the Code requirement. The Commission will still provide acceptance of the relief requests in writing. Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility or a new or different kind of accident from any accident previously evaluated.

No new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident from those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes are administrative in nature and do not adversely impact the plant's ability to meet applicable regulatory requirements related to inservice testing or inspection. The proposed changes eliminate any possible misinterpretation of the Code requirements regarding relief requests and do not reduce the protection of public health and safety. Therefore, it can 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.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 13, 1994

Description of amendment request: The proposed amendments would permit an out-of-service component to be returned to service under administrative controls for the purpose of determining operability. The proposed change is consistent with the method utilized in the new Westinghouse Standard Technical Specifications (NUREG-1431). In addition, the proposed amendment corrects a typographical error in the header information on Page 3/4 0-2 of the current technical specifications.

Basis for proposed no significant hazards consideration determination: 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. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

a. Header Information

This editorial change corrects a typographical error only. As such, existing accident analyses are unaffected.

b. Specification 3.0.6

The proposed change merely clarifies the intent of Specification 3.0.2. As such, existing accident analyses are unaffected.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

a.Header Information

This editorial change corrects a typographical error only. As such, it does not alter the function of any plant equipment, involve any design changes, nor does it create any new operating modes or accident scenarios.

b. Specification 3.0.6

The proposed change merely clarifies the intent of Specification 3.0.2. As such, it does not alter the function of any plant equipment, involve any design changes, nor does it create any new operating modes or accident scenarios.

3. Will not involve a significant reduction in a margin of safety.

a. Header Information

This editorial change corrects a typographical error only. As such, the present margins of safety are unaffected.

b. Specification 3.0.6

The proposed change merely clarifies the intent of Specification 3.0.2. As such, the present margins of safety are unaffected.

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.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: June 17, 1994 as supplemented July 13, 1994

Description of amendment request: The proposed amendment would change the requirement to perform the Channel Functional Test of the Power Operated Relief Valve (PORV) position indication from quarterly to every 18 months and to exempt the PORV Block Valve position indication from performance of the channel Function Test if the PORV Block Valve is shut as required to isolate a PORV that cannot be manually cycled.

Basis for proposed no significant hazards consideration determination: 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. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A change from quarterly (Q) to at least every 18 months (R) may appear to be non-conservative, at first; however, by extending the surveillance requirement to cycle the PORV during non-power conditions, the change eliminates the potential risk and consequences of having the valve sticking open at power or not fully closing (leaking). Therefore, by extending the surveillance the probability and consequences of any previously analyzed accident is reduced, since the testing would now be conducted in a non-power condition, and the margin to safety is increased. Consequently, a net safety gain is realized by eliminating or minimizing these risks.

The added note for PORV block valve is included for consistency and alignment between the surveillance requirement under this T/S (Table 4.3-11) with that of T/S surveillances 4.4.3.2 and 4.4.5.2 for Units 1 and 2 respectively.

Therefore, the proposed amendment does not involve a physical or procedural change to any structure, component, or system that significantly affects accident/malfunction probabilities or consequences previously evaluated in the UFSAR.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not introduce any design or physical configuration changes to the facility which could create new accident scenarios.

3. Does not involve a significant reduction in a margin of safety.

As stated in response to question number 1 above, the proposed changes do not eliminate the required T/S surveillance requirements. The first change eliminates the need to cycle the PORV valves through one

complete cycle of full travel at power. The second change allows for not having to perform a surveillance on a valve that it is being used as an isolation point. The valve has been closed to comply with requirements of another T/S action statement. Therefore, the probability and consequences of any previously analyzed accident is reduced, thus increasing the margin to 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.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Tennessee Valley Authority, Docket No. 50-296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama

Date of amendment request: March 29,1994 (TS 340)

Description of amendment request: The proposed amendment to the Unit 3 Technical Specifications adds a limiting condition for operation and a surveillance requirement for a load shedding logic being added by a design change to Unit 3. The load shedding logic is being added to ensure that the maximum capacity of the Unit 3 Emergency Diesel Generators is not exceeded during a postulated loss of offsite power event concurrent with a design basis accident.

Basis for proposed no significant hazards consideration determination: 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. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change establishes a surveillance testing requirement and limiting condition for operation for the Unit 3 480-volt load shedding logic system. This Technical Specification change will not introduce any new failure mode and will not alter any assumptions previously made in evaluating the consequences of an accident. Accordingly, this change does not affect any design limiting safety system settings or operating parameters. Furthermore, the change does not modify or add any accident initiating events or parameters. Therefore, these proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change establishes a limiting condition for operation and a surveillance requirement for the Unit 3 480-volt load shedding logic system. The addition of a limiting condition for operation and surveillance requirement will not adversely affect the operation of Unit 3 or the manner in which it is operated. Furthermore, the change does not create a failure mode that can lead to an accident of a different type than previously evaluated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The addition of a limiting condition for operation and surveillance requirement will not reduce the margin of safety. The testing of the 480-volt load shedding logic on an 18-month interval is consistent with BWR/4 (NUREG-1433) Standard Technical Specifications. These are based on the guidance set forth in NRC Regulatory Guide 1.108, "Periodic Testing of Diesel Generator Units Used as Onsite Electric Power Systems at Nuclear Power Plants." The addition of a limiting condition for operation establishes a minimum acceptable level of performance for the 480-volt load shedding logic system. Thus, the ability of the Emergency Diesel Generators to supply power during a loss of offsite power coincident with a design basis accident is assured.

Furthermore, no reductions in the requirements or setpoints of the equipment supplied by the Emergency Diesel Generators are made which could result in a reduction in the margin of safety. Therefore, this proposed change does not involve a reduction in the 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.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: February 23, 1994

Brief description of amendments: The proposed changes would revise the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Technical Specifications (TS) to (1) allow a one-hour allowed outage time (AOT) following discovery of a closed cold leg injection accumulator discharge isolation in Modes 1, 2, or 3; (2) eliminate the redundant requirement to reverify accumulator boron concentration following fill from the refueling water storage tank (RWST); (3) relocate the accumulator water level and pressure channel analog channel operational test (ACOT) and channel calibration from the CPSES Technical Specifications to an administratively controlled program; (4) change the accumulator limits to analysis values rather than indicated values; and (5) reduce the inspection frequency following containment entries.

Basis for proposed no significant hazards consideration determination: 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. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

The current requirement to immediately open a cold leg accumulator discharge isolation valve (or shut down the unit) upon discovery that the valve is closed is modified by the requested change to provide a one hour allowed outage time (AOT) prior to requiring a unit shutdown. This change is consistent with NUREG-1431. The currently required action is more restrictive than that required by CPSES Technical Specification 3.0.3, that specifies the action required if an LCO [Limiting Condition for Operation] and its associated action requirements are not met and which provides a one hour AOT prior to taking steps to place the plant in Mode 3 within the following 6 hours. Following this requested change, the required actions for an accumulator declared inoperable due to a closed discharge isolation valve will be identical to those actions required for inoperability for other reasons, with the exception of the accumulator boron concentration being out of specification that has an AOT of 72 hours. Changing the AOT from "immediate" to one hour does not affect the probability of an accident. The only previously evaluated accident that is potentially impacted is the Loss of Coolant Accident (LOCA). With all valves open and thus all accumulators available, a potential LOCA is bounded by the existing accident analyses. With one accumulator discharge isolation valve closed and thus one accumulator not available, the consequences of a LOCA could be more severe; however, this requested amendment does not create this scenario. In other words, although the change in AOT may slightly increase the probability that, were a LOCA to occur, an

accumulator would not be available (see the response to [number] 3 below), it does not involve a significant increase in the consequences of an accident previously evaluated.

The requirement to test the accumulator boron concentration following a 101 gallon or greater solution volume increase is modified by the requested change to exclude volume additions from the Refueling Water Storage Tank (RWST). Since the RWST boron concentration must be confirmed to satisfy the limits for the accumulators, there is no impact on the probability or consequences of any accident.

The relocation of the accumulator water level and pressure channel ACOT and Channel Calibration from CPSES Technical Specifications to an administratively controlled program is essentially an administrative change. Because proper tests will still be performed, there is no impact on the probability or consequences of any accident.

The requested change to reduce the containment debris inspections from "at the completion of every entry" to "[a]t least once daily" will require fewer inspections and is consistent with SR [Surveillance Requirement] 4.6.1.3 for the containment air locks. The accident of concern is a LOCA and these inspections have no impact on the probability of a LOCA. Performing fewer inspections would slightly increase the possibility that, should a LOCA occur, there could be debris in containment which could be transported to and partially clog the containment sump. However, inspecting at least daily if containment entries have been made is adequate and is justified by the reduced total radiation exposure for plant personnel. The inspections conducted at least daily assures that there is not a significant increase in the consequence of any accident.

The requested changes do not modify the existing LCOs for Technical Specifications 3.5.1 and 3.5.2 with the exception of the replacement of "indicated" values with analysis values in LCO 3.5.1, consistent with the relocation of the SRs for accumulator instrumentation. The requested changes are consistent with NUREG-1431 and GL 93-05, and, as such, have already been generically assessed by the NRC. It is concluded that the requested changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated accident.

The only requested change that modifies current operation of the plant is the requested one hour alowed outage time for action following discovery of a closed cold leg accumulator discharge isolation valve. The requested one hour completion time to open the valve continues to ensure that prompt action will be taken to return the inoperable accumulator to an operable status, minimizing the potential for exposure of the plant to a LOCA under this condition. In addition, as LCO 3.5.1a will continue to require that the accumulator discharge isolation valve be open with power removed from the valve operator, the probability of the discharge isolation valve being closed in Modes 1, 2, or 3 will remain low. This change in current operation does not create the possibility of a new or different kind of accident.

The requested slight reduction in the containment inspection frequencies specified in SR 4.5.2 only serves to reduce the number of unnecessary inspections. It does not make substantial changes to the inspection requirements, nor does it change the method of performing these requirements. Thus, the requested change does not create the possibility of a new or different kind of accident.

No significant changes to the limiting conditions for operation of the accumulators or the emergency core cooling system are requested as part of this amendment request. The requested changes do not involve any physical changes to the plant. The requested changes are consistent with NUREG-1431 and GL 93-05, and, as such, have already been generically assessed by the NRC. Thus, the requested changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The only requested change that modifies current operation of the plant is the requested one hour allowed outage time for action following discovery of a closed cold leg accumulator discharge isolation valve. As noted in the response to [number] 1 above, this requested change in AOT does not significantly affect the probability or consequences of an accident, but does increase the possibility that, should a LOCA occur, one of the accumulators may not be available to help mitigate the consequences of the accident. However, the requested one hour completion time to open the valve continues to ensure that prompt action will be taken to return the inoperable accumulator to an operable status, minimizing the potential for exposure of the plant to a LOCA under this condition. In addition, as LCO 3.5.1a will continue to require that the accumulator discharge isolation valve be open with power removed from the valve operator, the probability of the discharge isolation valve being closed in Modes 1, 2, or 3 will remain low. Considering the controls above and the fact that the requested action statement is consistent with TS 3.0.3, it is concluded that the requested change does not involve a significant reduction in the margin of safety.

The requested slight reduction in the containment inspection frequencies specified in SR 4.5.2 only serves to reduce the number of unnecessary inspections conducted and reduce the personnel exposure associated with the inspections. As adequate inspections will continue to be conducted, this requested change does not involve a significant reduction in a margin of safety.

No significant changes to the limiting conditions for operation of the accumulators or the emergency core cooling systems are requested as part of this amendment request. The requested changes are consistent with NUREG-1366, NUREG-1431 and GL 93-05, and, as such, have already been generically assessed by the NRC. Thus, it is concluded that the requested changes do not involve a significant reduction in the 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.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: William D. Beckner

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 22, 1994

Brief description of amendments: The proposed amendments would revise the technical specifications by changing the frequency of auxiliary feedwater pump operational testing from monthly to quarterly.

Basis for proposed no significant hazards consideration determination: 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. The proposed change does not involve a significant increase in the probability or consequences or a previously evaluated accident.

Because the Auxiliary Feedwater System pumps are provided to mitigate certain accidents, altering the test frequency of the pumps will not impact the probability of an accident. The Auxiliary Feedwater System pumps will continue to be tested quarterly on a staggered basis to the same standards applied to safety-related pumps as defined by ASME Section XI. Satisfactory completion of the testing in accordance with the Code is used as verification that safety-related pumps will be available to perform their intended function. Quarterly testing of the Auxiliary Feedwater System pumps on a staggered basis, therefore, will continue to assure that the Auxiliary Feedwater System will be capable of performing its intended function. It is thus concluded that the requested change will not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated

2. The proposed changes do not create the possibility of a new or different kind of

accident from any accident previously evaluated.

Changing the surveillance test frequency of the Auxiliary Feedwater Pumps does not involve any physical modification of the plant or result in a change in a method of operation. Therefore, it is concluded that the requested change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Changing the surveillance testing frequency of the Auxiliary Feedwater System pumps does not affect any safety limits or any limiting safety system settings. System operating parameters are unaffected. The availability of equipment required to mitigate or assess the consequence of an accident is not reduced; in fact the availability is increased because the system is rendered inoperable on a quarterly basis to perform pump testing, rather than a monthly basis. Further, vibration testing being the most effective early indication of gradual pump degradation continues to be performed on the same frequency. Quarterly testing of the Auxiliary Feedwater pumps on a staggered basis in accordance with the criteria specified in the ASME Section XI code provides adequate assurance that the Auxiliary Feedwater System pumps are capable of performing their intended function. Thus, its [sic] is concluded that the requested change does not involved [sic] 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.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: William D. Beckner

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 25, 1994

Brief description of amendments: The proposed amendments would revise the technical specifications to reduce the number of fast starts currently required by surveillance requirements for the emergency diesel generators (EDGs).

Basis for proposed no significant hazards consideration determination: 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. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

This change reduces the number of "fast starts" required on the EDGs and allows the EDGs to be tested using "slow starts." Reducing the number of "fast starts" (required to start in 10 seconds or less) will reduce the wear on the EDGs primarily by minimizing coking of fuel in the cylinder and preventing premature wearing of the turbocharger thrust bearing. This increases engine reliability and availability. A "slow start" may require that the EDG be taken out of service to perform the test if the EDG start time is not 10 seconds or less. TU Electric feels that testing the "fast start" capability of the EDG every 184 days will maintain its present level of reliability. The period of time in which the EDG is actually inoperable due to testing (i.e., may not start and be ready to load in 10 seconds) is quite short. Overall the reliability and the availability of the EDG will be increased.

The impact of the EDGs on the postulated accidents is directly related to their reliability and availability. Therefore, the proposed reduction in the number of "fast starts" does not involve a significant increase in the probability or consequences of any previously evaluated accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated accident.

The revised testing allowed by this Technical Specification change does not create a new or different kind of accident. The EDGs are primarily accident mitigation components. The potential failure of EDGs have already been assessed in the CPSES design.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The only aspect of this change that could adversely affect the margin of safety is the potential impact on the start time of the engine. The start time of the engine is not expected to exceed the assumption in the accident analyses except possibly in the short period of time required to perform the "slow start" test. If the EDG does not start in 10 seconds or less under these conditions, the EDG is declared inoperable, as allowed by the Technical Specifications, to perform the "slow start" test. Because these periods of inoperability are only implemented as allowed by the Technical Specifications, there is no impact on the margin of safety. The margin of safety established by the assumed EDG availability will be enhanced by the increased reliability and availability of the EDGs.

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.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: William D. Beckner

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 25, 1994

Brief description of amendments: The proposed amendments would revise the technical specifications by updating the unit staff qualification requirements to Regulatory Guide 1.8, Revision 2, "Qualification and Training of Personnel for Nuclear Power Plants," and by relocating administrative control of training from the technical specifications to the Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: 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. The proposed changes do not involve a significant increase in the probability or consequences of a previously evaluated accident.

This proposed amendment involves a consolidation of previous unit staff qualification requirements into one source document, and a relocation of training requirements to a more appropriate license basis document. The qualification requirements of the unit staff remains the same as the existing requirements, and the relocation of the training requirements does not change the scope of the program as it now exists. The relocated training program requirements retain adequate administrative and regulatory controls to ensure the plant is not placed in an unanalyzed condition.

These changes are administrative in nature. They remain within the assumptions of the current accident analysis. As a result, they do not increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated accident.

These changes are administrative in nature. They merely consolidate qualification requirements and relocate training requirements. The relocated program requirements retain adequate administrative and regulatory controls to ensure the plant is not introduced to an unreviewed safety question.

These changes are administrative in nature. They do not introduce any new initiating

events. As a result, they do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a signficant reduction in a margin of safety.

These changes are administrative in nature and have no impact on actual plant protection or safety actuation systems, or the assumed actions performed in accordance with normal, abnormal, or emergency operating procedures. There are adequate regulatory and plant configuration controls existing to ensure there is no impact on the plant 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.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019

Attorney for licensee: George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, N.W., Suite 1000, Washington, D.C. 20036

NRC Project Director: William D. Beckner

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 21, 1994

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) by adding requirements for the steam exclusion system. The new TS addresses the steam exclusion system (TS 3.15) and the surveillance on the steam exclusion system (TS 4.15). This system was not previously addressed by the TS.

Basis for proposed no significant hazards consideration determination: 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:

A) TS 3.15 Steam Exclusion System (New)

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The intent of this new specification is to specify the operability requirements for the Steam Exclusion System and to demonstrate the acceptability of removing the Steam Exclusion System from service for short periods of time.

The proposed change will not significantly increase the probability of an accident previously evaluated. The accident under consideration is a high energy line break outside of containment. Allowing a steam exclusion boundary to be inoperable for a short period of time has no effect on the probability of occurrence of a high energy line break outside of containment.

The proposed change will not significantly increase the consequences of an accident previously evaluated. Again, the accident under consideration is a high energy line break outside of containment. Calculations conclude that the core damage frequency for a high energy line break outside of containment with a non-redundant steam exclusion boundary open is 2.57E-8 per 12-hour period. Further conservative assumptions of one non-redundant steam exclusion boundary being open 12 hours per day, 5 days per week, 52 weeks per year results in a core damage frequency of 6.68E-6 per year. This analysis was conservatively calculated taking minimal credit for mitigating the accident, and is considered to be an acceptable level of risk on an annual basis. A safety factor of five was applied to NUREG/CR-4550 data to determine the initiating event frequency of a high energy line break. This calculation supports the conclusion that this addition to the Technical Specifications will not result in a significant increase in the probability or consequences of an high energy line break outside of containment.

Furthermore, calculations conclude that the core damage frequency for a high energy line break outside of containment with one of two redundant steam exclusion boundaries open is 4.62E-10 per 72-hour period. Further conservative assumptions of one redundant steam exclusion damper being open 24 hours per day, 5 days per week, 52 weeks per year results in a core damage frequency of 4.00E-8 per year. This analysis was conservatively calculated taking minimal credit for mitigating the accident, and is also considered to be an acceptable level of risk on an annual basis. Again, a safety factor of five was applied to NUREG/CR-4550 data to determine the initiating event frequency of a high energy line break. This calculation also supports the conclusion that this addition to the Technical Specifications will not result in a significant increase in the probability or consequences of an high energy line break outside of containment.

Specific requirements for the Steam Exclusion System do not currently exist in the Technical Specifications. Addition of TS 3.15 is an enhancement to the Kewaunee Technical Specifications, and providing this information for the plant staff and operators will not significantly increase the probability or consequences of an accident previously evaluated, nor will it adversely affect the health and safety of the public.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not alter the plant configuration, operating setpoints or overall plant performance. Therefore, it cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in the margin of safety.

Addition of the specification is an enhancement to the Technical Specifications and does not alter input to the safety analysis. Furthermore, the supporting analysis demonstrates an acceptable level of risk for removing components from service for limited periods of time. Therefore, it will not involve a significant reduction in the margin of safety.

Additionally, the proposed change is similar to example C.2.e(ii) in 51 FR 7751. Example C.2.e(ii) states that changes that constitute an additional limitation, restriction or control not presently included in the TS's are not likely to involve a significant hazard.

B) S 4.15 Steam Exclusion System (New)

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. The accident under consideration is a high energy line break outside of containment. The performance of periodic surveillance requirements, testing which verifies that components in the Steam Exclusion System are operating properly, cannot significantly increase the probability or consequences of a high energy line break, nor will it adversely affect the health and safety of the public.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not alter the plant configuration, operating setpoints or overall plant performance. Therefore, it cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3) Involve a significant reduction in the margin of safety.

Addition of the specification is an enhancement to the Kewaunee Technical Specifications and does not alter input to the safety analysis. Therefore, it will not involve a significant reduction in the margin of safety.

Additionally, the proposed change is similar to example C.2.e(ii) in 51 FR 7751. Example C.2.e(ii) states that changes that constitute an additional limitation, restriction or control not presently included in the TS's are not likely to involve a significant hazard.

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.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O.

Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: John N. Hannon

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 26, 1994

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) Sections 2.3, 3.6, and 4.6 by correcting minor typographical errors and format inconsistencies. These changes are being proposed as a part of the licensee's ongoing effort to revise each section of the KNPP TS to achieve a consistent format and to convert the entire document to Word Perfect. In addition, changes to the basis for TS Sections 2.3, 3.6, and 4.6 have also been proposed.

Basis for proposed no significant hazards consideration determination: 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:

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

2) create the possibility of a new or different kind of accident from any accident previously evaluated.

3) involve a significant reduction in the margin of safety.These proposed changes involve the conversion of the TS to the Word Perfect format now being used at WPSC. Minor typographical errors and format inconsistencies were corrected. These proposed changes are administrative in nature; accordingly, these proposed changes do not involve a significant hazards consideration. Additionally, the proposed changes are similar to example C.2.e.(i) in 51 FR 7751. Example C.2.e.(i) states that changes which are purely administrative in nature; i.e., to achieve consistency throughout the Technical Specifications, correct an error, or a change in nomenclature, are not likely to involve a significant hazard.

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.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: John N. Hannon

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: January 4, 1994

Brief description of amendment request: The proposed amendment would implement recommended changes from Generic Letter (GL) 93-05, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation." Specifically, the licensee proposed to change their Technical Specifications corresponding to the following GL 93-05 line numbers: 4.1.2, 5.8, 5.14, 6.1, 7.5, 8.1, 9.1, 12, and 14. Date of individual notice in **Federal Register:** July 22, 1994 (59 FR 37513)

Expiration of individual notice: August 22, 1994

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Arizona Public Service Company, et al., Docket No. STN 50-529, Palo Verde Nuclear Generating Station, Unit 2, Maricopa County, Arizona

Date of application for amendment: July 1, 1994

Brief description of amendment request: The proposed amendment would modify Technical Specification (TS) Figure 3.2-1, "Reactor Coolant Cold Leg Temperature vs. Core Power Level." Specifically, the minimum cold leg temperature for core power levels between 90 percent and 100 percent would be changed to 552°F (which is a reduction of 10°F from the previous TS requirement). This TS change permits reactor operation at full power with a lower reactor coolant temperature to minimize potential steam generator tube degradation.

Date of individual notice in **Federal Register:** July 13, 1994 (59 FR 35767)

Expiration of individual notice: August 12, 1994

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Commonwealth Edison Company, Docket No. STN 50-456, Braidwood Station, Unit 1, Will County, Illinois

Date of amendment request: June 20, 1994

Description of amendment request: The proposed amendment would revise the Braidwood, Unit 1, Technical Specifications (TSs) to remove the condition limiting operation of the facility to 100 days during the present fuel cycle when T_{hot} is greater than 500°F and to restore the reactor coolant dose equivalent Iodine-131 limit to 1 microcurie per gram of coolant from the present value of 0.35. Both the limit on permissible operational time and the reduction in the permissible level of Iodine-131 were incorporated into the TSs by Amendment No. 50 issued to *Facility Operating License No.* NPF-72 for Braidwood Station, Unit 1, on May 7, 1994.

Date of publication of individual notice in **Federal Register:** July 11, 1994 (59 FR 35389)

Expiration of individual notice: August 10, 1994

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of amendment request: June 16, 1994

Description of amendment request: The proposed amendments would consist primarily of an administrative change to the Zion Station's Technical Specifications (TSs) to reflect an exemption to 10 CFR Part 50, Appendix J, Section III.D.3.

Date of publication of individual notice in **Federal Register:** June 30, 1994 (59 FR 33798)

Expiration of individual notice: August 1, 1994

Local Public Document Room location: Waukegan Public Library, 128

N. County Street, Waukegan, Illinois 60085

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: June 24, 1994

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to change the Administrative Controls section to require an individual who serves as the Operations Manager to either hold a Millstone Unit 2 senior reactor operator (SRO) license or have an SRO license at another pressurized water reactor. If the Operations Manager does not hold a Millstone Unit 2 SRO license, then an individual serving as the Assistant Operations Manager would be required to possess an SRO license at Millstone Unit 2. Date of publication individual notice in **Federal Register:** July 7, 1994 (59 FR 34872).

Expiration of individual notice: August 8, 1994

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Southern Nuclear Operating Company, Inc., Docket No. 50-348,Joseph M. Farley Nuclear Plant, Unit 1

Date of amendment request: June 17, 1994

Brief description of amendment request: The amendment changes the Technical Specifications to revise the nuclear enthalpy rise hot channel factor (F delta H) from equal to or less than 1.65 [1 plus 0.3(1-P)] to equal to or less than 1.70 [1 plus 0.3(1-P)] where P is a fraction of rated power. The amendment also revises the action statement to reflect guidance contained in the improved standard technical specifications.

Date of publication of individual notice in **Federal Register:** June 22, 1994 (59 FR 32249)

Expiration of individual notice: July 22, 1994

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Notice Of Issuance Of Amendments To Facility Opersting Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendment: August 5, 1993, as supplemented by letter dated January 19, 1994.

Brief description of amendment: The amendment extends the surveillance interval of selected channel functional test for the reactor protection system (RPS) and the engineered safety feature actuation system (ESFAS) instrumentation from once per month to quarterly. In addition, the amendment will modify Technical Specification (TS) 2.2.1, Table 2.2-1 to change selected reactor trip setpoints and allowable values. This amendment supersedes an amendment request dated December 28, 1992, published in the **Federal Register** on February 3, 1993 (58 FR 6994)

Date of issuance: July 15, 1994

Effective date: July 15, 1994

Amendment Nos.: 78, 64, and 50

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48378) The additonal information contained in the January 19, 1994, letter was clarifying in nature, was within the scope of the initial notice, and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: March 25, 1994

Brief description of amendment: The amendment revises TS 3/4.8.4.2, by eliminating the term "motor starter" and replacing it with a more accurate description of the MOV bypass configuration.

Date of issuance: July 12, 1994

Effective date: July 12, 1994

Amendment No.: 48

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1994 (59 FR 22002) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 12, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson SteamElectric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: May 20, 1994

Brief description of amendment: The amendment revises the Technical Specification requirement for the Manager - Operations to hold a Senior Reactor Operators (SRO) license at HBR.The revision allows the Manager - Operations position to be filled by an

individual who holds or has held an SRO license at either HBR or a similar plant. The amendment also requires the Manager - Shift Operations to hold an SRO license for HBR.

Date of issuance: July 15, 1994
Effective date: July 15, 1994
Amendment No.: 148
Facility Operating License No. DPR-23. Amendment revises the Technical Specifications.
Date of initial notice in **Federal Register:** June 8, 1994 (59 FR 29625) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: March 12, 1993
Brief description of amendment: The amendment revises Technical Specification Table 3.3.7.1-1 Action 72, to clarify the actions to be taken if the control room ventilation radiation monitor becomes inoperable.
Date of issuance: July 18, 1994
Effective date: as of its date of issuance to be implemented within 90 days.
Amendment No. 64
Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 28, 1994 (59 FR 22013) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 1994. No significant hazards consideration comments received: No
Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: March 11, 1994
Brief description of amendments: The amendments add new hydraulic snubbers on the main steamlines to the Technical Specifications (TS) for Quad Cities, Units 1 and 2, and also change the snubber visual inspection interval and corrective actions in TS Section 3.6.1 and 4.6.1 to the format and content of the BWRs STSs, as revised by Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," dated December 11, 1990.
Date of issuance: July 13, 1994
Effective date: July 13, 1994
Amendment Nos.: 149 and 145
Facility Operating License Nos. DPR-29 and DPR-30. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** 59 FR 17595 (April 13, 1994) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 13, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South CarolinaDate of application for amendments: January 25, 1993, as supplemented May 12, 1993

Brief description of amendments: The amendments revise the Technical Specifications to allow longer surveillance test intervals and allowed outage times for the reactor protection system and the engineered safety features actuation system.
Date of issuance: July 18, 1994
Effective date: July 18, 1994
Amendment Nos.: 122 and 116
Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41501) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: February 25, 1994
Brief description of amendments: The amendments revise Technical Specification (TS) Tables 3.3-10 and 4.3-7 to add four instruments as part of the accident monitoring instrumentation, and delete five instruments from the TS Tables that are not part of the accident monitoring instrumentation.
Date of issuance: July 18, 1994
Effective date: July 18, 1994
Amendment Nos.: 144 and 126
Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17597) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1994.No significant hazards consideration comments received: No.
Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, FloridaDate of application for amendments: February 22, 1994

Brief description of amendments: These amendments relocate the instrument response time limits for the Reactor Protective System and the Engineered Safety Features Actuation System from the Technical Specifications to be Updated Safety Analysis Report for both units.
Date of issuance: July 12, 1994
Date of issuance: July 12, 1994
Effective date: July 12, 1994
Amendment Nos.: 128 and 67
Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17598) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1994No significant hazards consideration comments received: No.
Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: April 11, 1994
Brief description of amendment: The amendment revises the plant Technical Specifications (TS) to relocate the detailed inspection criteria, methods and frequencies of the containment tendon surveillance program to the Final Safety Analysis Report (FSAR) and to provide a direct reference to the tendon surveillance program in the TS, and make certain editorial changes.

Date of issuance: July 14, 1994
Date of issuance: July 14, 1994
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 187
Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** June 8, 1994 (59 FR 29627). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 14, 1994. No significant hazards consideration comments received: No.
Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 21, 1994
Brief description of amendments: The amendments revise Technical Specifications 3.1.2.3 "Reactivity Control Systems Charging Pumps - Shutdown" and 3.1.2.1 "Boration Systems Flow Paths - Shutdown." The amendments allow energizing of an inoperable centrifugal charging pump in preparation for switching of the centrifugal charging pumps, provided the pump discharge is isolated from the reactor coolant system. The amendment allows for continued flow to the reactor coolant pump seals.
Date of issuance: July 12, 1994
Effective date: July 12, 1994, to be implemented within 31 days of issuance.
Amendment Nos.: Unit 1 - Amendment No. 62; Unit 2 - Amendment No. 51
Facility Operating License Nos. NPF-76 and NPF-80. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17602) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: April 18, 1994
Brief description of amendment: Technical Specification Sections 3/4.6.6.3, "Standby Gas Treatment System," and 3/4.7.2, "Control Room Ventilation System," require periodic testing of the charcoal filter beds to demonstrate their continuing effectiveness in removing radioiodine. The specifications, which referenced the testing methodology of ASTM D3803-79, have been updated to reference the 1989 version of the standard.
Date of issuance: July 22, 1994
Effective date: July 22, 1994
Amendment No.: 91
Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 12, 1994 (59 FR 24750) The June 16, 1994, submittal consisted of revisions/clarifications which did not change the staff's initial proposed no significant hazards considerations determination.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 22, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: November 17, 1993.
Brief description of amendments: The amendments modify the Technical Specifications to allow a portion of the Waste Gas Holdup System Explosive Monitoring System to be inoperable for 160 days on a one-time basis so that the Waste Gas Oxygen Analyzer can be replaced. These amendments also make an editorial change to the Automatic Gas Analyzer tag numbers.
Date of issuance: July 7, 1994
Effective date: July 7, 1994
Amendment Nos.: 179 & 163
Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4938) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 7, 1994.No significant hazards consideration comments received: No.
Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 6, 1993
Brief description of amendments: This amendment request changes the technical specifications to provide for a separate action if the Accumulator cannot meet the requirements of the Limiting Condition for Operation due to boron concentration. The allowed outage time to restore boron concentration is changed from 1 hour to 72 hours.
Date of issuance: July 20, 1994
Effective date: July 20, 1994
Amendment Nos. 152 and 132
Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48389) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 20, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Public Service Electric & Gas Company, Docket No. 50-311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: June 11, 1993 and supplemented July 19, August 3, and September 16, 1993.
Brief description of amendment: The amendment reduces the boron concentration in the boric acid tank from 12 percent by weight to between 3.75 and 4 percent by weight. The reduced boron concentration results in eliminating the need for heat tracing in the boric acid tank piping system.
Date of issuance: July 20, 1994
Effective date: July 20, 1994
Amendment No. 133
Facility Operating License No. DPR-75: This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43932) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 20, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, AlabamaDate of application for amendments: December 23, 1993 (TS 346)

Brief description of amendment: The amendments revise the Technical Specification surveillance requirements regarding the visual inspection of snubbers, consistent with the guidance in Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Date of issuance: July 5, 1994

Effective date: July 5, 1994

Amendment Nos.: 210, 225 and 183

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 25, 1994 (59 FR 27067) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 5, 1994.No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: May 16, 1994 (TS 93-18)

Brief description of amendments: The amendments change the Electrical Power Systems surveillance requirements wording to reflect the use of the new common station service transformers with auto load tap changers as the normal power supply for the 6.9 KV unit boards.

Date of issuance: July 11, 1994

Effective date: July 11, 1994

Amendment Nos.: 184 and 176

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** June 8, 1994 (59 FR 29637) The Commission's related evaluation of the amendments are contained in a Safety Evaluation dated July 11, 1994. No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: March 18, 1994, as supplemented on June 20, 1994.

Brief description of amendment: The amendment revises TS 2.1.2 (Reactor Core), TS 2.2.1 (Reactor Protection System Setpoints), Bases 2.1.1 and 2.1.2 (Reactor Core), Bases 2.2.1 (Reactor Protection System Instrumentation Setpoints), TS 3.2.2 and 3.2.3 (Power Distribution Limits), Bases 3/4 (Power Distribution Limits), and TS 6.9.1.7 (Administrative Controls, Core Operating Limits Report). This amendment removes cycle-specific limits from TS and relocates them in the Core Operating Limits Report.

Date of issuance: July 22, 1994

Effective date: July 22, 1994

Amendment No. 189

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1994 (59 FR 22014) The June 20, 1994, submittal provided supplemental information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 22, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: February 21, 1992, supplemented by letters dated April 16, 1992, and March 29, 1994

Brief description of amendment: The amendment revises the Technical Specifications Appendix B, Environmental Protection Plan (Non-radiological), by removing Sections 2.3 and 4.3, "Cultural Resources." Union Electric has developed and maintains a management plan for the protection of cultural resources on the Callaway Plant site. The amendment request summarizes the plan that provides the status and disposition of each portion of the current Appendix B sections related to cultural resources.

Date of issuance: July 13, 1994

Effective date: to be implemented within 30 days of issuance

Amendment No.: 90

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications Appendix B, Environmental Protection Plan.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17607) The additional information contained in the April 16, 1992, and March 29, 1994, letters was supplemental in nature, is within the scope of the initial notice, and did not affect the NRC staff's proposed no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Virginia Ele1ctric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 1, 1994, as supplemented by letter dated June 16, 1994

Brief description of amendments: The amendments modify the requirement for operability testing of an EDG when the alternate safety buses' EDG is inoperable. Also, the requirement for operability testing of the EDGs when one or both offsite AC sources are inoperable is deleted. Finally, the amendments eliminate fast loading of EDGs except for the Loss of Offsite Power test and separate the hot restart test from the 24-hour loaded test run of the EDGs. The changes are consistent with NRC Generic Letter 93-05 dated September 27, 1993.

Date of issuance: July 18, 1994

Effective date: July 18, 1994

Amendment Nos.: 184 and 165

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14899) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 1994No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: December 6, 1993, supplemented by letter dated May 6, 1994

Brief description of amendment: The amendment revised Table 4.3.7.5-1 of Technical Specification (TS) 3/4.3.7.5, "Accident Monitoring Instrumentation," to include a note that requires that safety/relief valve (SRV) position indicator surveillance testing be performed within 12 hours after steam pressure and flow are adequate to do the testing. The amendment also revised TS 3/4.4.2, "Safety/Relief Valves," and TS 3/4.5.1, "Emergency Core Cooling Systems," to require that the main steam system and automatic depressurization system SRVs be surveilled within 12 hours after steam pressure and flow are adequate to do the testing. Additionally, Bases Section 3/4.4.2 was revised to reflect the changes in the TS.

Date of issuance: July 8, 1994

Effective date: July 8, 1994

Amendment No.: 128

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 13, 1994 (59 FR 25131) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee NuclearPower Plant, Kewaunee County, Wisconsin

Date of application for amendment: December 7, 1993

Brief description of amendment: The amendment revises Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 5.3.a.1 to provide flexibility in the repair of fuel assemblies containing damaged and leaking fuel rods by reconstituting the assemblies, provided that an NRC-approved methodology is used. This change is consistent with guidance provided in Supplement 1 to Generic Letter (GL) 90-02, "Alternative Requirements for Fuel Assemblies in the Design Features Section of Technical Specifications," dated July 31, 1992. In addition, administrative changes to KNPP TS Section 5 have been made.

Date of issuance: July 15, 1994

Effective date: to be implemented within 30 days

Amendment No.: 109

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 2, 1994 (59 FR 4951) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By September 2, 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 for the particular facility involved. 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 a 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 a 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 **(Project Director)**: 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the 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 Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: July 14, 1994

Brief description of amendment: The amendment revises Technical Specification 3.6.1.4, main steam isolation valve (MSIV) leakage control system (LCS), to add a footnote to the APPLICABILITY statement. The footnote states, "The provisions of Specification 3.0.4 are not applicable from the effective date of this amendment until the completion of Operating Cycle 5."

Date of issuance: July 15, 1994

Effective date: July 15, 1994

Amendment No. 63

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.The Commission's related evaluation of the amendment, finding of emergencycircumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 15, 1994.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Patriots Point Development Authority and U.S. Maritime Administration, Docket No. 50-238, N.S. Savannah

Date of application for amendment: May 19, 1994, as supplemented on May 24 and 27, 1994, and June 3, 1994.

Brief description of amendment: The amendment (1) deleted the Patriots Point Development Authority (PPDA) as a co-licensee, (2) allowed relocation of the N.S. Savannah to the James River Reserve Fleet, a U.S. Maritime Administration (MARAD) facility, (3) changed the performance of radiological health physics coverage, surveillance and response to the U.S. Army Center for Public Works, Humphries Engineering Center, (4) changed the composition of the Review and Audit Committee to be consistent with the deletion of PPDA as a co-licensee, and (5) discontinued public access to the facility and made other minor changes to the TS.

Date of issuance: June 29, 1994

Effective date: June 29, 1994

Amendment No.: 12Amended Facility License No. NS-1: Amendment revised the Technical Specifications and license.Public comments requested as to proposed no significant hazards consideration: The NRC published a public notice of the proposed amendment, issued a proposed finding of no significant hazards consideration and requested that any comments on the proposed no significant hazards consideration be provided to the staff by the close of business on June 2, 1994. The notice was published in The Virginian-Pilot/The Ledger-Star, Norfolk, Virginia on Sunday, May 29, 1994, The Daily Press, Newport News, Virginia on Friday, May 27, 1994, and The Post and Courier, Charleston, South Carolina, on Friday, May 27, 1994. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the States of South Carolina and Virginia and final no significant hazards consideration determination are contained in a Safety Evaluation dated June 29, 1994.

Attorney for licensees: M. J. McMorrow, Office of the Chief Council (MAR 220), U.S. Maritime Administration, Room 7228, 400 Seventh Street, SW, Washington, D.C. 20590.

Local Public Document Room location: N/A

Washington Public Power Supply System, Docket No. 50-397, Nuclear ProjectNo. 2, Benton County, Washington

Date of application for amendment: July 8, 1994

Brief description of amendment: The amendment modified the technical specifications to permit post-maintenance testing of control rod scram insertion times to be performed at lower reactor coolant pressures than currently allowed.

Date of issuance: July 14, 1994

Effective date: July 14, 1994

Amendment No.: 129

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.Public comments on proposed no significant hazards consideration comments received: No.The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated July 14, 1994.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Attorney for licensee: M. H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Theodore R. Quay

Dated at Rockville, Maryland, this 27th day of July 1994.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II,Office of Nuclear Reactor Regulation.

[FR Doc. 94-18741 Filed 8-2-94; 8:45 am]

BILLING CODE 7590-01-F

[Docket Nos. STN 50-528, STN 50-529, and STN 50-530]

Arizona Public Service Company, et al.; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Receipt of Petition for Director's Decision Under 10 CFR 2.206 and 2.202

Notice is hereby given that by letter of May 27, 1994, Thomas J. Saporito, on behalf of himself and Florida Energy Consultants, Inc. (petitioners), has raised numerous concerns regarding the Palo Verde Nuclear Generating Station (Palo Verde) operated by the Arizona Public Service Company (licensee). He supplemented his original petition, raising additional issues on July 8, 1994. Petitioners request that the NRC (1) institute a show cause proceeding pursuant to 10 CFR 2.202 for the modification, suspension, or revocation of the Palo Verde operating licenses; (2) issue a notice of violation against the licensee for continuing to employ The Atlantic Group (TAG) as a labor contractor at Palo Verde; (3) investigate alleged material false statements made by William F. Conway, Executive Vice President at Palo Verde, during his testimony at a DOL hearing (ERA Case No. 92-ERA-30) and that, in the interim, the NRC require that he be relieved of any authority over operations at Palo Verde; (4) investigate the licensee's statements in an August 10, 1993, letter from Mr. Conway to NRC Administrator, Mr. Bobby H. Faulkenberry, regarding Mr. Saporito, in which the licensee said that Mr. Saporito gave materially false, inaccurate, and incomplete information on his application for unescorted access to Palo Verde, so that as a result of that event, he lacks trustworthiness and reliability for access to Palo Verde; (5) investigate pursuant to 10 CFR 50.7 the circumstances surrounding the February 1994 termination of licensee employee Joseph Straub, a former radiation protection technician at Palo Verde, to determine if his employment was illegally terminated by the licensee for having engaged in "protected activity" during the course of his employment; (6) require that the licensee respond to a "chilling effect" letter regarding the circumstances surrounding Mr. Straub's termination from Palo Verde and whether any measures were taken to ensure that his termination did not cause a chilling effect at Palo Verde; and (7) initiate appropriate actions to require the licensee to immediately conduct eddy current testing on all steam generators at Palo Verde, because the steam generator tubes were recently subjected to cracks.

As bases for these requests, petitioners allege that (1) a show cause proceeding is necessary because the public health and safety concerns alleged are significant and to permit public participation to provide NRC with new and relevant information; (2) past practices of TAG demonstrate that employees of TAG were retaliated against for having raised safety concerns while employed at Palo Verde; (3) citations to testimony from transcripts and numerous newspaper articles (appended as exhibits to the petition), demonstrate that Mr. Conway's testimony is not credible; (4) statements in the August 10, 1993, letter are inaccurate and materially false and characterize Mr. Saporito as an individual lacking trustworthiness and reliability for access to Palo Verde, so that such negative characterizations have blacklisted him from continued employment in the nuclear industry, which is all in retaliation for him raising safety concerns about operations at Palo Verde; thus, petitioners ask that these statements be rescinded; (5) an investigation into the termination of Mr. Straub is warranted in view of the fact that the licensee has engaged in similar illegal conduct in the past where the NRC has required the licensee to pay

fines; (6) Mr. Straub is entitled to reinstatement with pay and benefits pending the NRC's investigation into his termination to offset any chilling effect his termination had on the Palo Verde workforce; and (7) the stress corrosion and cracking in the steam generators is a recurring problem of which the licensee is aware and has failed to properly correct, in addition to cooling tower problems, so that the NRC should be concerned about proper maintenance of safety systems and equipment there.

On July 8, 1994, petitioners filed a supplement raising six additional issues. Petitioners request that the NRC (1) institute a show cause proceeding pursuant to 10 CFR 2.202 for the modification, suspension or revocation of the Palo Verde operating licenses for Units 1, 2 and 3; (2) modify the Palo Verde operating licenses to require operation at 86% power or less; (3) require the licensee to submit a No Significant Hazards safety analysis to justify operation of those units above 86% power; (4) take immediate action (e.g. confirmatory order) to cause the licensee to reduce operation to 86% power or less; (5) require the licensee to analyze a design basis SGTR event to show that the offsite radiological consequences do not exceed a small fraction of the limits of 10 CFR Part 100; and (6) require the licensee to demonstrate that its emergency operating procedures for SGTR events are adequate and the plant operators are sufficiently trained in emergency operating procedures.

As bases for these requests, petitioners allege that (1) the licensee experienced a steam generator tube rupture in the free span area on Unit 2 on March 14, 1993; (2) during a January, 1994 inspection on Unit 2, 85 axial indications were identified, the longest indication being 7.5 inches; (3) more extensive testing will confirm the existence of circumferential crack indications in the expansion transition area; (4) in May 1994, steam generator sludge from Units 1 and 2 indicates a lead content of 4,000–6,000 ppm, which is unusually high, accelerates the crevice corrosion process, and is believed to be caused by a feedwater source deficiency; (5) the licensee failed to properly implement operational procedures regarding the March 14, 1993 steam generator tube rupture event, citing eight instances; (6) the licensee's failure to comply with approved procedures in the above event is indicative of a problem plant that warrants further NRC action; (7) the NRC is aware of additional licensee weaknesses regarding the steam generator tube event, citing four instances; (8) the licensee cannot assure that the radiation dose limits are satisfied for applicable postulated accidents; (9) the licensee is not maintaining an adequate level of public protection in that the offsite dose limits will be exceeded during a steam generator tube rupture; (10) the licensee cannot demonstrate that a Palo Verde unit can safely shut down and depressurize to stop steam generator tube leakage prior to a loss of reactor water storage tank inventory; (11) steam generator tubes are an integral part of the reactor coolant boundary, and that tube failures could lead to containment bypass, and therefore must be carefully considered by the NRC and the licensee, (12) the licensee cannot demonstrate compliance with 10 CFR part 50, Appendix A, which establishes the fundamental requirements for steam generator tube integrity; (13) the licensee has failed to comply with NRC requirements under NUREG–0800 to show that in the case of a steam generator tube rupture event, the offsite conditions and single failure do not exceed a small fraction of the limits of 10 CFR part 100; and (14) the licensee has posed an unacceptable risk to public health and safety by raising power on all three Palo Verde units above 86%, considering the severe degradation of the steam generator tubes.

This request is being treated pursuant to 10 CFR §§ 2.206 and 2.202 of the Commission's regulations. The request has been referred to the Director of the Office of Enforcement and the Director of the Office of Nuclear Reactor Regulation. In a letter of July 26, 1994, the petitioners' requests that the Commission take immediate action to require eddy current testing on all Palo Verde steam generators, and reduce operation of the Palo Verde units to 86% power or less, have been denied. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time. A copy of the petition is available for inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and local public document room a the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland this 26th day of July 1994.

For the Nuclear Regulatory Commission.

Joseph R. Gray,

Deputy Director, Office of Enforcement.

[FR Doc. 94–18849 Filed 8–2–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 150–00003; License No. ARK–740–BP–1–94; EA 94–138]

Otho Jones (DBA Jones Inspection Services), Alderson Oklahoma; Order to Cease and Desist Use and Possession of Regulated Byproduct Material in NRC Jurisdiction (Effective Immediately)

I

Jones Inspection Services is the holder of Radioactive Material License ARK–740–BP–1–94 issued by the state of Arkansas, an NRC Agreement State. The license authorizes Jones Inspection Services to possess and use sealed radioactive sources in various radiographic exposure devices at temporary job sites in the state of Arkansas. 10 CFR 150.20 of the NRC's regulations grants a general license to Agreement State licensees to conduct the same activities in non-Agreement States provided that the NRC is notified and the other provisions of 10 CFR 150.20 are followed.

II

On July 14, 1994, an NRC investigation was conducted to determine whether Jones Inspection Services was using regulated byproduct material in NRC jurisdiction without NRC authorization. Based on interviews with Otho G. Jones, the sole proprietor of Jones Inspection Services, and on documents obtained from the Central Oklahoma Oil and Gas Company, the investigation confirmed that Jones Inspection Services, which does not hold an NRC license, had illegally used and possessed regulated byproduct material in Oklahoma, a non-Agreement State in which the NRC maintains regulatory authority over such material. The NRC's investigation determined that Jones Inspection Services stored radiographic exposure devices in Oklahoma from at least January 1, 1994, to July 1994, and that these devices has been used to perform industrial radiography in Oklahoma from April 1, 1994, to June 27, 1994 for Central Oklahoma Oil and Gas Company. The investigation also determined that these activities were conducted without NRC authorization. Specifically, the investigation found that Jones Inspection Services did not hold an NRC license as required by 10 CFR 30.3 and that Otho Jones did not notify the NRC, in accordance with the provisions of 10 CFR 150.20, that he planned to conduct radiography at temporary job sites in NRC jurisdiction.[1] Thus, these

[1] The NRC notes that Otho Jones' previous company, Tumbleweed X-Ray Company, was

Continued

activities were not subject to inspection by the NRC to assure the protection of the public health and safety.

In a signed statement Mr. Jones provided the NRC investigator, he said he did not know he had to notify the NRC and did not know to whom the information should be provided. However, Mr. Jones also said "I did think to call the NRC about reciprocity, but I am afraid of the NRC and did not want me more hassel [sic] so I chose not to call them about working in Oklahoma." Furthersome, as indicated in the footnote, Mr. Jones was the sole proprietor of Tumbleweed X-Ray Company in September 1991 when that company was issued an NRC order specifically suspending its authority to conduct radiography activities in Oklahoma and other states in which NRC maintained regulatory authority.

On July 21, 1994, the NRC issued a Confirmatory Action Letter (CAL 4–94–70) which described voluntary commitments made by Mr. Jones to discontinue the use of three radiographic exposure devices in his possession and to transfer the devices to authorized recipients or authorized locations. Mr. Jones informed NRC Region IV personnel on the same date that he had already transferred two devices to an NRC licensee in the state of Oklahoma and was preparing to ship a third device to the manufacturer.

III

Based on the above, it appears that Otho G. Jones, the sole proprietor of Jones Inspection Services, he willfully violated NRC requirements and, notwithstanding his voluntary actions to transfer three radiographic exposure devices, was and may continue to be in violation of NRC requirements by possessing regulated byproduct material in NRC jurisdiction without authorization, i.e., without either an NRC license or a general license authorizing the use of this material in the state of Oklahoma. This is prohibited by section 81 of the Atomic Energy Act (AEA) of 1954, as amended, and by 10 CFR 30.3, which state that, (except for persons exempt as provided in 10 CFR parts 30 and 150), no person shall possess or use byproduct material except as authorized in a specific or general NRC license.

Improper handling of the byproduct material can result in unnecessary exposure to radiation. The Atomic Energy Act and the Commission's regulations require that the possession of licensed material be under a regulated system of licensing and inspection. Given the current circumstances surrounding Mr. Jones' possession of the byproduct material and the facts associated with Mr. Jones' former company (i.e., Tumbleweed X-Ray Company) to whom Mr. Jones was the sole proprietor in 1991 and to which an NRC order was issued suspending its authority to conduct radiography activities in Oklahoma and other states, Mr. Jones has not demonstrated that he will comply with NRC requirements.

Consequently, it appears that Mr. Jones is either unwilling or unable to comply with NRC requirements and without Mr. Jones having an NRC license, I lack the requisite reasonable assurance that the health and safety of the public will be protected. Therefore, the public health, safety, and interest require that Otho Jones and Jones Inspection Services be required to cease and desist unauthorized possession of regulated byproduct material and to provide certification to the NRC that all regulated byproduct material has been transferred to authorized recipients or authorized locations. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violation described above is such that the public health, safety, and interest require that this Order be immediately effective.

IV

Accordlingly pursuant to section 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR part 30 and 10 CFR part 150, it is hereby ordered, effective immediately, that Otho G. Jones shall:

A. For all regulated byproduct material that remains in his possession in Oklahoma or other states where the NRC maintains jurisdiction effective from the date of this Order;

(1) Immediately cease and desist the use of all such material in non-Agreement States within NRC jurisdiction;

(2) Immediately place all such material that is currently in states within NRC jurisdiction in safe, locked storage pending transfer;

(3) Within five days of the date of this Order, complete the transfer of all such material to an authorized recipient or to an authorized location outside of NRC jurisdiction.

(4) Notify Ms. Linda Kasner, Chief of Nuclear Materials Inspection Branch, NRC Region IV, at telephone number 817–860–8213, of the above arrangements no later than one day prior to the actual transfer of this material.

B. For all regulated byproduct material that is transferred in accordance with the above terms, and all material that was transferred between July 14, 1994, and the date of this Order:

1. Within 10 days of the date of this Order, certify in writing to the NRC Regional Administrator, Region IV at the address in B.2 below, under oath or affirmation, that such material was transferred, and provide documentation showing the date of transfer and the recipient of the material; and

2. The certification required in B.1 above must be sent to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

C. Mr. Jones shall cease and desist from possession and use of regulated byproduct material in NRC jurisdiction unless authorized in accordance with 10 CFR 30.3 or 10 CFR 150.20.

The Regional Administrator, Region IV, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

Dated at Rockville, Maryland this 26th day of July 1994.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 94–18848 Filed 8–2–94; 8:45 am]

BILLING CODE 7590–01–M

prohibited by Order from conducting licensed activities in non-Agreement States until September 6, 1994. Thus, had Mr. Jones notified the NRC of his intent to conduct radiography activities in Oklahoma in early 1994, it is unlikely that the NRC would have authorized those activities.

[Docket No. 50–346]

Toledo Edison Company, Centerior Service Company and The Cleveland Electric Illuminating Company; Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Centerior Service Company (the licensee) to withdraw its March 30, 1994, application for proposed amendment to Facility Operating License No. NPF–3 for the Davis-Besse Nuclear Power Station, Unit No. 1, located in Ottawa County, Ohio.

The proposed amendment would have modified the technical specifications by adding a new technical specification for Limiting Condition for Operation 3/4.4.12, Pilot Operated Relief Value and Block Valve, including associated Bases and Surveillance Requirements.

The Commission had previously issued a Notice of Consideration of

Issuance of Amendment published in the **Federal Register** on April 28, 1994 (59 FR 22015). However, by letter dated July 14, 1994, the licensee withdrew the proposed changes.

For further details with respect to this action, see the application for amendment and the licensee's letter dated March 30, 1994, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room in the Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Dated at Rockville, Maryland, this 28th day of July 1994.

For the Nuclear Regulatory Commission.

Robert J. Stransky,

Project Manager, Project Directorate III–3, Division of Reactor Projects-III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–18851 Filed 8–2–94; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2674, Notice of Insolvency

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (1212–0033) contained in its regulation on Notice of Insolvency (29 CFR Part 2674). The collection of information involves notices that must be given by the plan sponsor of a multiyear pension plan under certain adverse financial circumstances described in the regulation. Current approval of the collection of information expires on September 30, 1994.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212–0031), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, 1200 K Street, NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner or Deborah C. Murphy, Attorney, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20006, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Notice of Insolvency (29 CFR 2674).

Section 4245(e) of the Employee Retirement Income Security Act of 1974 ("ERISA") requires that the sponsor of a multiemployer pension plan that is in reorganization notify the Secretary of the Treasury, the PBGC, and certain third parties (*i.e.*, contributing employers, employee organizations representing participants, and plan participants and beneficiaries) whenever the plan is or may become "insolvent" for a plan year (that is, unable to pay full benefits when due during that plan year). The plan sponsor must also notify the same parties of the level of benefits that will be paid during each insolvency year. Section 4245(e)(4) provides that these notices (except for the notices to the Secretary of the Treasury) are to be given in accordance with rules promulgated by the PBGC.

Section 4245(e) requires two types of notice to the PBGC: a "notice of insolvency," stating the plan sponsor's determination that the plan is or may become insolvent, and a "notice of insolvency benefit level," stating the level of benefits that will be paid during an insolvency year. (The notices also go to certain third parties.) The Notice of Insolvency regulation prescribes the contents of these notices, the manner in which they must be given, and the time limits for their issuance.

The PBGC uses the information it receives to estimate cash needs for financial assistance to troubled plans. Without this regulation, the notices required by ERISA section 4245 would be inconsistently given and of varying quality, as plan sponsors applied their individual interpretations to the law. Further, PBGC financial assistance to troubled plans would likely be delayed by delays in notification.

The PBGC has requested extension of approval by the Office of Management and Budget (OMB) for this collection of information (1212–033), which is currently approved by OMB through September 30, 1994. The PBGC estimates that three plans will be affected by this regulation each year and that each of these plans will spend 6 hours preparing the required notices. This amounts to an annual burden on the public of 18 hours.

Issued at Washington, DC, this 28th day of July 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–18908 Filed 8–2–94; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34449; File No. SR-CSE–94–04]

Self-Regulatory Organizations; Cincinnati Stock Exchange, Inc.; Order Approving Proposed Rule Change Concerning Chinese Wall Procedures for Designated Dealers

July 27, 1994.

I. Introduction and Background

On March 17, 1994 the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposed rule change would require specialists to establish the appropriate functional separation to their operations while maintaining and enforcing written procedures to prevent the misuse of material, non-public information by employee, affiliated individual and proprietary accounts.

Notice of the filing of this proposal appeared in the **Federal Register** on June 21, 1994.[3] No comment letters were received. For the reasons discussed below, the Commission has determined to approve the proposal.

II. Description

The CSE is proposing to require Exchange Designated Dealers ("specialist") to establish the appropriate functional separation to their operations while maintaining and enforcing written procedures designed to prevent the misuse of material, non-public information by employee, affiliated individual and proprietary accounts. The proposed rule further requires that a copy of such procedures be provided to the Exchange for review and approval, and sets forth specific guidelines for designated dealers to follow in adopting, maintaining and

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] *See* Securities Exchange Act Release No. 34215, 59 FR 32031 (June 21, 1994).

enforcing Chinese Wall procedures. Finally, the proposal requires that the Exchange specialist firm obtain prior[4] written approval of the Exchange that it has complied with the requirements in establishing functional separation as appropriate to the operation and that it has established proper compliance and audit procedures to ensure the maintenance of the functional separation.[5]

The proposal identifies certain minimum procedural and maintenance requirements. First, the associated or affiliated person can have no influence on specific specialist trading decisions. Second, material, non-public corporate or market information obtained by the associated or affiliated person from the issuer may not be made available to the specialist. Third, clearing and margin financing information regarding the specialist may be routed only to employees engaged in overseeing operations of the affiliated or associated persons and specialist entities.

In addition, the proposal places limitations on the information which may pass between a broker affiliated with an associated or affiliated person and the specialist, such that they are limited to that exchange of information which would occur in the normal course of his trading and "market probing" activity. The specialist may divulge to such an affiliated broker information regarding market conditions in speciality stocks that he would make available in the normal course of specializing to any other broker, and in the same manner. The proposal permits an affiliated or associated person to "popularize"[6] a specialty stock provided it makes adequate disclosure about the existence of possible conflicts of interest.

The proposal, moreover, provides specific procedures that will apply if a specialist becomes privy to material, non-public information. In such a case, the specialist must promptly inform his firm's compliance officer, or other designated official, of the communication and seek guidance from the officer or official as to what procedures he should follow or what other action should subsequently be followed. The compliance officer or official must maintain appropriate records, including a summary of the information received by the specialist and a description of the action taken by the compliance officer or other official.

Finally, the Exchange has established certain procedures to monitor compliance, including the examination of the Chinese Wall procedures established by the Exchange specialist firms and surveillance of proprietary trades effected by an affiliated or associated person and its affiliated or associated specialist firm. The Exchange will also monitor the trading activities of affiliated or associated persons and affiliated or associated specialist in the specialist firms' speciality stocks in order to monitor the possible trading while in possession of material, nonpublic information through the periodic review of trade and comparisons reports generated by the Exchange.

III. Discussion

The Commission has determined that the CSE's proposal is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it promotes just and equitable principles of trade and protects investors and the public interest. Further, the Commission believes the proposal is consistent with Section 11A(a)(1)(C)(ii)[7] in that it aids in assuring fair competition among brokers and dealers.

The Commission recognizes that significant conflicts of interest can arise between a specialist operation and any associated or affiliated persons, which, if not addressed by appropriate Chinese Wall procedures and the adequate surveillance of such procedures, could result in potential manipulative market making activity and informational advantages benefitting the specialist, specialist unit, or customers of either, all in contravention of Section 6(b) of the Act.[8] The Commission further believes that the procedures the Exchange intends to implement with respect to approving and monitoring the Chinese Wall address these concerns, and therefore are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

The Commission initially addressed the necessity and viability of Chinese Walls in approving the amendments to New York Stock Exchange ("NYSE") and American Stock Exchange ("Amex") Rules 98 and 193 respectively, which created the present Chinese Wall scheme in effect on those exchanges.[9] At that time, the Commission expressed its belief that it is also desirable for the regional exchanges to consider requiring specialists affiliated with integrated firms to establish adequate Chinese Walls and generally to review the efficacy of their surveillance and compliance regarding those specialists. The Commission previously had recognized the use of Chinese Walls in a number of instances regarding the establishment of an organizational separation between different departments of a broker-dealer as one of the several means of preventing the interdepartment communication of material, non-public information.[10]

The NYSE/Amex Order noted that, for example, in view of the diverse functions performed by a multi-service firm and the material, non-public information that may be obtained by any one department of the firm, the firm often may be required to restrict access to information to the department receiving it, in order to avoid potential liability under Sections 10(b) and 14(c) of the Act[11] and Rules 10b–5 and 14e–3 thereunder. Moreover, two years after approval of the Amex's and NYSE's Chinese Wall procedures, Congress enacted the Insider Training and Securities Fraud Enforcement Act of 1988 ("ITSFEA"), designed primarily to prevent, deter, and prosecute insider trading.[12] Among other provisions, ITSFEA created a specific requirement for broker-dealers to maintain procedures designed to prevent the misuse of material, non-public information.[13] In response to the promulgation thereof, many firms redrafted their internal Chinese Wall procedures to ensure compliance.[14]

---

[4] Current Exchange members will be given a 90 day grace period to come into compliance. Thereafter, as well as for now applicants during such 90 day period, compliance must be demonstrated to the Exchange before the applicant firm may function as a specialist on the Exchange. Conversation between Robert P. Ackermann, Secretary and Vice President Regulatory Services, Cincinnati Stock Exchange, and Jill W. Ostergaard, Attorney, Office of Market Supervision, Division of Market Regulation, Commission on July 12, 1994.

[5] In addition, a copy of these Chinese Wall procedures, and any amendments thereto, must be filed with the Exchange Surveillance Department.

[6] "Popularizing" generally refers to the practice by specialists, their member organizations and their corporate parents, of making recommendations and providing research coverage regarding their speciality securities. *See* Securities Exchange Act Release No. 23768, 51 FR 41183 (November 13, 1986) ("NYSE/Amex Order").

[7] 15 U.S.C. § 78k–1(a)(1)(C)(ii)(1988).

[8] 15 U.S.C. § 78f(b) (1988).

[9] *See* NYSE/Amex Order.

[10] *See* Securities Exchange Act Release No. 23768, 51 FR 41183 (Nov. 13, 1986), *citing* SEC Institutional Investor Study, H.R. Doc. No. 9264, 92nd Cong., 1st Sess. 2539 (1971). The Study urged financial institutions to "consider the necessity of segregating information flows arising from a business relationship with a company as distinct from information received in an investor or shareholder capacity."

[11] 15 U.S.C. § 78j(b), 78n(e) (1982).

[12] Pub. L. No. 100–704.

[13] 15 U.S.C. § 78o(f).

[14] Several SRO's (Philadelphia Stock Exchange, Chicago Board Options Exchange, Pacific Stock

The Commission restates its understanding that a number of firms with regional specialist operations have established Chinese Wall procedures between the specialist and its affiliated firm. Nevertheless, such procedures have not necessarily been adopted by all specialist affiliates, have not been adopted pursuant to any specific regional exchange requirements, and have not been subject to specific exchange surveillance and oversight. Consistent with the NYSE/Amex Order, the Commission has continued to encourage the regional exchanges to adopt Chinese Wall procedures.[15]

The NYSE/Amex Order, in addressing the need for regional exchange to participate in the regulation of affiliations between specialist operations and diversified broker-dealer firms, took into account the fact that regional exchanges differ from the primary exchanges in terms of order flow and market information. While noting that overall regional exchange volume is small compared to primary market volume, and that regional exchange pricing of orders is generally derived from primary market quotations, the Commission expressed its concern that the diversion by a large broker-dealer of all or a significant portion of order flow in specialty stocks to an affiliated regional specialist could raise certain regulatory concerns similar to those raised by such affiliations on the primary exchanges. Moreover, the Commission noted that even if regional exchange specialists continue to set their prices based on primary market quotations, a regional specialist affiliated with an integrated retail firm could obtain significant access to material, non-public information.

The Commission continues to believe that Chinese Walls, with effective controls, may be useful in restricting information flow between the various departments of broker-dealers. The Commission had monitored the NYSE and Amex Chinese Wall rules since their inception, and generally believes they have proven effective in the context of specialists and affiliated approved persons.

The Commission believes the CSE proposal effectively addresses the potential for market abuses resulting from the ongoing relationship between specialists and associated or affiliated persons. These factors, along with the specialist's existing statutory duty to maintain a fair and orderly market, should combine to enhance the effectiveness of the proposed Chinese Wall.

Finally, the Commission notes that the structural adequacy of the Chinese Wall is only one part of evaluating whether the procedures established by the Exchange will detect and deter potential improper activity by either the approved person or the specialist. Appropriate surveillance procedures are critical to ensure the Chinese Wall is maintained. To this end, the Exchange has submitted to the Commission proposed procedures for monitoring the Chinese Wall.[16] The Commission also notes that the Exchange has represented that it believes that it has adequate staffing capacity to monitor compliance and conduct independent reviews of member firms.

IV. Conclusion

In view of the above, the Commission has concluded that the proposed rule change is consistent with Section 6(b) of the Act, and that it is appropriate to approve the Chinese Wall Procedures for Designated Dealers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority, 17 CFR 200.30–3(A)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–18821 Filed 8–2–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application to Withdraw From Listing and Registration; (Bush Industries, Inc., Class A Common Stock, $.10 Par Value) File No. 1–13190

July 28, 1994.

Bush Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration includes the following:

According to the Company, in addition to being listed on the Amex, its Class A Common Stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company 's Class A Common Stock commenced trading on the NYSE at the opening of business on July 14, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its Class A Common Stock from listing on the Amex, the Company considered the direct and indirect cost and expenses attendant on maintaining the dual listing of its securities on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its Class A Common Stock and believes that dual listing would fragment the market for its Class A Common Stock.

Any interested person may, on or before August 18, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz

Secretary.

[FR Doc. 94–18824 Filed 8–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–20431; 812–9090]

The Gabelli Equity Trust Inc., et al.; Application

July 28, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1994 (the "Act").

APPLICANTS: The Gabelli Equity Trust Inc. (the "Trust"), the Gabelli Global Multimedia Trust Inc. ("Multimedia"), and Gabelli Funds, Inc. ("GFI").

Exchange and Boston Stock Exchange) have adopted the substance of ITSFEA procedures under their rules applicable to members and member firms (*See* Securities Exchange Act Release Nos. 30122, 57 FR 729 (Jan. 8, 1992); 30557, 57 FR 13393 (April 16, 1992); 33171, 58 FR 60802 (Nov. 18, 1993); and 34284 (June 30, 1994).

[15] The Commission, in the past, has requested the regional stock exchanges to detail the procedures each exchange has implemented for surveillance of compliance with the Chinese Wall procedures adopted by firms affiliated with exchange specialists.

[16] The Exchange has requested that these procedures be accorded confidential treatment by the Commission.

RELEVANT ACT SECTIONS: Exemption requested under section 17(b) from section 17(a) and pursuant to section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Trust to transfer a portion of its assets to Multimedia, a newly formed, wholly-owned subsidiary that is a registered investment company and to distribute to the Trust's shareholders the stock of the subsidiary received in exchange for the transfer of assets.

FILING DATES: The application was filed on July 1, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, One Corporate Center, Rye, New York 10580.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563 or Barry D. Miller, Senior Special Counsel, at (202) 942–056 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a non-diversified, closed-end management investment company. GFI is the investment adviser to the Trust. The Trust seeks long-term growth of capital primarily through investment in equity securities. Income is a secondary objective of the Trust. When the Trust commenced operations, it stated in its prospectus that, as a non-diversified investment company, the Trust could concentrate investments in individual issues to a greater degree than a diversified investment company.

2. The Board of Directors of the Trust has taken several steps in order to seek to reduce any discount between the trading price of the Trust's shares and the Trust's net asset value. The Board of Directors of the Trust has authorized the purchase of Trust shares in the open market whenever a discount of 10% or more exists. Additionally, the Board has adopted a "10% payout" policy.[1] while the Board of Directors of the Trust believes that the adoption of this policy has ameliorated the discount at which the Trust's shares trade, GFI, in managing the Trust's assets with a view toward assuring that the Trust will be able to meet its 10% payout policy on a consistent basis, has diversified the Trust's investments to a greater extent than required under the Act and the Internal Revenue Code of 1986, as amended.

3. Multimedia was incorporated on March 31, 1994 and filed a notification of registration on Form N–8A on April 8, 1994 to register under the Act as a non-diversified closed-end management investment company. Multimedia filed a registration statement under the Act on Form N–2 on July 8, 1994. The Trust owns 10,000 shares of Multimedia's common stock, constituting all the issued and outstanding shares of the common stock of Multimedia.[2] These shares were issued in respect of the Trust's contribution to Multimedia of $100,000 of initial capital. The person who currently serve as directors of the Trust are the directors of Multimedia, and the principle executive officers of the Trust hold the same officers with Multimedia.

4. Multimedia's primary investment objective is long-term growth of capital. However, unlike the Trust, which attempts to achieve this objective by investing primarily in a portfolio of equity securities of companies in a wide variety of industries, Multimedia will concentrate its investments in common stock and other securities of foreign and domestic companies in telecommunications, entertainment, media, and publishing industries.

5. The Board of Directors of the Trust has approved, subject to exemptive relief and subsequent shareholder approval, the contribution of up to 10% of the Trust's net assets (but in any event not less than $60 million in order to satisfy the listing requirements of the New York Stock Exchange) to Multimedia. It is anticipated that the contributed assets will consist largely or exclusively of cash and short-term fixed income instruments. All the shares of the common stock of Multimedia then will be distributed by the Trust as a dividend to its shareholders at a rate of one share of Multimedia Trust common stock for every ten shares held of the Trust. The contribution of the Trust assets to Multimedia and the subsequent distribution of Multimedia shares to the Trust shareholders is referred to herein as the "Transaction." Application will be made to list Multimedia's shares for trading on the New York Stock Exchange.

6. GFI will serve as investment adviser to Multimedia. The advisory fee structure for Multimedia will be the same as that approved by the Trust shareholders at the Trust's 1994 annual meeting of shareholders held on June 27, 1994.[3]

7. The Board of Directors of the Trust believes that the Transaction will result in the following benefits to Trust shareholders: (a) Shareholders will receive shares of an investment company with a more concentrated portfolio and a different risk-return profile than the Trust; (b) shareholders will acquire Multimedia shares at a much lower cost than is typically the case for a newly-organized closed-end equity fund since there will be no underwriting discounts or commissions; and (c) Multimedia will distribute substantially all of its annual net income and capital gains to shareholders at year end, and consequently Multimedia may be more fully invested in equity securities than the Trust. Multimedia does not intend to adopt a dividend policy similar to the Trust's 10% payout policy. The Board of Directors believes that the benefits of the Transaction outlined above outweigh the costs of the Transaction.

8. The Trust does not expect that it will recognize significant taxable gain on its contribution of cash and securities to Multimedia in exchange for shares of Multimedia. Multimedia has been advised by counsel that the distribution of shares of Multimedia to Trust shareholders likely will be a taxable event for Trust shareholders and, under certain circumstances, will be a taxable event for the Trust.

[1] Pursuant to this policy, the Trust makes quarterly distributions of $0.25 per share following each of the first three calendar quarters of each year and an adjusting distribution in December equal to the sum of 2.5% of the net asset value of the Trust as of the last day of the four preceding calendar quarters less the aggregate distribution of $0.75 per share for the most recent calendar quarters.

[2] Applicants received a non-action letter with respect to section 12(d)91). See The Gabelli Equity Trust, (pub. avail. April 1, 1994).

[3] Under the investment advisory agreement between Multimedia and GFI, GFI will manage the portfolio of Multimedia and also oversee the administration of all aspects of Multimedia's business. The investment advisory agreement will provide that Multimedia will pay GFI a fee computed weekly and paid monthly at an annual rate of 1.00% of Multimedia average weekly net assets.

However, the Transaction is not expected to increase significantly the total amount of taxable distributions received by Trust shareholders for the year in which the Transaction is consummated and is not expected to result in the recognition of significant taxable gain by the Trust.

9. The costs of organizing Multimedia and effecting the distribution of Multimedia's shares to the Trust's shareholders, including the fees and expense of counsel and accountants and printing, listing, and registration fees, are estimated to be approximately $250,000 and will be borne by Multimedia. The Trust will bear the costs of soliciting its shareholders' approval of the Transaction. The costs incurred in connection with the application for exemptive relief will be allocated between the Trust and Multimedia on the basis of their net assets, after giving effect to the Transaction. Costs incurred in connection with the organization of Multimedia will be amortized on a straight-line basis for a five-year period beginning at the commencement of operations of Multimedia. In addition, Multimedia will incur operating expenses on an ongoing basis, including legal, auditing, transfer agency, and custodian expenses that, when aggregated with the fees payable by the Trust for similar services after the distribution, will likely exceed the fees currently payable by the Trust for those services. It is not expected that the Transaction will have significant effect on the annual expenses of the Trust as a percentage of its assets.

Applicants' Legal Analysis

1. The Trust may be viewed as an affiliated person of Multimedia under section 2(a)(3) of the Act since the Trust will own 100 percent of Multimedia's voting securities until the consummation of the Transaction. Multimedia may similarly be considered an affiliated person of the Trust since 100 percent of Multimedia's voting securities will be owned by the Trust. The Trust and Multimedia also may be viewed as affiliated persons of each other to the extent that they may be deemed to be under the common control of GFI.

2. Section 17(a)(1) of the Act makes it unlawful, among other things, for any affiliated person of a registered investment company to sell any securities or other property to the registered company. Section 17(a)(2) of the Act makes it unlawful, among other things, for such an affiliated person to purchase securities or other property from the registered company.

3. As a result of the affiliation between the Trust and Multimedia, section 17(a)(1) would prohibit the Trust's "sale" to Multimedia of a portion of the Trust's assets and Multimedia's "sale" to the Trust of securities issued by Multimedia, although the latter transaction arguably may be excepted by section 17(a)(1)(B). Section 17(a)(2) would prohibit Multimedia's "purchase" from the Trust of such portion of the Trust's assets. It is also possible that section 17(a) may apply with respect to the Trust's *pro rata* distribution of Multimedia securities to any Trust shareholder holding more than 5% of Trust shares.

4. Applicants request an exemption pursuant to section 17(b) of the Act from the provisions of section 17(a) of the Act in order to permit the Trust to effect the Transaction. Section 17(b) authorizes the SEC to issue such an exemptive order if certain conditions are met.

5. Applicants also seek an order under section 17(d) and rule 17d–1 thereunder. Section 17(d) and rule 17d–1 thereunder generally prohibit, among other things, transactions in which a registered investment company and any affiliated person of such a company may be deemed to be acting jointly. Applicants request an order pursuant to rule 17d–1 to the extent that the participation of the applicants in the Transaction may be deemed to constitute a prohibited joint transaction.

6. Applicants assert that the terms of the Transaction, including the consideration to be paid or received, are fair and reasonable and involve no element of overreaching. Applicants state that the proposed sale by the Trust of a portion of its assets to Multimedia in exchange for the securities of Multimedia will be based on the fair value of those assets as computed on the day of the proposed transfer. Applicants further state that such assets are anticipated to consist largely or exclusively of cash and short-term fixed income instruments and thus will likely pose few, if any, issued with respect to valuation. Similarly, applicants assert that Multimedia stock distributed by the Trust in the Transaction will be valued based on the value of Multimedia's assets. "Value" for those purposes will be determined in accordance with the provisions of section 2(a)(41) of the Act and rule 2a–4 thereunder.

7. Applicants state that the Transaction will be consistent with stated investment policies of the Trust and Multimedia as fully disclosed to shareholders. The distribution of Multimedia shares will not change the position of the Trust's shareholders with respect to the underlying investments that they then own; such investments simply will be held through two closed-end non-diversified investment companies with the same investment objectives rather than one. Thus, the effect of the Transaction is consistent with the information contained in past disclosure documents of the Trust. A proxy statement/prospectus of the Trust and Multimedia will be used, following the issuance of the exemptive relief, to solicit the approval of the Trust shareholders of the Transaction. Moreover, the Trust's shareholders will have the opportunity to vote on the Transaction after having received extensive disclosure concerning the Transaction.

8. Applicants state that the Transactions will not place any of the Trust, Multimedia, or existing shareholders of the Trust in a position less advantageous than that of any other of such persons. The Trust's assets transferred to Multimedia (and the shares received in return) will be based on their fair value as computed on the day of the transfer in accordance with the requirements of the Act. The shares of Multimedia will be distributed as a dividend to the shareholders in the same investment posture immediately following the Transaction as before.

9. Applicants also assert that the Transaction comports with the policies underlying rule 17a–8, which exempts from section 17(a) a merger, consolidation, or purchase or sale of substantially all of the assets involving registered companies which may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers. While the Trust and Multimedia will be affiliated briefly because of the Trust's ownership of Multimedia, the only potential affiliation after the distribution will be a commonality of investment adviser, directors, and certain officers. The Trust's Board of Directors, including a majority of the directors who are not interested persons of the Trust, have made the following findings required by rule 17a–8: (a) that participation in the Transaction is in the best interests of the Trust; and (b) that the interests of the existing shareholders of the Trust will not be diluted as a result of its effecting the transactions. In addition, as required by rule 17a–8, such findings, and the basis upon which the findings were made, will be recorded fully in the minute book of the Trust.

10. Accordingly, applicants believe that the standards of sections 17(b) and 17(d) and rule 17d–1 thereunder are met.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–18825 Filed 8–2–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (McDonald's Corporation, Common Stock, No Par Value, With Attached Rights) File No. 1–5231

July 26, 1994.

McDonald's Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange Inc. ("PSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors of the Company (the "Board"), pursuant to lawfully delegated authority, unanimously approved resolutions on May 27, 1994, to withdraw the Company's Common Stock from listing on the PSE. The decision of the Board was based upon the belief that the listing of the Common Stock on the PSE was no longer beneficial to the Company due to minimal volume of trading of Company shares on the Exchange. Further, an adequate market exists for trading of the Company's Common Stock on the New York Stock Exchange, Inc. ("NYSE").

Any interested person may, on or before August 16, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan D. Katz,

Secretary.

[FR Doc. 94–18820 Filed 8–2–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application to Withdraw From Listing and Registration; (Regency Health Services, Inc., Common Stock, $.01 Par Value; 6½% Convertible Subordinated Debentures Due 2003) File No. 1–11144

July 28, 1994.

Regency Health Services, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock and the debentures are listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock and the debentures commenced trading on the NYSE at the opening of business on April 5, 1994 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock and the debentures from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its common stock and the debentures on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for the common stock.

Any interested person may, on or before August 18, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–18823 Filed 8–2–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20429; 811–4601]

Variable Annuity Fund II Separate Account

July 27, 1994.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Variable Annuity Fund II Separate Account.

RELEVANT 1940 ACT SECTION AND RULE: Section 8(f) of the 1940 Act and Rule 8f–1 thereunder.

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 17, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 22, 1994, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Variable Annuity Fund II Separate Account: c/o Mr. Al W. Kennon, Jr., Southwestern Life Insurance Company, 500 North Akard, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 942–0670, or Michael V. Wible, Special Counsel, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. The Applicant was originally established by Southwestern Life Insurance Company as a separate account pursuant to the insurance laws of the State of Texas on February 14, 1986.

2. On February 28, 1986, the Applicant registered under the 1940 Act

as a unit investment trust. On that same date, the Applicant filed a registration statement on Form S–6 under the Securities Act of 1933 (File No. 33–3662). The registration statement was declared effective on October 7, 1987. The Applicant never made an initial public offering of its securities.

3. The Applicant has not transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of the Applicant.

4. The Applicant has not made any distributions to securityholders.

5. The Applicant has no assets, debts, or other liabilities outstanding.

6. The Applicant is not a party to any litigation or administrative proceedings (other than this deregistration proceeding).

7. The Applicant has no securityholders.

8. The Applicant is not now engaged, nor does it intend to engage, in any business activity other than that necessary for the winding-up of its affairs.

Applicant's Conclusion

Based on the facts set out above, Applicant represents that it has never made a public offering of its securities, has not more than 100 securityholders for purposes of Section 3(c)(1) of the 1940 Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind. Applicant therefore requests an order pursuant to Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–18822 Filed 8–2–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 99000115]

BH Capital Partners, L.P.; Filing of an Application for a License To Operate As a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994) by BH Capital Partners, L.P. at 1860 Embarcadero Road, Suite 235, Palo Alto, CA 94303 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. et. seq.), and the Rules and Regulations promulgated thereunder.

BH Capital Partners, L.P., a California limited partnership, will be owned as follows:

Jefferies & Company Inc., 580 California St., Suite 2080, San Francisco, CA 94104, 50%, Limited Partner

First Taiwan, Investment Banking Group, 15 F, 563, Chung Hsiao E. Rd., Section 4, Taipei, Taiwan, 20%, Limited Partner

The Ralph Evans Trust, 676 Gunpark Dr. E., Boulder, Co 80301, 20%, Limited Partner

BH Capital Associates L.P., 1860 Embarcadero Rd., Suite 235, Palo Alto, CA 94303, 4.5%, General Partner

Robert Wilson, 174 Catulpa Rd., Atherton, CA 94311, 2.5%, Limited Partner

Chris Alick, 580 California St., Suite 2080, San Francisco, CA 94104, 1.5%, Limited Partner

John Chiles, 580 California St., Suite 2080, San Francisco, CA 94104, 1.5%, Limited Partner

BH Capital Associates L.P., the General Partner, will be owned as follows:

Norman F.T. Hall, 1860 Embarcadero Rd., Suite 235, Palo Alto, CA 94303, 38.9%, Limited Partner

J. Thomas Bentley, 1860 Embarcadero Rd., Suite 235, Palo Alto, CA 94303, 38.9%, Limited Partner

BH Capital Inc., 1860 Embarcadero Rd., Suite 235, Palo Alto, CA 94303, 22.2%, General Partner

BH Capital Inc., a California S corporation will be owned by:

Norman F.T. Hall, 1860 Embarcadero Rd., Suite 235, Palo Alto, CA 94303, 50%

J. Thomas Bentley, 1860 Embarcadero Rd., Suite 235, Palo Alto, CA 94303, 50%

The managers of BH Capital Partners, L.P. are listed bellow:

Name	Title
J. Thomas Bentley	Managing Partner.
Norman F.T. Hall	Partner.
Kristin Ryan	Associate.

The applicant will have Regulatory Capital of $20.0 million in the first year. It will be a source of debt and equity financing for qualified small business concerns throughout the United States concentrating primarily in the northwest.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Palo Alto, CA.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: July 27, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–18836 Filed 8–2–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Aerial Transit Company For A Redetermination of Its Fitness

AGENCY: Department of Transportation

ACTION: Notice of Order to Show Cause (Order 94–7–40)

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Aerial Transit Company continues to be, fit, willing, and able to engage in interstate and foreign all-cargo scheduled air transportation.

DATES: Persons wishing to file objections should do so no later than August 8, 1994.

ADDRESSES: Objections and answers to objections should be addressed to the Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2342.

Dated: July 27, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94–18899 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–62–P

Employee Protection Program Investigations

AGENCY: Department of Transportation.

ACTION: Order Reopening Proceedings (Order 94–7–35) Dockets: 40201, 39783, 38978, 38883, and 38571.

SUMMARY: The Department of Transportation is seeking comments from all parties to the lead Employee Protection Program (EPP) cases in light of the remand of the cases with instructions from the U.S. Court of Appeals for the District of Columbia Circuit on review of the final Department order in the matter (Order 91–9–20). The cases involve threshold determinations leading to possible assistance payments for eligible airline employees at Air New England (Docket 40201), Mackey International Airlines (Docket 39783), Braniff International Airlines (Docket 38978), Pan American World Airways (Docket 38883), and United Air Lines (Docket 38571).

DATES: Parties wishing to file comments should do so no later than Monday, September 12, 1994, 45 days after the service date of Order 94–7–35. Any reply comments are due no later than Wednesday, October 12, 1994, 30 days later.

ADDRESSES: Comments should be filed in the appropriate docket(s), addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Bernard F. Diederich, Office of the General Counsel, (C–10, room 10102), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–9154.

Dated: July 28, 1994.

Paul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 94–18803 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. The FAA is publishing an index by order number, an index by subject matter, and case digests that contain identifying information about the final decisions and orders issued by the Administrator. Publication of these indexes and digests is intended to increase the public's awareness of the Administrator's decisions and orders and to assist litigants and practitioners in their research and review of decisions and orders that may have precedential value in a particular civil penalty action. Publication of the index by order number, as supplemented by the index by subject matter, ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation, (AGC–400), Federal Aviation Administration, 701 Pennsylvania Avenue NW., Suite 925, Washington, DC 20004, telephone (202) 376–6441.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G. The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a subject-matter index, and digests organized by order number.

In a notice issued on October 26, 1990, the FAA published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that it would publish supplements to these indexes and digests on a quarterly basis (*i.e.*, in January, April, July, and October of each year). The FAA announced further in that notice that only the subject-matter index would be published cumulatively, and that both the order number index and the digests would be non-cumulative.

Since that first index was issued on October 26, 1990 (55 FR 45984; October 31, 1990), the FAA has issued supplementary notices containing the quarterly indexes of the Administrator's civil penalty decisions as follows:

Dates of quarter	FEDERAL REGISTER publication
10/1/90–12/31/90 ..	56 FR 44886; 2/6/91
1/1/91–3/31/91	56 FR 20250; 5/2/91
4/1/91–6/30/91	56 FR 31984; 7/12/91
7/1/91–9/30/91	56 FR 51735; 10/15/91
10/1/91–12/31/91 ..	57 FR 2299; 1/21/92
1/1/92–3/31/92	57 FR 12359; 4/9/92
4/1/92–6/30/92	57 FR 32825; 7/23/92
7/1/92–9/30/92	57 FR 48255; 10/22/92
10/1/92–12/31/92 ..	58 FR 5044; 1/19/93
1/1/93–3/31/93	58 FR 21199; 4/19/93
4/1/93–6/30/93	58 FR 42120; 8/6/93
7/1/93–9/30/93	58 FR 58218; 10/29/93
10/1/93–12/31/93 ..	59 FR 5466; 2/4/94
1/1/94–3/31/94	59 FR 22196; 4/29/94

In the notice published on January 19, 1993, the Administrator announced that for the convenience of the users of these indexes, the order number index published at the end of the year would reflect all of the civil penalty decisions for that year. 58 FR 5044; 1/19/93. The order number indexes for the first, second, and third quarters would be non-cumulative.

As noted at the beginning of the digests, *the digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.*

The Administrator's final decisions and orders, indexes, and digests are available for public inspection and copying at all FAA legal offices. (The addresses of the FAA legal offices are listed at the end of this notice.)

In addition, the Administrator's decisions and orders have been published by commercial publishers and are available on computer databases. (Information about these commercial publications and computer databases is provided at the end of this notice.)

Civil Penalty Actions—Orders Issued by the Administrator—Order Number Index

(This index includes all decisions and orders issued by the Administrator from April 1, 1994 to June 30, 1994)

Order No. and (service date)	Name and docket No.
94–11 4/21/94	Pan American Airways CP89WP0220, CP89SO0232, P89O0239, CP89SO0204
94–12 4/28/94	David Bartusiak CP93WP0042
94–13 5/19/94	John G. Boyle CP93SO0060
94–14 6/9/94	B&G Instruments CP93SO0028
94–15 6/15/94	Anthony Columna CP94SO0002
94–16 6/15/94	Martha Phyllis Ford CP93SO0244
94–17 6/22/94	TCI Corp. CP93NE007
94–18 6/22/94	Phyllis Jones Luxemburg CP93SO0105
94–19 6/22/94	Pony Express Courier Corp. 89–4 (HM)
94–20 6/22/94	Conquest Helicopters CP92NM0500
94–21 6/22/94	Mark L. Sweeney CP91NM0430
94–22 6/22/94	Jimmy Lee Harkins CP93AL0214
94–23 6/27/94	Ezequiel Perez CP93SO0374
94–24 6/29/94	Todd M. Page CP92NM0486

Civil Penalty Actions—Orders Issued by the Administrator

Subject Matter Index

(Current as of June 30, 1994)

Administrative Law Judges—Power and Authority:
- Continuance of hearing ..... 91–11 Continental Airlines; 92–29 Haggland.
- Credibility findings ..... 90–21 Carroll; 92–3 Park; 93–17 Metcalf; 94–3 Valley Air; 94–4 Northwest Aircraft Rental.
- Default Judgment ..... 91–11 Continental Airlines; 92–47 Cornwall; 94–8 Nunez; 94–22 Harkins.
- Discovery ..... 89–6 American Airlines; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–46 Sutton-Sautter; 93–10 Costello.
- Expert Testimony ..... 94–21 Sweeney.
- Granting extensions of time ..... 90–27 Gabbert.
- Hearing location ..... 92–50 Cullop.
- Hearing request ..... 93–12 Langton; 94–6 Strohl.
- Initial Decision ..... 92–1 Costello; 92–32 Barnhill.
- Jurisdiction ..... 90–20 Degenhardt; 90–33 Cato; 92–1 Costello; 92–32 Barnhill.
- Motion for Decision ..... 92–83 Wyatt; 92–75 Beck; 92–76 Safety Equipment; 93–11 Merkley.
- Notice of Hearing ..... 92–31 Eaddy.
- Sanction ..... 90–37 Northwest Airlines; 91–54 Alaska Airlines; 94–22 Harkins.
- Vacating initial decision ..... 90–20 Degenhardt; 92–32 Barnhill.

Agency Attorney ..... 93–13 Medel.

Air Carrier:
- Agent/independent contractor of ..... 92–70 USAir.
- Careless or Reckless ..... 92–48 & 92–70 USAir; 93–18 Westair Commuter.
- Employee ..... 93–18 Westair Commuter.

Aircraft Maintenance ..... 90–11 Thunderbird Accessories; 91–8 Watts Agricultural Aviation; 93–36 & 94–3 Valley Air.
- After certificate revocation ..... 92–73 Wyatt.

Aircraft Records:
- Aircraft Operation ..... 91–8 Watts Agricultural Aviation.
- Maintenance Records ..... 91–8 Watts Agricutlural Aviation; 94–2 Woodhouse.
- "Yellow tags" ..... 91–8 Watts Agricultural Aviation.

Airmen:
- Pilots ..... 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp; 93–17 Metcalf.
- Altitude deviation ..... 92–49 Richardson & Shimp.
- Careless or Reckless ..... 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp; 92–47 Cornwell; 93–17 Metcalf; 93–29 Sweeney.
- Flight time limitations ..... 93–11 Merkley.
- Follow ATC Instruction ..... 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp.
- Low Flight ..... 92–47 Cornwall; 93–17 Metcalf.
- See and Avoid ..... 93–29 Sweeney.

Air Operations Area (AOA):
- Air Carrier Responsibilities ..... 90–19 Continental Airlines; 91–33 Delta Air Lines; 94–1 Delta Air Lines.
- Airport Operator Responsibilities ..... 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].
- Badge Display ..... 91–4 [Airport Operator]; 91–33 Delta Air Lines.
- Definition of ..... 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–58 [Airport Operator].
- Exclusive Areas ..... 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–58 [Airport Operator].

Airport Security Program (ASP):
- Compliance with ..... 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 94–1 Delta Air Lines.

Airports:
Airport Operator Responsibilities ..... 90–12 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].

Air Traffic Control (ATC):
Error as mitigating factor ..... 91–12 & 91–31 Terry & Menne.
Error as exonerating factor ..... 91–12 & 91–31 Terry & Menne; 92–40 Wendt.
Ground Control ..... 91–12 Terry & Menne; 93–18 Westair Commuter.
Local Control ..... 91–12 Terry & Menne.
Tapes & Transcripts ..... 91–12 Terry & Menne; 92–49 Richardson & Shimp.
Airworthiness ..... 91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited; 92–48 & 92–70 USAir; 94–2 Woodhouse.

Amicus Curiae Briefs ..... 90–25 Gabbert.
Answer:
What constitutes ..... 92–32 Barnhill; 92–75 Beck.
Appeals (See also Timeliness; Mailing Rule):
Additional Appeal Brief ..... 92–3 Park; 93–5 Wendt; 93–6 Westair Commuter; 93–28 Strohl; 94–4 Northwest Aircraft; 94–18 Luxemburg, n.7.

Appeal dismissed as moot after complaint withdrawn ..... 92–9 Griffin.
Appellate arguments ..... 92–70 USAir.
Briefs, Generally ..... 89–4 Metz; 91–45 Park; 92–17 Giuffrida; 92–19 Cornwall; 92–39 Beck; 93–24 Steel City Aviation; 93–28 Strohl; 94–23 Perez..

Court of Appeals, appeal to (See Federal Courts):
"Good Cause" for Late-Filed Brief or Notice of Appeal ..... 90–3 Metz; 90–27 Gabbert; 90–39 Hart; 91–10 Graham; 91–24 Esau; 91–48 Wendt; 91–50 & 92–1 Costello; 92–3 Park; 92–17 Giuffrida; 92–39 Beck; 92–41; Moore & Sabre Associates; 92–52 Beck; 92–57 Detroit Metro Wayne Co. Airport; 92–69 McCabe; 93–23 Allen; 93–27 Simmons; 93–31 Allen.

Motion to Vacate construed as a brief ..... 91–11 Continental Airlines.
Perfecting an Appeal ..... 92–17 Giuffrida; 92–19 Cornwall; 92–39 Beck; 94–23 Perez.
Extension of Time for, good cause for ..... 89–8 Thunderbird Accessories; 91–26 Britt Airways; 91–32 Bargen; 91–50 Costello; 93–2 & 93–3 Wendt; 93–24 Steel City Aviation; 93–32 Nunez.

Failure to ..... 89–1 Gressani; 89–7 Zenkner; 90–11 Thunderbird Accessories; 90–35 P Adams; 90–39 Hart; 91–7 Pardue; 91–10 Graham; 91–20 Bargen; 91–43, 91–33, 91–46 & 91–47 Delta Air Lines; 92–11 Alilin; 92–15 Dillman; 92–18 Bargen; 92–34 Carrell; 92–35 Bay Land Aviation; 92–36 Southwest Airlines Co.; 92–45 O'Brien; 92–56 Montauk Caribbean Airways; 92–67 USAir; 92–68 Weintraub; 92–78 TWA; 93–7 Dunn; 93–8 Nunez; 93–20 Smith; 93–23 & 93–31 Allen; 93–34 Castle Aviation; 93–35 Steel City Aviation; 94–12 Bartusiak; 94–24 Page.

What Constitutes ..... 90–4 Metz; 90–27 Gabbert; 91–45 Park; 92–7 West; 92–17 Giuffrida; 92–39 Beck; 93–7 Dunn; 94–15 Columna; 94–23 Perez.

Service of brief:
Failure to serve other party ..... 92–17 Giuffrida; 92–19 Cornwall.
Timeliness of Notice of Appeal ..... 90–3 Metz; 90–39 Hart; 91–50 Costello; 92–7 West; 92–69 McCabe; 93–27 Simmons.

Withdrawal of ..... 89–2 Lincoln-Walker; 89–3 Sittko; 90–4 Nordrum; 90–5 Sussman; 90–6 Dabaghian; 90–7 Steele; 90–8 Jenkins; 90–9 Van Zandt; 90–13 O'Dell; 90–14 Miller; 90–28 Puleo; 90–29 Sealander; 90–30 Steidinger; 90–34 D. Adams; 90–40 & 90–41, Westair Commuter Airlines; 91–1 Nestor; 91–5 Jones; 91–6 Lowery; 91–13 Kreamer; 91–14 Swanton; 91–15 Knipe; 91–16 Lopez; 91–19 Bayer; 91–21 Britt Airways; 91–22 Omega Silicone Co.; 91–23 Continental Airlines; 91–25 Sanders; 91–27 Delta Air Lines; 91–28 Continental Airlines; 91–29 Smith; 91–34 GASPRO; 91–35 M. Graham; 91–36 Howard; 91–37 Vereen; 91–39 America West; 91–42 Pony Express; 91–49 Shields; 91–56 Mayhan; 91–57 Britt Airways; 91–59 Griffin; 91–60 Brinton; 92–2 Koller; 92–4 Delta Air Lines; 92–6 Rothgeb; 92–12 Bertetto; 92–20 Delta Air Lines; 92–21 Cronberg; 92–22, 92–23, 92–24, 92–25, 92–26 & 92–28 Delta Air Lines; 92–33 Port of Authority of NY & NJ; 92–42 Jayson; 92–43 Delta; 92–44 Owens; 92–53 Humble; 92–54 & 92–55 Northwest Airlines; 92–60 Costello; 92–61 Romerdahl; 92–62 USAir; 92–63 Schaefer; 92–64 & 92–65 Delta Air Lines; 92–66 Sabre Associates & Moore; 92–79 Delta Air Lines; 93–1 Powell & Co.; 93–4 Harrah; 93–14 Fenske; 93–15 Brown; 93–21 Delta Air Lines; 93–22 Yannotone; 93–26 Delta Air Lines; 93–33 HPH Aviation; 94–9 B & G Instruments; 94–10 Boyle; 94–11 Pan American Airways; 94–13 Boyle; 94–14 B & G Instruments; 94–16 Ford.

"Attempt" ..... 89–5 Schultz.
Attorney Fees (See EAJA):
Aviation Safety Reporting System ..... 90–39 Hart; 91–12 Terry & Menne; 92–49 Richardson & Shimp.
Balloon (Hot Air) ..... 94–2 Woodhouse.
Bankruptcy ..... 91–2 Continental Airlines.

Certificates and Authorizations:
Surrender when revoked ..... 92–73 Wyatt.
Civil Air Security National Airport:
Inspection Program (CASNAIP) ..... 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].
Civil Penalty Amount (See Sanction):
Closing Argument (See Final Oral Argument):
Collateral Estoppel ..... 91–8 Watts Agricultural Aviation.
Complaint:
Complainant Bound By ..... 90–10 Webb; 91–53 Koller.
Failure to File Timely
Answer to ..... 90–3 Metz; 90–15 Playter; 92–32 Barnhill; 92–47 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 94–5 Grant.
Partial Dismissal/Full Sanction ..... 94–19 Pony Express.
Timeliness of ..... 91–51 Hagwood; 93–13 Medel; 94–7 Hereth; 94–5 Grant.
Compliance & Enforcement Program:
FAA Order No. 2150.3A ..... 89–5 Schultz; 89–6 American Airlines; 91–38 Esau; 92–5 Delta Air Lines.
Sanction Guidance Table ..... 89–5 Schultz; 90–23 Broyles; 90–33 Cato; 90–37 Northwest Airlines; 91–3 Lewis; 92–5 Delta Air Lines.
Concealment of Weapons ..... 89–5 Schultz; 92–46 Sutton-Sautter; 92–51 Koblick.
Consolidation of Cases ..... 90–12, 90–18, & 90–19 Continental Airlines.
Continuance of Hearing ..... 90–25 Gabbert; 92–29 Haggland.
Corrective Action (See Sanction):
Credibility of Witnesses:
Deference to ALJ ..... 90–21 Carroll; 92–3 Park; 93–17 Metcalf.
Expert witnesses:
(See also Witnesses) ..... 90–27 Gabbert; 93–17 Metcalf.
Impeachment ..... 94–4 Northwest Aircraft Rental.
De facto answer ..... 92–32 Barnhill.
Deliberative Process Privilege ..... 89–6 American Airlines; 90–12, 90–18, & 90–19 Continental Airlines.
Deterrence ..... 89–5 Schultz; 92–10 Flight Unlimited.
Discovery:
Deliberative Process Privilege ..... 89–6 American Airlines; 90–12, 90–18 & 90–19 Continental Airlines.
Depositions ..... 91–54 Alaska Airlines.
Notice of ..... 91–54 Alaska Airlines.
Failure to Produce ..... 90–18 & 90–19 Continental Airlines; 91–17 KDS Aviation; 93–10 Costello.
Of Investigative File in Unrelated Case ..... 92–46 Sutton-Sautter.
Sanctions for ..... 91–17 KDS Aviation; 91–54 Alaska Airlines.
Due Process:
Before finding a violation ..... 90–27 Gabbert.
Violation of ..... 89–6 American Airlines; 90–12 Continental Airlines; 90–37 Northwest Airlines.
EAJA:
Adversary Adjudication ..... 90–17 Wilson; 91–17 & 91–52 KDS Aviation; 94–17 TCI.
Further proceedings ..... 91–52 KDS Aviation.
Jurisdiction over appeal ..... 92–74 Wendt.
Other expenses ..... 93–29 Sweeney.
Prevailing party ..... 91–52 KDS Aviation.
Substantial justification ..... 91–52 & 92–71 KDS Aviation; 93–9 Wendt.
Ex Parte Communications ..... 93–10 Costello.
Expert Witnesses (see Witness):
Extension of Time:
By Agreement of Parties ..... 89–6 American Airlines; 92–41 Moore & Sabre Associates.
Dismissal by Decisionmaker ..... 89–7 Zenkner; 90–39 Hart.
Good Cause for ..... 89–8 Thunderbird Accessories.
Objection to ..... 89–8 Thunderbird Accessories; 93–3 Wendt.
Who may grant ..... 90–27 Gabbert.
Federal Courts ..... 92–7 West.
Federal Rules of Civil Procedure ..... 91–17 KDS Aviation.
Final Oral Argument ..... 92–3 Park.
Firearms (See Weapons):
Flights ..... 94–20 Conquest Helicopters.
Freedom of Information Act ..... 93–10 Costello.
Guns (See Weapons):
Hazardous Materials Transp. Act ..... 90–37 Northwest Airlines; 92–76 Safety Equipment; 92–77 TCI; 94–19 Pony Express.
Civil Penalty ..... 92–77 TCI.
Corrective Action ..... 92–77 TCI.
Culpability ..... 92–77 TCI.
First-time violation ..... 92–77 TCI.
Gravity of the violation ..... 92–77 TCI.
Criminal Penalty ..... 92–77 TCI.
Knowingly ..... 92–77 TCI; 94–19 Pony Express.

Informal Conference ..... 92–4 Northwest Aircraft Rental.
Initial Decision:
  What constitutes ..... 92–32 Barnhill.
Interference with crewmembers ..... 92–3 Park.
Interlocutory Appeal ..... 89–6 American Airlines; 91–54 Alaska Airlines; 93–37 Airspect.
Internal FAA Policy and/or Procedures ..... 89–6 American Airlines; 90–12 Continental Airlines; 92–73 Wyatt.
Jurisdiction:
  After initial decision ..... 90–20 Degenhardt; 90–33 Cato; 92–32 Barnhill; 93–28 Strohl.
  $50,000 Limit ..... 90–12 Continental Airlines.
  EAJA cases ..... 92–74 Wendt.
  HazMat cases ..... 92–76 Safety Equipment.
  NTSB ..... 90–11 Thunderbird Accessories.
Knowledge (See also Weapons Violations):
  Of concealed weapon ..... 89–5 Schultz; 90–20 Degenhardt.
Laches (See Unreasonable Delay):
Mailing Rule ..... 89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird Accessories; 90–39 Hart.
  Overnight express delivery ..... 89–6 American Airlines.
Maintenance (See Aircraft Maintenance):
Maintenance Instruction ..... 93–36 Valley Air.
Maintenance Manual ..... 90–11 Thunderbird Accessories.
Mootness:
  Appeal dismissed as moot ..... 92–9 Griffin; 94–17 TCI.
National Aviation Safety Inspection:
  Program (NASIP) ..... 90–16 Rocky Mountain.
National Transportation Safety Board:
  Administrator not bound by NTSB case law ..... 91–12 Terry & Menne; 92–49 Richardson & Shimp; 93–18 Westair Commuter.
  Lack of Jurisdiction ..... 90–11 Thunderbird Accessories; 90–17 Wilson; 92–74 Wendt.
Notice of Hearing:
  Receipt ..... 92–31 Eaddy.
Notice of Proposed Civil Penalty:
  Initiates Action ..... 91–9 Continental Airlines.
  Signature of agency attorney ..... 93–12 Langton.
  Withdrawal of ..... 90–17 Wilson.
Operate ..... 91–12 & 91–31 Terry & Menne; 93–18 Westair Commuter.
Oral Argument:
  Decision to hold ..... 92–16 Wendt.
  Instructions for ..... 92–27 Wendt.
Order Assessing Civil Penalty:
  Appeal from ..... 82–1 Costello.
  Withdrawal of ..... 89–4 Metz; 90–16 Rocky Mountain; 90–22 USAir.
Parts Manufacturer Approval:
  Failure to obtain ..... 93–19 Pacific Sky Supply.
Passenger Misconduct ..... 92–3 Park.
  Smoking ..... 92–37 Giuffrida.
Penalty (See Sanction):
Person ..... 93–18 Westair Commuter.
Proof & Evidence:
  Affirmative Defense ..... 92–13 Delta Air Lines; 92–72 Giuffrida.
  Burden of Proof ..... 90–26 & 90–43 Waddell; 91–3 Lewis; 91–30 Trujillo; 92–13 Delta Air Lines; 92–72 Giuffrida; 93–29 Sweeney.
  Circumstantial Evidence ..... 90–12, 90–19 & 91–9 Continental Airlines; 93–29 Sweeney.
  Credibility (See Administrative Law Judges; Credibility of Witnesses):
    Criminal standard rejected ..... 91–12 Terry & Menne.
    Closing Arguments ..... 94–20 Conquest Helicopters.
    Hearsay ..... 92–72 Giuffrida.
    Preponderance of evidence ..... 90–11 Thunderbird Accessories; 90–12 Continental Airlines; 91–12 & 91–31 Terry & Menne; 92–72 Giuffrida.
  Presumption that message on ATC tape is received as transmitted. 91–12 Terry & Menne; 92–49 Richardson & Shimp.
  Presumption that a gun is deadly or dangerous ..... 90–26 Waddell; 91–30 Trujillo.
  Substantial evidence ..... 92–72 Giuffrida.
Pro Se Parties:
  Special Considerations ..... 90–11 Thunderbird Accessories; 90–3 Metz.
Prosecutorial Discretion ..... 89–6 American Airlines; 90–23 Broyles; 90–38 Continental Airlines; 91–41 [Airport Operator]; 92–46 Sutton-Sautter; 92–73 Wyatt.
Reconsideration:
  Denied by ALJ ..... 89–4 & 90–3 Metz.
  Granted by AL ..... 92–32 Barnhill.
  Stay of Order Pending ..... 90–31 Carroll; 90–32 Continental Airlines.
Remand ..... 89–6 American Airlines; 90–16 Rocky Mountain; 90–24 Bayer; 91–51 Hagwood; 91–54 Alaska Airlines; 92–1 Costello; 92–76 Safety Equipment.
Repair Station ..... 90–11 Thunderbird Accessories; 92–10 Flight Unlimited; 94–2 Woodhouse.

Rules of Practice (14 CFR Part 13, Subpart G):
- Applicability of ..... 90–12, 90–18 & 90–19 Continental Airlines; 91–17 KDS Aviation.
- Challenges to ..... 90–12, 90–18 & 90–19 Continental Airlines; 90–21 Carroll; 90–37 Northwest Airlines.
- Effect of Changes in ..... 90–21 Carroll; 90–22 USAir; 90–38 Continenta Airlines.
- Initiation of Action ..... 91–9 Continental Airlines.

Runway incursions ..... 92–40 Wendt, 93–18 Westair Commuter

Sanction:
- Ability to Pay ..... 89–5 Shultz; 90–10 Webb; 91–3 Lewis; 91–38 Esau; 92–10 Flight Unlimited; 92–32 Barnhill; 92–37 & 92–72 Giuffrida; 92–38 Cronberg; 92–46 Sutton-Sautter; 92–51 Koblick; 93–10 Costello; 94–4 Northwest Aircraft Rental; 94–20 Conquest Helicopters.
- Agency policy:
  - ALJ Bound by ..... 90–37 Northwest Airlines; 92–46 Sutton-Sautter.
  - Statements of (e.g., FAA Order 2150.3A, Sanction Guidance Table, memoranda pertaining to). ..... 90–19 Continental Airlines; 90–23 Broyles; 90–33 Cato; 90–37 Northwest Airlines; 92–46 Sutton-Sautter.
- Corrective Action ..... 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 92–5 Delta Air Lines; 93–18 Westair Commuter.
- Discovery (See Discovery):
- Factors to consider ..... 89–5 Schultz; 90–23 Broyles; 90–37 Northwest Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick.
- First-Time Offenders ..... 89–5 Schultz; 92–5 Delta Air Lines; 92–51 Koblick.
- HazMat (See Hazardous Materials Transp. Act):
- Inexperience ..... 92–10 Flight Unlimited.
- Maximum ..... 90–10 Webb; 91–53 Koller.
- Modified ..... 89–5 Schultz; 90–11 Thunderbird Accessories; 91–38 Esau; 92–10 Flight Unlimited; 92–13 Delta Air Lines; 92–32 Barnhill.
- Pilot Deviation ..... 92–8 Watkins.
- Test object detection ..... 90–18 & 90–19 Continental Airlines.
- Unauthorized access ..... 90–19 Continental Airlines; 90–37 Northwest Airlines; 94–1 Delta Air Lines.
- Weapons violations ..... 90–23 Broyles; 90–33 Cato; 91–3 Lewis; 91–38 Esau; 92–32 Barnhill; 92–46 Sutton-Sautter; 92–51 Koblick; 94–5 Grant.
- Screening of Persons Entering Sterile Areas ..... 90–24 Bayer; 92–58 Hoedl.
- Separation of Functions ..... 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–21 Carroll; 90–38 Continental Airlines; 93–13 Medel.

Service (See also Mailing Rule):
- Of NPCP ..... 90–22 USAir.
- Of FNPCP ..... 93–13 Medel.
- Valid Service ..... 92–18 Bargen.

Settlement ..... 92–50 & 92–1 Costello.

Smoking ..... 92–37 Giuffrida; 94–18 Luxemburg.

Standard Security Program (SSP):
- Compliance with ..... 90–12, 90–18 & 90–19 Continental Airlines; 91–33 Delta Air Lines; 92–55 Continental Air Lines; 92–13 & 94–1 Delta Air Lines.

Stay of Orders ..... 90–31 Carroll; 90–32 Continental Airlines.

Strict Liability ..... 89–5 Schultz; 90–27 Gabbert; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–58 [Airport Operator].

Test Object Detection ..... 90–12, 90–18, 90–19, 91–9 & 91–55 Continental Airlines; 92–13 Delta Air Lines.
- Proof of violation ..... 90–18, 90–19 & 91–9 Continental Airlines; 92–13 Delta Air Lines.
- Sanction ..... 90–18 & 90–19 Continental Airlines.

Timeliness (See also Complaint, Mailing rule, and Appeals):
- Of response to NPCP ..... 90–22 USAir.
- Of complaint ..... 91–51 Hagwood; 93–13 Medel; 94–7 Hereth.
- Of NPCP ..... 92–73 Wyatt.
- Of request for hearing ..... 93–12 Langton.

Unapproved Parts (See also Parts Manufacturer Approval) ..... 93–19 Pacific Sky Supply.

Unauthorized Access:
- To Aircraft ..... 90–12 & 90–19 Continental Airlines; 94–1 Delta Air Lines.
- To Air Operations Area (AOA) ..... 90–37 Northwest Airlines; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–58 [Airport Operator]; 94–1 Delta Air Lines.

Unreasonable Delay In Initiating Action ..... 90–21 Carroll.

Visual Cues Indicating Runway, Adequacy of ..... 92–40 Wendt.

Weapons Violations ..... 89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–23 Broyles; 90–33 Cato; 90–26 & 90–43 Waddell; 91–3 Lewis; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–46 Sutton-Sautter; 92–51 Koblick; 92–59 Petek-Jackson; 94–5 Grant.

Concealment (See Concealment):
- Deadly or Dangerous ..... 90–26 & 90–43 Waddell; 91–30 Trujillo; 91–38 Esau.
- First-time Offenders ..... 89–5 Schultz.
- Intent to commit violation ..... 89–5 Schultz; 90–20 Degenhardt; 90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 91–53 Koller.

Knowledge:
Of Weapon Concealment (See also Knowledge) ..... 89–5 Schultz; 90–20 Degenhardt.
Sanction (See "Sanction"):
Witnesses:
Absence of, Failure to subpoena ..... 92–3 Park.
Expert testimony (see also Credibility) Evaluation of ..... 93–17 Metcalf; 94–3 Valley Air; 94–21 Sweeney.
REGULATIONS (*Title 14 CFR*, unless otherwise noted):
1.1 (operate) ..... 91–12 & 91–31 Terry & Menne; 93–18 Westair Commuter.
1.1 (person) ..... 93–18 Westair Commuter.
13.16 ..... 90–16 Rocky Mountain; 90–22 USAir; 90–37 Northwest Airlines; 90–38 & 91–9 Continental Airlines; 91–18 [Airport Operator]; 91–51 Hagwood; 92–1 Costello; 92–46 Sutton-Sautter; 93–13 Medel; 93–28 Strohl.
13.201 ..... 90–12 Continental Airlines.
13.202 ..... 90–6 American Airlines; 92–76 Safety Equipment.
13.203 ..... 90–12 Continental Airlines; 90–21 Carroll; 90–38 Continental Airlines.
13.204
13.205 ..... 90–20 Degenhardt; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–32 Barnhill.
13.206
13.207
13.208 ..... 90–21 Carroll; 91–51 Hagwood; 92–73 Wyatt; 92–76 Safety Equipment; 93–13 Medel; 93–28 Strohl; 94–7 H.
13.209 ..... 90–3 Metz; 90–15 Playter; 91–18 [Airport Operator]; 92–32 Barnhill; 92–47 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 94–8 Nunez; 94–5 Grant; 94–22 Harkins.
13.210 ..... 92–19 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 93–7 Dunn; 93–28 Strohl; 94–5 Grant.
13.211 ..... 89–6 American Airlines; 89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird Accessories; 90–39 Hart; 91–24 Esau; 92–1 Costello; 92–9 Griffin; 92–18 Bargen; 92–19 Cornwall; 92–57 Detroit Metro. Wayne Co. Airport; 92–74 Wendt; 92–76 Safety Equipment; 93–2 Wendt; 94–5 Grant; 94–18 Luxemburg.
13.212 ..... 90–11 Thunderbird Accessories; 91–2 Continental Airlines.
13.213
13.214 ..... 91–3 Lewis.
13.215 ..... 93–28 Strohl.
13.216
13.217 ..... 91–17 KDS Aviation.
13.218 ..... 89–6 American Airlines; 90–11 Thunderbird Accessories; 90–39 Hart; 92–9 Griffin; 92–73 Wyatt; 93–19 Pacific Sky Supply; 94–6 Strohl.
13.219 ..... 89–6 American Airlines; 91–2 Continental Airlines; 91–54 Alaska Airlines; 93–37 Airspect.
13.220 ..... 89–6 American Airlines; 90–20 Carroll; 91–8 Watts Agricultural Aviation; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–46 Sutton-Sautter.
13.221 ..... 92–29 Haggland; 92–31 Eaddy; 92–52 Cullop.
13.222 ..... 92–72 Giuffrida.
13.223 ..... 91–12 & 91–31 Terry & Menne; 92–72 Giuffrida.
13.224 ..... 90–26 Waddell; 91–4 [Airport Operator]; 92–72 Giuffrida; 94–18 Luxemburg.
13.225
13.226
13.227 ..... 90–21 Carroll.
13.228 ..... 92–3 Park.
13.229
13.230 ..... 92–19 Cornwall.
13.231 ..... 92–3 Park.
13.232 ..... 89–5 Schultz; 90–20 Degenhardt; 92–1 Costello; 92–18 Bargen; 92–32 Barnhill; 93–28 Strohl.

13.233	89–1 Gressani; 89–4 Metz; 89–5 Schultz; 89–7 Zenkner; 89–8 Thunderbird Accessories; 90–3 Metz; 90–11 Thunderbird Accessories; 90–19 Continental Airlines; 90–20 Degenhardt; 90–25 & 90–27 Gabbert; 90–35 P. Adams; 90–19 Continental Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–7 Pardue; 91–8 Watts Agricultural Aviation; 91–10 Graham; 91–11 Continental Airlines; 91–12 Bargen; 91–24 Esau; 91–26 Britt Airways; 91–31 Terry & Menne; 91–32 Bargen; 91–43 & 91–44 Delta; 91–45 Park; 91–46 Delta; 91–47 Delta; 91–48 Wendt; 91–52 KDS Aviation; 91–53 Koller; 92–1 Costello; 92–3 Park; 92–7 West; 92–11 Alilin; 92–15 Dillman; 92–16 Wendt; 92–18 Bargen; 92–19 Cornwall; 92–27 Wendt; 92–32 Barnhill; 92–34 Carrell; 92–35 Bay Land Aviation; 92–36 Southwest Airlines; 92–39 Beck; 92–45 O'Brien; 92–52 Beck; 92–56 Montauk Caribbean Airways; 92–57 Detroit Metro. Wayne Co. Airport; 92–67 USAir, Inc.; 92–69 McCabe; 92–72 Giuffrida; 92–74 Wendt; 92–78 TWA; 93–5 Wendt; 93–6 Westair Commuter; 93–7 Dunn; 93–8 Nunez; 93–19 Pacific Sky Supply; 93–23 Allen; 93–27 Simmons; 93–28 Strohl; 93–31 Allen; 93–32 Nunez; 94–9 B & G Instruments; 94–10 Boyle; 94–12 Bartusiak; 94–15 Columna; 94–18 Luxemburg; 94–23 Perez; 94–24 Page.
13.234	90–19 Continental Airlines; 90–31 Carroll; 90–32 & 90–38 Continental Airlines; 91–4 [Airport Operator].
13.235	90–11 Thunderbird Accessories; 90–12 Continental Airlines; 90–15 Playter; 90–17 Wilson; 92–7 West.
Part 14	92–74 & 93–2 Wendt.
14.01	91–17 & 92–71 KDS Aviation.
14.04	91–17, 91–52 & 92–71 KDS Aviation; 93–10 Costello.
14.05	90–17 Wilson.
14.20	91–52 KDS Aviation.
14.22	93–29 Sweeney.
14.26	91–52 KDS Aviation.
21.303	93–19 Pacific Sky Supply.
25.855	92–37 Giuffrida.
39.3	92–10 Flight Unlimited; 94–4 Northwest Aircraft Rental.
43.3	92–73 Wyatt.
43.13	94–3 Valley Air.
43.15	94–2 Woodhouse.
43.9	91–8 Watts Agricultural Aviation.
43.13	90–11 Thunderbird Accessories.
43.15	90–25 & 90–27 Gabbert; 91–8 Watts Agricultural Aviation.
65.15	92–73 Wyatt.
65.92	92–73 Wyatt.
91.8 (91.11 as of 8/18/90)	92–3 Park.
91.9 (91.13 as of 8/18/90)	90–15 Playter; 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–48 USAir; 92–49 Richardson & Shimp; 92–47 Cornwall; 92–70 USAir; 93–9 Wendt; 93–17 Metcalf; 93–18 Westair Commuter; 93–29 Sweeney.
91.29 (91.7 as of 8/18/90)	91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited; 94–4 Northwest Aircraft Rental.
91.65 (91.111 as of 8/18/90)	91–29 Sweeney; 94–21 Sweeney.
91.67 (91.113 as of 8/18/90)	91–29 Sweeney.
91.75 (91.123 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–49 Richardson & Shimp; 93–9 Wendt.
91.79 (91.119 as of 8/18/90)	90–15 Playter; 92–47 Cornwall; 93–17 Metcalf.
91.87 (91.129 as of 8/18/90)	91–12 & 91–31 Terry & Menne; 92–8 Watkins.
91.173 (91.417 as of 8/18/90)	91–8 Watts Agricultural Aviation.
107.1	90–19 Continental Airlines; 90–20 Degenhardt; 91–4 [Airport Operator]; 91–58 [Airport Operator].
107.13	90–12 & 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].
107.20	90–24 Bayer; 92–58 Hoed].
107.21	89–5 Schultz; 90–10 Webb; 90–22 Degenhardt; 90–23 Broyles; 90–26 &90–43 Waddell; 90–33 Cato; 90–39 Hart; 91–3 Lewis; 91–10 Graham; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–38 Cronberg; 92–46 Sutton-Sautter; 92–51 Koblick; 92–59 Petek-Jackson; 94–5 Grant.
108.5	90–12, 90–18, 90–19, 91–2 & 91–9 Continental Airlines; 91–33 Delta Air Lines; 91–54 Alaska Airlines; 91–55 Continental Airlines; 92–13 & 94–1 Delta Air Lines.
108.7	90–18 & 90–19 Continental Airlines.
108.11	90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 92–46 Sutton-Sautter.
108.13	90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines.
121.133	90–18 Continental Airlines.
121.153	92–48 & 92–70 USAir.
121.317	92–37 Giuffrida; 94–18 Luxemburg.

121.318	92–37 Giuffrida.
121.367	90–12 Continental Airlines.
121.571	92–37 Giuffrida.
135.5	94–3 Valley Air; 94–20 Conquest Helicopters.
135.25	92–10 Flight Unlimited; 94–3 Valley Air.
135.87	90–21 Carroll.
135.413	94–3 Valley Air.
135.421	93–36 Valley Air; 94–3 Valley Air.
135.437(b)	94–3 Valley Air.
145.53	90–11 Thunderbird Accessories.
145.57	94–2 Woodhouse.
145.61	90–11 Thunderbird Accessories.
191	90–12 & 90–19 Continental Airlines 90–37 Northwest Airlines.
298.1	92–10 Flight Unlimited.
302.8	90–22 USAir.
49 CFR:	
1.47	92–76 Safety Equipment.
171.2	92–77 TCI.
171.8	92–77 TCI.
172.101	92–77 TCI.
172.200	92–77 TCI.
172.202	92–77 TCI.
172.204	92–77 TCI.
172.304	92–77 TCI.
172.400	92–77 TCI.
172.406	92–77 TCI.
173.1	92–77 TCI.
173.27	92–77 TCI.
173.115	92–77 TCI.
173.240	92–77 TCI.
821.30	92–73 Wyatt.
821.33	90–21 Carroll.
Statutes:	
5 U.S.C.:	
504	90–17 Wilson; 91–17 & 92–71 KDS Aviation; 92–74, 93–2 & 93–9 Wendt; 93–29 Sweeney; 94–17 TCI.
552	90–12, 90–18 & 90–19 Continental Airlines; 93–10 Costello.
554	90–18 Continental Airlines; 90–21 Carroll.
556	90–21 Carroll; 91–54 Alaska Airlines.
557	90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines.
11 U.S.C.:	
362	91–2 Continental Airlines.
28 U.S.C.:	
2412	93–10 Costello.
2462	90–21 Carroll.
49 U.S.C. App.:	
1301(31) (operate)	93–18 Westair Commuter.
(32)(person)	93–18 Westair Commuter.
1356	90–18 & 90–19, 91–2 Continental Airlines.
1357	90–18, 90–19 & 91–2 Continental Airlines; 91–41 [Airport Operator]; 91–58 [Airport Operator].
1421	92–10 Flight Unlimited; 92–48 USAir; 92–70 USAir; 93–9 Wendt.
1429	92–73 Wyatt.
1471	89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12, 90–18 & 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Air Lines; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick; 92–74 Wendt; 92–76 Safety Equipment; 94–20 Conquest Helicopters.
1475	90–20 Degenhardt; 90–12 Continental Airlines; 90–18, 90–19 & 91–1 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator].
1486	90–21 Carroll.
1809	92–77 TCI; 94–19 Pony Express.

Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Current as of June 30, 1994)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from April 1, 1994, to June 30, 1994. The FAA will publish noncumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the

Administrator's decisions before citing them in any context.

In the Matter of Pan American Airways, Inc.

Order No. 94–14 (4/21/94)

Appealed Dismissed. Complainant withdrew its notice of appeal, and as a result, the Administrator dismissed its appeal.

In the Matter of David D. Bartusiak

Order No. 94–12 (4/28/94)

Appeal Dismissed. Respondent failed to perfect his appeal by filing an appeal brief, and has failed to show good cause for this failure. Respondent's appeal is dismissed.

In the Matter of John G. Boyle

Order No. 94–13 (5/19/94)

Appeal Dismissed. Complainant's appeal was dismissed in a previous order. Respondent's appeal, however, remained active. Respondent has now withdrawn its notice of appeal, and therefore, its appeal is dismissed also.

In the Matter of B&G Instruments, Inc.

Order No. 94–14 (6/9/94)

Appeal Dismissed. Respondent has withdrawn its appeal. Respondent's appeal is dismissed.

In the Matter of Anthony F. Columna

Order No. 94–15 (6/15/94)

Notice of Appeal Construed as Appeal Brief. Respondent failed to file an appeal brief. His notice of appeal, however, satisfies the requirements for an appeal brief. Complainant is granted 35 days from the service date of this order to file a reply brief.

In the Matter of Martha Phyllis Ford

Order No. 94–16 (6/15/94)

Appeal Dismissed. Complainant has withdrawn its appeal. Complainant's appeal is dismissed.

In the Matter of TCI Corp.

Order No. 94–17 (6/22/94)

Appeal Dismissed. Complainant sought a ruling that the Equal Access to Justice Act (EAJA) does not apply to cases arising under the Hazardous Materials Transportation Act. The law judge already ruled that TCI was not entitled to attorney's fees under the EAJA because the FAA's case against TCI was "substantially justified." Thus, the FAA's appeal was moot, and would be dismissed.

In the Matter of Phyllis Jones Luxemburg

Order No. 94–18 (6/22/94)

No Error in Granting Motion for Decision. Respondent argued that the law judge erred in granting Complainant's motion for decision and assessing a $1,000 civil penalty for smoking on an aircraft when the no-smoking signs were lit without considering Respondent's reply to Complainant's motion. The law judge waited until after Respondent's deadline for filing a reply had expired before he issued his order. Respondent failed to file either a reply or a request for extension of time before the deadline, and she has failed to show good cause for this failure. The law judge committed to error in this regard.

Stress and Advanced Age Not Mitigating Factors. Respondent argued that the sanction of $1,000 should be reduced because of several mitigating factors, including the stress she was under at the time of the incident and her advanced age. Neither stress nor advanced age justify a reduction in a civil penalty for an intentional violation of the regulations.

Sanction Reduced. The only justification the agency attorney offered the law judge for imposing the maximum civil penalty of $1,000 was that the *Giuffrida* case also involved smoking in the cabin when the no-smoking signs were lit and the Administrator imposed the maximum penalty of $1,000 in that case. However, *Giuffrida* actually involved smoking in the lavatory. Complainant concedes that Respondent's violation, involving smoking in the cabin when the no-smoking signs are lit, does not pose as great a threat to safety as smoking in the lavatory. A civil penalty of $700 more closely reflects the gravity, nature, and extent of Respondent's violation.

In the Matter of Pony Express Courier Corp.

Order No. 94–19 (6/22/94)

Sanction Increased. Although several complaint allegations were dismissed, the Administrator increased the civil penalty assessed against Respondent to the full $40,000 sought in the complaint because those allegations that were established were serious enough to warrant the full requested civil penalty. The $40,000 civil penalty was substantially less than the maximum civil penalty possible. The law judge's reduction of the civil penalty to $30,000 was inappropriate because the law judge made several findings concerning the serious and wilful nature of Respondent's violations of the Hazardous Materials Transportation Act, and Respondent did not establish any mitigating factors.

In the Matter of Conquest Helicopters

Order No. 94–20 (6/22/94)

Remand Due to Errors of Law. The Administrator remanded this case to the administrative law judge for a hearing solely to determine the appropriate amount of civil penalty, after finding errors in the law judge's reasons for reducing the civil penalty to $4,500.

Closing Arguments. The law judge's finding that a civil penalty over $4,500 would result in financial hardship for Respondent was based entirely on statements made by Respondent during closing arguments, and not on evidence.

Number of Flights. Once the law judge determined that Respondent made two flights, he should have found that each flight was a separate violation.

In the Matter of Mark L. Sweeney

Order No. 94–21 (6/22/94)

Reconsideration Denied. The Administration denied Respondent's petition to reconsider the Administrator's prior decision assessing Respondent a $2,500 civil penalty for failing to see and avoid another aircraft, creating a collision hazard, and careless or reckless operation. Respondent raised no new arguments and cited no law in his petition.

In the Matter of Jimmy Lee Harkins

Order No. 94–22 (6/29/94)

Dismissal Affirmed. The Administrator affirmed the decision of the administrative law judge to dismiss Respondent's request for hearing because Respondent failed to file an answer. On appeal Respondent failed to show good cause for his failure to file an answer.

Integrity of the Civil Penalty Process. Though the $5,000 civil penalty assessed is not insignificant, especially when imposed on an individual respondent, in this case there was no basis in the record to do other than affirm the law judge's decision. Procedural rules must be enforced in a non-arbitrary manner to ensure the integrity of the civil penalty process, even where this results in severe consequences.

In the Matter of Ezekuiel G. Perez

Order No. 94–23 (6/27/94)

Appeal Brief Construed. Letter Respondent sent to the administrative law judge after dismissal of Respondent's case for failure to file an answer, was construed by the

Administrator as a timely notice of appeal and an appeal brief. In his letter, which was timely filed, Respondent alleged that he had filed an answer but had only sent it to agency counsel. Complainant was given 35 days to file a reply brief.

In the Matter of Todd M. Page

Order No. 94–24 (6/29/94)

Appeal Dismissed. Respondent failed to perfect his appeal by filing an appeal brief, and has failed to show good cause for this failure. Respondent's appeal is dismissed.

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

In June 1991, as a public service, the FAA began releasing to commercial publishers the Administrator's decisions and orders in civil penalty cases. The goal was to make these decisions and orders more accessible to the public. The Administrator's decisions and orders in civil penalty cases are now available in the following commercial publications.

AvLex, published by Aviation Daily, 1156 15th Street, NW., Washington, DC 20005, (202) 822–4669;

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, 50 Broad Street East, Rochester, NY 14694, (716) 546–1490.

The decisions and orders may be obtained on disk from Aviation Records, Inc., P.O. Box 172, Battle Ground, WA 98604, (206) 896–0376. Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040 (806) 733–2483, is placing the decisions on CD-ROM. Finally, the Administrator's decisions and orders in civil penalty cases are available on the following computer databases: Compuserve; Fedix; and GENIE.

The FAA has stated previously that publication of the subject-matter index and the digests may be discontinued once a commercial reporting service publishes similar information in a timely accurate manner. No decision has been made yet on this matter, and for the time being, the FAA will continue to prepare and publish the subject-matter index and digests.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters:

FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Assistant Chief Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur, Oklahoma City, OK 73125; (405) 680–3296.

Office of the Assistant Chief Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Assistant Chief Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Assistant Chief Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 553–1035.

Office of the Assistant Chief Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018; (708) 294–7108.

Office of the Assistant Chief Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Burlington, MA 01803; (617) 273–7050.

Office of the Assistant Chief Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 18000 Pacific Highway South, Seattle, WA 98188; (206) 227–2007.

Office of the Assistant Chief Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Assistant Chief Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 4400 Blue Mound Road, Fort Worth, TX 76193; (817) 624–5707.

Office of the Assistant Chief Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Assistant Chief Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (310) 297–1270.

Issued in Washington, DC on July 12, 1994.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 94–18832 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–13–M

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on August 22, 1994, at 1 p.m. Arrange for oral presentations by August 15, 1994.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC, 1 p.m.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration (ARM–25), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on August 22, 1994, at the General Aviation Manufacturers Association, 1400 K Street, NW., Suite 801, Washington, DC, 1 p.m. The agenda will include:

- A status report on the FAA Regulatory Review.
- A discussion of the "sufficiency" of EXCOM agendas.
- A follow-up on open action items.
- A status report on working group and internal FAA procedures.
- Notable comments on specific issues.
- Other business.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by August 15, 1994, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as

well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Issued in Washington, DC, on July 27, 1994.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 94-18922 Filed 8-2-94; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc., Joint RTCA Special Committee 181/EUROCAE WG-13, Standards of Navigation Performance; Fifth Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for the Joint RTCA Special Committee 181/EUROCAE WG-13 to be held August 22-26, 1994, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, N.W., Washington, DC 20036.

Specific Working Groups Sessions

August 22-23—Working Groups 1, 2 and 3

August 24-25—Agenda Plenary Session

August 24:

1. 0900-0915—Introductions
2. 0915-0930—Opening Remarks and Agenda Review—Frank Alexander, Co-Chairman; Geoff Burtenshaw, Co-Chairman
3. 0930-1000—Approval of summary of fourth meeting
4. 1000-1030—Chairman's report—Frank Alexander
5. 1030-1045—Break
6. 1045-1200

Working Group Reports:
Working Group 1
Working Group 2
Working Group 3
Containment Surface Subgroup
Other business

7. 1200-1300—Lunch
8. 1300-1700—Working Group Sessions

August 25

1. 0900-1700—Working Group Sessions

August 26

1. 0830-0930—Working Group Status Reports
2. 0930-1000—Future Meeting Schedule
3. 1000-1100—Any other business
4. 1100—Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on July 26, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94-18839 Filed 8-2-94; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Marion County, West Virginia

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 Fairmont, West Virginia.

FOR FURTHER INFORMATION CONTACT: Billy Higginbotham, Division Administrator, Federal Highway Administration, 550 Eagan Street, Suite 300, Charleston, West Virginia 25304-0430. Telephone (304) 558-3093.

Ben L. Hark, Environmental Section Chief, Roadway Design Division, West Virginia Department of Transportation, 1900 Kanawha Boulevard East, Building 5, Room A830, Charleston, WV 25305-0430. Telephone (304) 558-3236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the West Virginia Division of Highways will prepare an environmental impact statement (EIS) on a proposal to build a new expressway in Fairmont, West Virginia. The proposed project could involve construction of a new facility which would begin at the Pleasant Valley Interchange of I-79, cross either the Monongahela River or the Tygart Valley and West Fork Rivers, utilize a railroad right-of-way that runs along Fairmont adjacent to the Monongahela River, and end at U.S. 19 south of Rivesville. The project length is approximately six miles. Improvements in the corridor are considered necessary to reduce congestion in downtown Fairmont, to improve traffic flow, and to create a better environment for economic development.

Alternatives under consideration include (1) taking no action; (2) improvements to existing routes; (3) alternate alignments at both ends and (4) alternate designs for the portion utilizing railroad right-of-way.

Following the publishing of this notice of intent in the **Federal Register**, a formal scoping meeting will be held to provide other Federal and State agencies an opportunity to review the proposed project and to provide early input as to the areas of concern. The draft EIS and other pertinent materials will be made available for public and agency review and comment prior to a 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 at the address provided here.

(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).

Billy Higginbotham,

Division Administrator.

[FR Doc. 94-18805 Filed 8-2-94; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 94-29; Notice 2]

B.A.T. Incorporated; Grant of Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

B.A.T. ("Battery Automated Transportation") Inc. of West Valley City, Utah, petitioned to be exempted from Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection* for Geo Metro sedans that it converts to electric power. The basis of the petition was that an exemption will facilitate the development and field evaluation of low-emission motor vehicles.

Notice of receipt of the petition was published on May 25, 1994, and an opportunity afforded for comment (59 FR 27100). This notice grants the petition.

Petitioner has already been excused from compliance with the crash test provision of Standard No. 208 by NHTSA Temporary Exemption No. 93-3 which expires August 1, 1995 (see 58 FR 45549). Although that exemption is not vehicle-specific by its terms, petition had been made only on behalf of 1993 model Ford Ranger pickup trucks to be converted to electric power.

Thus, rather than providing the petitioner with an interpretation that the current exemption extends to sedans as well as pickups, NHTSA concluded that the public should be offered an opportunity to comment on B.A.T.'s latest request.

As before, the basis of the petition is that a temporary exemption would facilitate the development and field evaluation of a low-emission motor vehicle, as provided by 49 CFR 555.6(c). The petitioner will not manufacture more than 2,500 vehicles during any 12-month period that the exemption is in effect.

Although the Geo Metro is certified by its original manufacturer as conforming with all applicable Federal motor vehicle safety standards, petitioner has determined that the vehicles may not conform, after their modification, with "the requirements of crash tests of" Standard No. 208 *Occupant Crash Protection.* The petitioner intends to make arrangements with the Lawrence Livermore National Laboratory to do computer simulated crash testing. Any changes that are shown to be necessary will be incorporated in all future versions "and will voluntarily be retrofitted in earlier units."

Although the petitioner has not provided specific arguments that an exemption would not unreasonably degrade the safety of the vehicle, it believes that electric vehicles are safer because they carry no flammable substances and do not have "a very hot catalytic converter close to the gasoline tank." B.A.T. conversions do not "emit hydrogen gas from the batteries due to the addition of hydrocaps which catalyze any hydrogen gas formed when charging or discharging." Further, "BAT 'Ultra Force' catalyst sharply reduces any gassing that might otherwise occur."

Finally, the petitioner argued, granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because the vehicles "are non polluting * * * and therefore can be a major means of improving the quality of the air we breathe."

One comment was received on the petition, from William Bohn of Marysville, Washington. Mr. Bohn is the owner of a 1989 Geo Metro and a 1970 BMW 2002 EV conversion. He questions "whether the safety of the vehicle has been compromised by the addition of the battery pack in regards to braking, steering, and suspension" as he fears "that the added weight of the battery pack is beyond the capacity that the car was originally tested." However, he concedes that the converter "may have reduced the total weight load by using 12V batteries in series vice the more common 6V series pack", and that the converter may also "have increased the suspension's capacity, and improved the brakes to better accommodate the increased weight."

The agency has reviewed Mr. Bohn's comment. It notes that neither B.A.T. nor another petitioner who converts Geo Metro vehicles (e.g., Solectria) has asked for a temporary exemption from the braking standard, Standard No. 105. NHTSA interprets this as indicating that these converters of Geo Metros have assured themselves that the conversions continue to meet Standard No. 105. As for its effect upon "steering", NHTSA is unsure of the exact nature of Mr. Bohn's concern, whether it goes to the steerability of the vehicle or something else. Solectria has requested an exemption from Standard No. 204 *Steering Control Rearward Displacement* whereas B.A.T. appears to believe that its alterer's certification will cover compliance with this standard after conversion. The suspension of a vehicle is not the subject of a safety standard. If the increased weight should result in a safety related defect, the converter will be subject to the notification and remedy provisions of the Vehicle Safety Act.

As NHTSA noted in granting B.A.T.'s previous petition:

> "* * * it is manifestly in the public interest for small manufacturers to engage in the converting of internal combustion engines to electric power, and for this agency to take appropriate steps to encourage these endeavors, provided that they are consistent with motor vehicle safety. Exemptions for conversions allow field evaluations by their purchasers and modifications by the converters that respond to the evaluations." (58 FR at 45550).

Those reasons, of course, still exist, and once again support a finding by the Administrator that an exemption from S5.1 of Standard No. 208 will facilitate the development and field evaluation of a low emission motor vehicle, and that the exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. The exemption provided will allow the petitioner to broaden its product range from trucks to passenger cans, and contribute to the development of its expertise in vehicle conversion.

Petitioner was not specific as to the extent that its conversion may not conform with Standard No. 208, although NHTSA assumes that the converted Metro will continue to be equipped with its original restraints. In this sense, an exemption would not, in the words of the statute, "unreasonably degrade" the safety of the Geo conversion.

B.A.T. did not request a specific time period for its exemption, and in its absence, NHTSA is providing one that will expire on August 1, 1995. First, this is the termination date of Exemption No. 93–3 granted B.A.T. for its Ford Ranger conversions, and if the company finds it necessary to petition for renewals of both exemptions, they may be made under the cover of one petition. Secondly, an exemption for this time period will allow B.A.T. to schedule and complete its compliance verification testifying with the Lawrence Livermore Laboratories. Finally, NHTSA notes that General Motors will introduce a substantially revised Geo Metro for the 1995 model year, and because of this, B.A.T. will have to decide whether to terminate its program of Metro conversions after the 1994 model year, or, if it decides to continue with the Metro, to reevaluate its conversion compliance status.

In consideration of the foregoing, B.A.T. Inc. is hereby granted NHTSA Temporary Exemption No. 94–4, expiring August 1, 1995, from S5.1 of 49 CFR 571.208 Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection.*

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–18801 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 91–61; Notice 4]

U.S. Electricar, Inc.; Grant of Petition for Renewal of Temporary Exemption From Five Federal Motor Vehicle Safety Standards

U.S. Electricar Corporation of Sebastopol, California, petitioned for renewal of NHTSA Temporary Exemption No. 92–3 from five Federal Motor Vehicle Safety Standards (see 57 FR 30997). At the time the exemption was granted, the petitioner was known as Solar Electric Engineering, Inc. As of the date of its petition, 70 vehicles had been sold under the Exemption.

Exemption No. 93–2 expired on June 1, 1994. The petition for renewal of the exemption was received on March 31, 1994. In accordance with agency regulations, when a petition for renewal has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants

or denies the petition for renewal (49 CFR 555.8(e)).

Notice of receipt of the petition was published on May 15, 1994 (59 FR 27111) and an opportunity afforded for comment. This notice grants the petition.

The basis of U.S. Electricar's original petition and its petition for renewal was that a temporary exemption would facilitate the development and field evaluation of a low emission motor vehicle. Renewal was sought for the same portions of the same five standards as were covered by the original exemption. These are paragraphs S4.2 and S4.3 of Standard No. 103 *Windshield Defrosting and Defogging Systems*, "the service brake requirements of S5.1 and the parking brake performance requirements of S5.2" of Standard No. 105 *Hydraulic Brake Systems*, paragraph S3.3 of Standard No. 201 *Occupant Protection in Interior Impact*, Standard No. 204 *Steering Control Rearward Displacement*, and paragraphs S4.1.4.1 and S4.2.2 of Standard No. 208 *Occupant Crash Protection*.

Under the original exemption, petitioner converted Ford Escorts, Chevrolet S–10 pickup trucks "and other FMVSS-compliant vehicles" to electric power. It has now substituted conversions of Geo Prizm sedans for Ford Escorts. Although the vehicles to be converted are certified by their original manufacturers to conform to all applicable Federal motor vehicle safety standards, the modifications that Electricar performs add weight to the converted vehicle and may affect its compliance with the standards. Until it has satisfied itself that the conversions conform, petitioner requested appropriate exemptions. The modifications that petitioner performs include removal of the internal combustion engine and fuel system modification or replacement of the transmission and installation of an electric propulsion system and battery pack. Springs, shock absorbers, tires and other components are removed and replaced with new, heavier-duty equipment as required to accommodate the weight of the battery pack added to the vehicle. An electric heater defroster is installed and an electric vacuum pump for the vacuum-assisted brake system is added to the vehicle.

The electric vacuum pump is intended to improve brake performance and has been developed during the term of the current exemption. Petitioner has also implemented a "Safety Development Program" using vehicle crashworthiness computer simulation and physical testing. Preliminary results from a frontal barrier crash test of the S–10 conversion indicate compliance with Standard No. 208 under these conditions "without ejection of batteries or spillage of battery electrolyte." The company has also been field testing an electrical safety system which "ensures that the primary battery pack remains electrically isolated from the vehicle chassis, and de-energizes the system" if the condition is violated.

Electricar asserts that an exemption would not unreasonably degrade motor vehicle safety as electric vehicles are intended for urban use and are therefore generally operated at lower speeds. Under a renewed exemption, the company will continue its safety development and field evaluations with a view to ensuring that its vehicles fully comply before the end of the renewed exemption period.

Finally, the petitioner argued that renewal of the exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. Its vehicles reduce air pollution at street level and lessen the dependence of the United States on importation of petroleum.

No comments were received on the petition.

In granting the previous petition, because of a comment from Ford Motor Company, NHTSA reviewed in great detail the five standards from which exemption had been requested, and found, after this review, that an exemption would not unreasonably degrade the safety of the vehicle (see 57 FR 30997–30998). NHTSA's rationale is herein incorporated by reference as a finding in the granting of the request for extension of that exemption. The petitioner provided further views and explanation of its requests on June 14, 1994, which have been docketed under Notice 3. It anticipates that it will achieve full certification for the Prizm by December 1994 (leading NHTSA to conclude that the maximum two-year exemption that is allowed is not needed). This is consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. Continued exemption of a low-emission motor vehicle facilitates its development and field evaluation and it remains in the public interest to do so.

In consideration of the foregoing, NHTSA Temporary Exemption No. 92–3 is hereby extended in its entirety from June 1, 1994, to June 1, 1995.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 27, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–18800 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 91–66; Notice 3]

Chrysler Corporation; Petition for Renewal of Temporary Exemption From Three Federal Motor Vehicle Safety Standards

Chrysler Corporation of Highland Park, Michigan, has petitioned for a renewal of NHTSA Temporary Exemption No. 92–1, expiring August 31, 1994 (57 FR 27507) which was granted covering three Federal motor vehicle safety standards, for electric-powered multipurpose passenger vehicles ("TEVan"). As of June 10, 1994, the company has produced 52 TEVans under the exemption. Its petition for renewal was accompanied by a copy of its original petition, and NHTSA interprets this as an indication that the company is repeating its original requests and arguments.

The TEVan is an electrically driven version of the Dodge Caravan/Plymouth Voyager multipurpose passenger vehicle. If the exemption is renewed, modifications will be made to production Dodge and Plymouth vans manufactured between September 1, 1994 and August 31, 1996. Although a successor to the current van will be introduced within this time frame, "electric conversions of that new platform will not be ready for production initially" and Chrysler is planning "to produce the current TEVan versions until the new electric conversion units are ready for introduction." The TEVan was developed in cooperation with the Electric Power Research Institute, U.S. Advanced Battery Consortium, and the United States Department of Energy. The basis for the petition was that a temporary exemption would facilitate the development and field evaluation of a low-emission motor vehicle, as provided by 49 CFR 555.6(c). The vehicles use electric motors powered by nickel-iron or other equivalent batteries that replace the internal combustion engine. According to Chrysler, the TEVans meet the California Air Resource Board zero emission requirements, and are low-emission vehicles as defined by section 123(g) of the National Traffic and Motor Vehicle Safety Act.

The TEVan differs from regular production vans as follows: the internal combustion engine, transmission,

coolant system, power brakes, gasoline fuel system, and power steering system have been replaced by an electric drive motor, a nickel-iron or equivalent battery pack, a micro-processor based battery management system, a controller-converter-charger unit, a two-speed manual/automatic transmission, and electric-motor-driven pumps for the vacuum power brakes and the hydraulically assisted power steering. Finally, the hot water heater/defroster unit is replaced by an electric resistance type heating/defrosting system.

The TEVan is based on production vehicles certified as complying with all applicable Federal motor vehicle safety standards. However, it does not comply with the portions of the standards indicated below.

1. Standard No. 101, *Controls and Displays.*

S5.1. The TEVan is equipped with a state-of-charge gauge to serve as an indicator of reserve battery power, rather than the fuel gauge required by the standard.

2. Standard No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect.*

S3.1.2. The requirement for transmission braking effect is met by regenerative braking, in which the electric motor becomes a generator, recharging the batteries and dissipating energy in the process. Regenerative braking can be switched off at the option of the driver to restore steering control on slippery surfaces.

S3.1.3. The starter interlock mechanism is deleted since there will be no electric starting motor.

S3.1.4. The automatic transmission shift mechanism is replaced with an electric switch control device that operates in a similar manner.

3. Standard No. 105, *Hydraulic Brake Systems*

S5.1. The performance of the service brake system is predicated on the use of the regenerative characteristic of the drive motor to augment the power-assisted hydraulic wheel brakes. The motor, driven through the transmission by the mass of the coasting vehicle, functions as a generator to dissipate energy through charging the drive batteries. Chrysler has never conducted tests using regenerative braking, however, tests of a conventionally powered weighted simulation of the TEVan indicate that the TEVan will meet the stopping distance requirements of S5.1.1. In the fade and recovery test, S5.1.4, the distance specified between the starting points of successive brake applications at 60 mph is 0.4 mile. The TEVan cannot accelerate to 60 mph in that distance, so the test cannot be conducted as prescribed, but based on the performance of a simulated TEVan, the TEVan could comply if it could accelerate as specified.

On TEVans equipped with anti-lock brake systems, the regenerative braking is disabled during hard stops that actuate the anti-lock feature of the brakes.

According to the original petition, an exemption would facilitate the development and field evaluation of a low-emission motor vehicle by enabling the petitioner to develop the electric drive motor, battery controller, battery, and other subsystems to increase the efficiency and durability of future generations of electric vehicles.

The petitioner requested extension of its exemption for a two-year period beginning September 1, 1994. In its original petition it argued that the exemptions will not unduly degrade the safety of the vehicles because the vehicles from which the TEVan is adapted are certified as conforming to the standards. Chrysler observes in its petition for renewal that its "field experience to date would indicate no negative result if this extension was granted."

Finally, petitioner originally argued that granting the exemption would be in the public interest and consistent with the National Traffic and Motor Vehicle Safety Act because it would accelerate the development of electrically-driven vehicles and related technology which could help to reduce the dependency on foreign oil.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the Docket No. 92–1; Notice 3 and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below Comment closing date: [30 days after publication of the notice in the **Federal Register**].

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50, 501.8)

Issued on July 29, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–18902 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–45; Notice 2]

Determination That Nonconforming 1991 and 1992 BMW 525i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1991 and 1992 BMW 525i passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1991 and 1992 BMW 525i passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 1991 and 1992 BMW 525i), and they are capable of being readily modified to conform to the standards.

DATE: The determination is effective August 3, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49

CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland (Registered Importer R–90–006) petitioned NHTSA to determine whether 1991 and 1992 BMW 525i passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 31, 1994 (59 FR 28129) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP 79 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that 1991 and 1992 BMW 525i passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1991 and 1992 BMW 525i passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. § 30115, and are capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 29, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–18903 Filed 8–2–94; 8:45 am]

BILLING CODE 4910–59–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 148
Wednesday, August 3, 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).

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL TELEPHONE BANK, USDA

Staff Briefing for the Board of Directors.

TIME AND DATE: 3 p.m., Wednesday, August 10, 1994.

PLACE: Room 108, Administration Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: The staff briefing will consist of matters relating to:

1. Review of Class C stock dividend rate.
2. Status report on upcoming Board of Directors election.
3. Privatization discussion, if necessary.

Regular Meeting of the Board of Directors.

TIME AND DATE: 10 a.m., Thursday, August 11, 1994.

PLACE: Williamsburg Room, Administration Building, Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to Order.
2. Approving the Minutes of the May 19, 1994, Board meeting.
3. Report on loans approved in the third quarter of FY 1994.
4. Review of financial statements for the third quarter of FY 1994.
5. Report of ad hoc committee on privatization of the RTB.
6. Report of ad hoc committee on prepayments, if necessary.
7. Consideration of RTB's 22nd Annual Report of the Board of Directors for FY 1993.
8. Consideration of resolution to set annual Class C stock dividend rate.
9. Consideration of resolution to establish the "As of date" for determining voting rights and the "notification date" for the November 16, 1994, stockholders meeting.
10. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Matthew P. Link, Assistant Secretary, Rural Telephone Bank (202) 720–0530.

Dated: July 29, 1994.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 94–19021 Filed 8–1–94; 12:43 pm]

BILLING CODE 3410–15–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 8, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: July 29, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–19012 Filed 8–1–94; 11:57 am]

BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 59, No. 148
Wednesday, August 3, 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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-270-000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 94-13984 appearing on page 29796 in the issue of Thursday, June 9, 1994, the docket number is corrected as set forth above.

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Parts 107, 114 and 9008

[Notice 1994-9]

Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions

Correction

In rule document 94-15710 beginning on page 33606, in the issue of Wednesday, June 29, 1994, make the following correction:

On page 33611, in the first column, in the first full paragraph, in the ninth line, "9188-25" should read "1988-25".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 92P-0476]

Crabmeat; Amendment of Common or Usual Name Regulation

Correction

In proposed rule document 94-17289 beginning on page 36103 in the issue of Friday, July 15, 1994, make the following corrections:

1. On page 36103, in the first column:

a. Under **ADDRESSES**, in the third line, "(HFA-05)" should read "(HFA-305)"; and in the fourth line, "rm. 1-3" should read "rm. 1-23".

b. Under **FOR FURTHER INFORMATION CONTACT**, in the second line, "(HFS-16)" should read "(HFS-416)".

2. On page 36104, in the first column:

a. Beginning in the first line, "(Docket Nos. 76P-182, 81P 0327/CP, and 84P-046)" should read "(Docket Nos. 76P-0182, 81P-0327/CP, and 84P-0046)".

b. In the first full paragraph, in the second line, "(Docket No. 76P-182)" should read "(Docket No. 76P-0182)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7067

[NM-920-4210-06; NMNM 88049]

Withdrawal of National Forest System Land for the Guadalupe Canyon Zoological Botanical Area; New Mexico

Correction

In rule document 94-17120 appearing on page 35859, in the issue of Thursday, July 14, 1994, make the following correction:

On page 35859, in the third column, in the land description, in T. 33 S., R. 22 W., "Sec. 36, E½E½, NW¼NE¼, and SW½SE½." should read "Sec. 36, E½E½, NW¼NE¼, and SW¼SE¼."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-4210-06-P; MTM 011811 and MTM 1171]

Notice of Proposed Continuation of Withdrawal; Montana

Correction

In notice document 94-13821 beginning on page 29613 in the issue of Wednesday, June 8, 1994, make the following correction:

On page 29613, in the third column, under **DATE**, in the last line "August 8" should read "September 6".

BILLING CODE 1505-01-D

THE PRESIDENT

3 CFR

Presidential Determination No. 94-39 of July 26, 1994

Provision of Aviaition Insurance Coverage for Commercial Air Carrier Service

Correction

In FR Doc. 94-18679 (Presidential Determination No. 94-39) appearing on page 38551 in the issue of Friday, July 29, 1994. The Billing code should read "4910–62–M".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 68

[CGD 94-050]

Deep Frames in Vessel Admeasurement

Correction

In rule document 94-17275 appearing on page 36088, in the issue of Friday, July 15, 1994, make the following correction:

On page 36088, in the third column, in the second full paragraph, in the tenth line, "before" should read "after".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule On Application To Use the Revenue From A Passenger Facility Charge (PFC) At Pellston Regional Airport of Emmet County, Pellston, MI

Correction

In notice document 94-17804 appearing on page 37289, in the issue of Thursday, July 21, 1994, make the following correction:

On page 37289, in the second column, under **SUPPLEMENTARY INFORMATION**, under the heading entitled "*Brief description of proposed project(s):*", in the fourth line, "(Runway 1/32)." should read "(Runway 14/32)."

BILLING CODE 1505-01-D

federal register

Wednesday
August 3, 1994

Part II

Environmental Protection Agency

40 CFR Parts 86 and 600
Fuel Economy Test Procedures
Alternative-Fueled Automobile CAFE
Incentives and Fuel Economy Labeling
Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86 and 600

[AMS-FRL-4675-2]

RIN 2060-AC78

Fuel Economy Test Procedures Alternative-Fueled Automobile CAFE Incentives and Fuel Economy Labeling Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the fuel economy regulations to include alternative-fueled automobiles. The Alternative Motor Fuels Act (AMFA) of 1988 includes 1993 model year and later alternative-fueled automobiles (passenger automobiles and light trucks) in the Corporate Average Fuel Economy (CAFE) program on a favorable basis to encourage the manufacture of these vehicles. The AMFA provides these CAFE "credits" for automobiles designed to be fueled with methanol, ethanol, other alcohols, natural gas, or dual-fueled automobiles designed to operate on one or more of these alterative fuels and gasoline or diesel fuel. Under the AMFA, these credits are only available for automobiles that meet certain requirements regarding: alternative fuel content (e.g., for alcohol fuels, a minimum of 85 percent by volume alcohol), energy efficiency, and driving range. Neither the AMFA nor today's final rule will affect automobiles that do not meet these requirements; such vehicles would not receive the favorable CAFE treatment. Alternative-fueled automobile labeling requirements are also specified in the AMFA. This final rule codifies the requirements of the AMFA in 40 CFR part 600. Recently, AMFA was amended by the Energy Policy Act of 1992, to extend the CAFE credit to automobiles designed to operate on additional types of alternative fuels. However, this final rule does not include these additional alternative fuel types, as they were not included in the CAFE program at the time the NPRM was published and the final rule was developed.

DATES: This final rule is effective September 2, 1994, except as follows: the effective date for the amendments to 40 CFR 600.006-89(b)(1) (i) and (h) and footnote 4 to the table in 40 CFR 86.129-94(a) will be October 3, 1994, unless adverse comment is received by September 2, 1994, upon which the amendments to 40 CFR 600.006-89(b)(1) (i) and (h) and footnote 4 to the table in 40 CFR 86.129-94(a) will be withdrawn before the effective date by a document published in the **Federal Register**.

The incorporation by reference of certain publications listed in this final rule is approved by the Director of the Office of the Federal Register as of September 2, 1994.

40 CFR 600.113-93, 600.206-93, 600.207-93, 600.209-95, 600.307-95, 600.510-93 are not effective until the Office of Management and Budget (OMB) has approved the Information Collection Requirements contained in them. EPA will publish a document in the **Federal Register** following OMB approval of the information collection requirements.

ADDRESSES: Comments regarding the amendments to 40 CFR 600.006-89(b)(1) (i) and (h) and footnote 4 to the table in 40 CFR 86.129-94(a) should be submitted to EPA Air Docket LE-131 (address following). Comments regarding the information collection requirements should be sent to Chief, Information Policy Branch (PM-2136); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Materials relevant to this final rule are contained in EPA Air Docket LE-131, Attention: Docket No. A-89-24, located at the Air Docket Section, U.S. Environmental Protection Agency, Room M-1500, 401 M Street SW., Washington, DC 20460 telephone (202) 382-7548. The docket may be inspected between the hours of 8:30 a.m. to 12 noon and from 1:30 to 3:30 p.m. weekdays. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zerafa, Certification Division, U.S. Environmental Protection Agency, National Fuel and Vehicle Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone (313) 668-4331.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Authority
II. Introduction
III. Description of the Action
IV. Public Participation
  A. Options to Include Alternative-Fueled Automobiles
  B. Fuel Specifications
  C. Energy Efficiency of Dual-Fueled Automobiles
  D. Fuel Economy Calculations—Fuel Properties
  E. Fuel Economy Label Format Requirements
  F. Gas Guzzler Tax Applicability
V. Technical Amendments
VI. Administrative Requirements
  A. Administrative Designation
  B. Reporting & Recordkeeping Requirement
  C. Regulatory Flexibility Act

I. Authority

The promulgation of these regulations is authorized by 15 U.S.C. 2001, 2002, 2003, 2005, 2006, 2013; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a).

II. Introduction

On October 14, 1988, Congress enacted the Alternative Motor Fuels Act (AMFA), Public Law 100-494, 15 U.S.C. 2001 *et seq.*, to encourage: (1) The development and widespread use of methanol, ethanol, and natural gas as transportation fuels by consumers; and (2) the production of methanol, ethanol, and natural gas-fueled motor vehicles. (AMFA section 3) The Energy Policy Act of 1992 (Public Law 102-486, October 4, 1992) amended the AMFA to also include liquefied petroleum gas; hydrogen; coal derived liquid fuels; fuels derived from biological materials; electricity; and any other fuel the Secretary of Transportation determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits. The AMFA prescribes explicit requirements in two areas relating to fuel economy of alternative-fueled vehicles: (1) CAFE credit qualification and calculation; and (2) fuel economy labeling.

Regarding the first area, the AMFA section 6, 15 U.S.C. 2013, as amended, provides for favorable CAFE treatment of certain dedicated alternative-fueled vehicles, and dual-fueled vehicles that meet specified requirements. Passenger automobiles and light-duty trucks that can be eligible for CAFE credit include those designed to: (1) Operate exclusively on alternative fuels, or (2) operate on either gasoline or diesel fuel, as well as alternative fuels, or a combination of gasoline or diesel fuel and alternative fuels (i.e., dual-fueled automobiles).

The eligibility for favorable CAFE treatment of dual-fueled vehicles is dependent on their ability to meet certain energy efficiency requirements. 15 U.S.C. 2013(h)(1). In order to be eligible, dual-fueled automobiles are to provide equal or superior energy efficiency when operating on the alternative fuel as when operating gasoline or diesel fuel. In addition, in order to be eligible, automobiles capable of operating on a mixture of an alternative fuel and gasoline or diesel

fuel which are manufactured in model years 1993 through 1995 (or for a longer period if extended by the Administrator) are to achieve energy efficiency when operated on a mixture of 50 percent alternative fuel and 50 percent gasoline or diesel equal to or superior to that achieved when operated exclusively on gasoline or diesel fuel.

One further requirement established by the AMFA for dual-fueled passenger automobiles to be eligible for CAFE credit is that they comply with minimum driving range requirements established by the Secretary of Transportation. 15 U.S.C. 2013(h)(2) Ranges were established by the National Highway Traffic Safety Administration (NHTSA) for alcohol dual-fueled and natural gas dual-fueled passenger automobiles in the **Federal Register** on April 26, 1990 (55 FR 17611). The minimum driving range established in NHTSA's rule for alcohol dual-fueled passenger automobiles is 200 miles and the range for natural gas dual-fueled passenger automobiles is 100 miles when operated on the alternative fuel. However, section 403 (5)(I) of the Energy Policy Act of 1992 amends the Motor Vehicle Information and Cost Savings Act (MVICSA) to require that all dual-fueled passenger automobiles (other than electric automobiles) meet a minimum driving range of 200 miles (or a higher value if determined by the Secretary of Transportation) while operating on the alternative fuel. 15 U.S.C. 2013(h)(2)(C). This amendment supersedes the requirements of AMFA and the NHTSA rulemaking.

For dedicated automobiles, the fuel economy calculated for CAFE purposes is based on the gasoline or diesel content of the mixture which is deemed by AMFA to be 15 percent by volume. 15 U.S.C. 2013(a)(c). Fuel economy for CAFE purposes is then based on the amount of gasoline or diesel fuel consumed. For example, a dedicated alcohol automobile which has a measured fuel economy of 18 miles per gallon of alcohol would receive a rating of 18/0.15 or 120 mpg for CAFE purposes.

Similarly, for dedicated natural gas-fueled automobiles, a gallon equivalent of natural gas is deemed by AMFA to contain 15 percent gasoline or diesel fuel for CAFE purposes. The AMFA provides that 100 cubic feet of natural gas shall be considered to contain 0.823 gallon equivalent of natural gas. 15 U.S.C. 2013(c). The fuel economy for CAFE purposes is based on the equivalent amount of gasoline or diesel fuel consumed. For example, a dedicated natural gas-fueled automobile with a measured fuel economy of 23 miles/100 cubic feet of natural gas at standard conditions would receive a value for CAFE purposes of 186.3 mpg ((23 miles/100 cubic feet)×(100 cubic feet/0.823 gallons equivalent natural gas)×(1 gallon equivalent natural gas/0.15 gallon gasoline)).

For dual-fueled automobiles, the fuel economy for CAFE purposes is to reflect the assumption that the automobiles are operated half of the time on gasoline or diesel fuel and half of the time on the alternative fuel. 15 U.S.C. 2013(b)(d). Therefore, fuel economy is based on the harmonic average of the fuel economy value when operated on gasoline or diesel and the credited fuel economy value when operated on the alternative fuel as described for the dedicated alternative-fueled vehicles above. The harmonic averaging method required by AMFA is equivalent to averaging fuel consumption (gallons/mile), which is the inverse of fuel economy (miles/gallon). For example, assume a model type achieves a combined city/highway fuel economy of 27 mpg on gasoline and 18 mpg on alcohol. If the model type were dedicated alcohol fueled, the rating for CAFE purposes would be 120 mpg as described previously. The fuel economy value for CAFE purposes of the dual-fueled model type would be 44.1 mpg (1/(([1/27)+(1/120))/2)).

The AMFA also limits the maximum model year increase in a manufacturer's CAFE attributable to dual-fueled automobiles to 1.2 mpg for model years 1993 through 2004 and, if extended by the Secretary of Transportation, to 0.9 mpg for model years 2005 through 2008 for each compliance category of automobiles (i.e. domestic passenger, import passenger, domestic light truck, and import light truck). 15 U.S.C. 2013(g). Furthermore, if the Secretary of Transportation reduces the average fuel economy standard applicable to passenger automobiles to less than 27.5 mpg for any model year, increases above 0.7 mpg in the manufacturer's average fuel economy attributable to dual-fueled passenger automobiles are to be reduced by the amount the standard was lowered, but may not be reduced to yield less than 0.7 mpg.

Regarding the second area, fuel economy labeling requirements, the AMFA section 8, 15 U.S.C. 2006(a), requires that specific fuel economy information for dedicated alterative-fueled automobiles and dual-fueled automobiles appear on the fuel economy label and in the Gas Mileage Guide published by the Department of Energy. For dedicated automobiles, the AMFA states that the fuel economy for labeling purposes shall be the fuel economy value calculated for CAFE purposes multiplied by the value, 0.15. 15 U.S.C. 2006(a)(4)(A). For dual-fueled automobiles, the AMFA 15 U.S.C. 2006(a)(4)(B) states that each label must: (i) Indicate the fuel economy of such automobiles when operated on gasoline or diesel fuel; (ii) clearly identify such automobiles as dual-fueled automobiles; (iii) clearly identify the fuels on which such automobiles may be operated; and (iv) contain a statement informing the consumer that the additional information is contained in the booklet published and distributed by the Department of Energy.

To administer the provisions of the AMFA described above, the EPA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on March 1, 1991. The purpose of the NPRM was to propose to integrate the requirements of the AMFA into EPA's existing fuel economy regulations (40 CFR part 600) and to frame issues of potential interest to commenters. Again, as stated in the "Summary" section, today's final rule does not affect automobiles that do not meet the eligibility requirements for favorable CAFE treatment specified in the AMFA. Also, to avoid significant delays, this final rule only covers those fuels contained in the AMFA at the time of proposal, namely alcohols and natural gas, and does not address the other fuels added by the Energy Policy Act of 1992, since this Act was passed well after publication of the NPRM and late in the development of this final rule. EPA will include these other fuels in a future separate rulemaking. The sections that follow describe the final regulations that have been adopted and the consideration of public comment that led to decisions regarding the final regulations.

III. Description of the Action

Today's final rule sets in place the CAFE credit mechanism and the fuel economy labeling requirements for the 1993 and later model year alternative-fueled vehicles covered by the AMFA, namely alcohol and natural gas automobiles. In addition, since emission standards and emission measurement procedures have already been developed for methanol-fueled automobiles (54 FR 14426), fuel economy measurement procedures for methanol-fueled vehicles are also included in today's rule. The fuel economy calculations for methanol-fueled vehicles are based on the carbon balance technique which relies on the premise that the quantity of carbon contained in the exhaust is equal to the quantity of carbon consumed by the engine as fuel. The proposed equation

was based on fixed fuel properties. However, based on comments received in response to the NPRM, EPA decided that measured fuel properties are more appropriate for the calculation of fuel economy and, therefore, today's final rules are based on measured fuel properties. This is further discussed in section V. "Public Participation".

EPA is currently developing emission standards, emission test procedures, and fuel economy calculation procedures for natural gas-fueled vehicles in a separate rulemaking. The notice of proposed rulemaking, "Standards for Emissions From Natural Gas-Fueled, and Liquified Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversion Hardware" was published in the **Federal Register** on November 5, 1992 (57 FR 52912). EPA expects that this rule will be promulgated in advance of the completion of the 1993 model year annual production period, after which CAFE for the 1993 model year is calculated, thereby allowing manufacturers to obtain CAFE credits for 1993 model year and later natural gas-fueled vehicles. In the event that this rulemaking cannot be promulgated in time, EPA expects to promulgate those portions regarding fuel economy test and calculation procedures in order to ensure fuel economy credits are available for 1993 model year natural gas-fueled vehicles.

EPA is currently developing a timeline for the development of emission standards and test procedures for ethanol-fueled vehicles. In the event that manufacturers introduce ethanol-fueled vehicles into commerce before federal fuel economy test procedures are established, EPA will consider proposing California test procedures and a fuel economy equation to ensure that a mechanism is in place for ethanol-fueled vehicle CAFE credit as soon as possible.

Today's rule also integrates the energy efficiency requirements of the AMFA into EPA's existing fuel economy regulations. These requirements must be met for a dual-fueled vehicle to be eligible for fuel economy credit. In the NPRM, EPA proposed that the manufacturer must test each dual-fueled vehicle used for fuel economy purposes on both the city and highway driving cycles using three fuels: gasoline or diesel fuel, the alternative fuel, and, in the case of alcohol dual-fueled automobiles, a 50 percent gasoline/50 percent alcohol mixture to satisfy the energy efficiency requirements of the AMFA. 15 U.S.C. 2013(h)(1)(C) (ii) and (iii). Although testing on both the alternative fuel and gasoline fuel is required to determine fuel economy, the 50/50 mixture requirement is only needed to determine energy efficiency. After considering comments received from manufacturers, the EPA realizes that the requirement to test every fuel economy vehicle on three fuels could be excessively burdensome compared to the requirements for testing gasoline-fueled vehicles, which are tested on one fuel. Therefore, for dual-fueled vehicles, this final rule requires manufacturers to: (1) Perform city and highway fuel economy tests on all vehicles used for fuel economy purposes using both gasoline and the alcohol fuel and, (2) during initial certification, either perform city and highway fuel economy tests on one emission data vehicle per engine family using the 50/50 alcohol/gasoline mixture or provide a statement attesting that equal or superior energy efficiency is attained while using a 50/50 mixture compared to using gasoline, where applicable. EPA retains the right to audit test any vehicle used for fuel economy purposes to confirm the manufacturer's statement. This will reduce the test burden on the manufacturer while preserving the intent of the energy efficiency requirements of the AMFA by ensuring that vehicles are designed to be equally or more energy efficient while operating on the alternative fuel and a 50/50 alcohol/gasoline mixture than when operated on gasoline.

Today's rule also integrates the fuel economy labeling requirements of the AMFA for alternative-fueled vehicles into the existing fuel economy regulations. Some minor modifications were made to the proposed label formats as a result of comments received on the NPRM. These changes are discussed in detail in the "Public Participation" section. In response to manufacturers' comments, the EPA is offering an optional label format for dual-fueled vehicles that contains fuel economy values for vehicle operation using the alternative fuel. The AMFA requires that the fuel economy values while operating on gasoline or diesel appear on the label with a statement that further information is contained in the Gas Mileage Guide available at the dealer. This optional label format contains a limited amount of additional information pertaining to the fuel economy while operating on the alternative fuel and should reduce consumer confusion and frustration in obtaining such fuel economy information. Also, this optional label will contain a statement that refers to the availability of additional information in the Gas Mileage Guide. The label formats established under this rulemaking are found in the revised regulations following the preamble.

EPA is working with the Department of Energy (DOE), the Department of Transportation (DOT), and the Federal Trade Commission (FTC) to revise the Gas Mileage Guide to include information on alternative-fueled vehicles. These changes will be coordinated with the FTC's implementation of section 406 of the Energy Policy Act of 1992 (Public Law 102–486) which mandates that the FTC promulgate rules to establish uniform labeling requirements for alternative fuels and alternative-fueled vehicles, including requirements for appropriate information with respect to costs and benefits so as to reasonably enable the consumer to make choices and comparisons. The revisions to the Gas Mileage Guide (including changing the name of the guide to "Fuel Economy Guide") will not be completed in time for inclusion in the 1994 model year guide. Therefore, the fuel economy labeling requirements for alternative-fueled vehicles, which contain label statements that refer the consumer to the Gas Mileage Guide for further information on the fuel economy of alternative-fueled vehicles, are applicable beginning with the 1995 model year. However, those manufacturers who produce 1993 or 1994 model year alternative-fueled automobiles may optionally comply with the labeling regulations in today's rule using the appropriate label wording modifications, approved by the Administrator, regarding availability of additional information in the Gas Mileage Guide.

The AMFA does not address the applicability of the gas guzzler tax to dedicated alternative-fueled vehicles or dual-fueled vehicles. The Secretary of the Treasury (after consultation with the Secretary of Transportation) is authorized by Section 201 of the Energy Tax Act of 1978, 26, U.S.C. 4064 *et seq.*, to include in the gas guzzler tax program automobiles fueled with any product of petroleum or natural gas, if such inclusion is consistent with the need of the nation to conserve energy. Consequently, the alternative fuels covered by the AMFA could conceivably be included in the gas guzzler tax program. Currently the program is limited to passenger automobiles powered by gasoline or diesel fuel. The Secretary of Treasury has not made a determination to include alcohols or natural gas in the gas guzzler program; therefore, dedicated alternative-fueled vehicles are currently not included in the guzzler program. In

the NPRM, the EPA solicited comments regarding whether alternative fueled automobiles or dual-fueled automobiles should be included in the gas guzzler tax program. The comments were forwarded to the Treasury Department for consideration in the determination of applicability of gas guzzler tax to dual-fueled vehicles. The IRS agreed that EPA's decision to label dual- fueled automobiles for gas guzzler tax purposes based on the fuel economy while operating on gasoline is in accordance with the law.

To save time and printing costs, some technical amendments of 40 CFR parts 86 and 600 have also been included in this final rule.

IV. Public Participation

A number of interested parties provided comments on EPA's March 1, 1991 NPRM. These comments and other documents relevant to the development of this final rule are contained in the public docket. The Agency has fully considered these comments in developing today's final rule.

The following section presents a brief summary of the major comments received on the NPRM and EPA's responses to those comments. A separate and more detailed Summary and Analysis of Comments on the NPRM has been prepared and is contained in the public docket. The interested reader is referred to that document for a more complete discussion of the comments, including some of the more minor concerns that have been evaluated, but are not presented here.

A. Options To Include Alternative-Fueled Automobiles in the Fuel Economy Regulations

Summary of the Proposal

EPA proposed to establish the CAFE incentive mechanism (credit calculation procedures) provided by the AMFA for methanol, ethanol, and natural gas-fueled automobiles in the regulations. EPA also proposed fuel economy measurement procedures for methanol-fueled automobiles. The current requirement that fuel economy data vehicles be covered by a certificate demonstrating compliance with emission standards was proposed to be revised so that it applies only when the vehicles are subject to emission standards. The Agency requested comments on how test procedures for alternative-fueled vehicles other than methanol could be promulgated on a timely basis, and whether there are any alternative fuels other than those addressed in the Alternative Motor Fuels Act, that could be included in the CAFE program in a manner consistent with the need of the nation to conserve energy. More specifically, EPA requested comments on whether the Agency would have good cause to dispense with prior notice and comment (i.e., direct final rule), if necessary to promulgate test procedures in time for manufacturers to obtain credits for vehicles designed to run on alternative fuels not already covered by established test procedures.

Summary of Comments

The Motor Vehicle Manufacturers' Association (MVMA) agreed with the proposal to revise the current requirements so that fuel economy data vehicles be covered by a certificate of conformity only when such vehicles are subject to emission standards. Atlantic Richfield Co. (ARCO) took issue with this proposal, stating that equal treatment is preferred for all the fuels, and that fuel economy determinations should be made on vehicles meeting emission standards both for gasoline and any alternative fuels considered.

A number of comments were received regarding the importance of a level playing field for alternative fuels and that a lack of federal regulations may impede the development of alternative-fueled vehicles. Particularly, a number of commenters urged that the establishment of emission standards and fuel economy test procedures for natural gas vehicles not be delayed. Comments were also received recommending that a timetable for implementation of ethanol-fueled automobile standards and test procedures be established as this technology develops. One manufacturer further commented that it is working on electric vehicles and urged the EPA to work with the Department of Energy to establish a CAFE credit mechanism for electric vehicles. The Northeast Sustainable Energy Association (NESEA) expressed that they were very concerned that the proposed amendments did not address electric vehicles and that electric-powered vehicles and electric dual-fueled vehicles should be included in fuel economy regulations. The NESEA also encouraged EPA to pursue emission standards for solar, hydrogen, and electric powered automobiles. ARCO stressed that gasoline reformulations should be included when working toward a level playing field for alternative fuels.

A number of commenters recommended that California's existing alternative-fueled vehicle test procedures could be used to generate fuel economy data until federal regulations are promulgated.

Comments were received in response to EPA's request for comments on a direct final rule type approach. Ford stated that manufacturers should be allowed to comment on both test procedures and standards before they are finalized. Ford recommended that EPA schedule workshops to discuss proposed rulemaking, which would be advantageous in allowing manufacturers and EPA to raise questions and concerns before test procedures are published. The Natural Gas Vehicle Coalition (NGVC) believes that sufficient "good cause" exists for EPA to take immediate action to establish emission standards and procedures for natural gas vehicles based on California's standards and procedures.

EPA Response to Comments

The EPA recognizes ARCO's concern that fuel economy determinations be made on vehicles meeting emission standards both for gasoline and alternative fuels. EPA has promulgated emission standards and test procedures for methanol-fueled vehicles and is currently developing standards for gaseous-fueled (CNG and LPG) vehicles. In addition, EPA will continue to assess the need to develop emission standards for other alternative-fueled vehicles. However, in the event that emission standards are not developed and promulgated for alternative-fueled vehicles covered by the AMFA before a manufacturer produces and enters such vehicles into commerce, the current regulations that require that fuel economy data vehicles be covered by a certificate demonstrating compliance with emission standards would not provide a mechanism for obtaining CAFE credit. Therefore, EPA is revising the current regulation so that it applies only where the vehicles are subject to emission standards. This will serve as an interim policy to ensure that manufacturers receive the CAFE credit provided by the AMFA for natural gas-fueled vehicles, ethanol-fueled vehicles and other alternative-fueled vehicles in the event that such vehicles are entered into commerce before emission standards are promulgated.

The EPA agrees with the comments received regarding the importance of a level playing field for the alternative fuels covered by the AMFA as well as other promising alternative fuels. The intent of EPA is to establish emission standards for any alternative-fueled vehicle design before such vehicles are commercially produced or, at the latest, before their sales volume could significantly impact a manufacturer's

CAFE. As discussed previously, the EPA has promulgated emission standards and test procedures for methanol-fueled vehicles and is currently developing emission standards and test procedures for natural gas-fueled vehicles. The notice of proposed rulemaking for emission standards and emission test procedures as well as fuel economy calculation procedures for natural gas-fueled vehicles was published on November 5, 1992 (57 FR 52912). EPA expects that this rule will be finalized in advance of the completion of the 1993 model year annual production period after which CAFE for the 1993 model year is calculated, thereby allowing manufacturers to obtain CAFE credits for 1993 model year and later natural gas-fueled vehicles. In the event that this rulemaking cannot be promulgated in time, EPA will expect to finalize those portions regarding fuel economy test and calculation procedures in order to ensure fuel economy credits are available for 1993 model year natural gas-fueled vehicles.

EPA is currently developing a timeline for the development of emission standards and test procedures for ethanol-fueled vehicles. In the event that manufacturers introduce ethanol-fueled vehicles into commerce before federal fuel economy test procedures are established, EPA will consider proposing California test procedures or procedures similar thereto and a fuel economy equation to ensure that a mechanism is in place for ethanol-fueled vehicle CAFE credit as soon as possible.

EPA has not established a timeline for the development of emission standards or test procedures for hydrogen, electric, and solar powered vehicles. EPA will continue to assess the need for establishing emission standards and test procedures for these vehicles.

The Department of Energy, under the Chrysler Corporation Loan Guarantee Act of 1979, is responsible for developing petroleum equivalency factors for electric vehicles for the purpose of including such vehicles in the CAFE program. The CAFE calculation and test procedures for electric vehicles are contained in 10 CFR 474.4. The petroleum equivalency factors for electric vehicles were not extended past 1987. However, due to continued technology development and a strong industry interest in the CAFE treatment of electric vehicles, DOE is currently developing a notice of proposed rule to establish new petroleum equivalency factors.

EPA is currently developing a reformulated gasoline program. Reformulated gasoline will be used in current gasoline-fueled vehicles. The AMFA does not provide CAFE credits for reformulated gasoline-fueled vehicles.

B. Fuel Specifications

Summary of the Proposal

The Agency proposed that alcohol fuel and natural gas fuel used for fuel economy testing and service accumulation shall be representative of commercially available fuel for motor vehicles.

Summary of Comments

Several automobile manufacturers recommended that definite fuel specifications for methanol and natural gas fuels used for emissions and fuel economy testing be adopted. The commenters stated that the proposed procedure allows for too much potential inconsistency between the manufacturers and EPA in fuels used for testing. Without fuel specifications, fuel economy and emission results could vary in response to differences in fuel properties. The manufacturers suggested that specifications for methanol blends be based on chemical grade methanol (ASTM D 1152) and certification grade gasoline (40 CFR 86.113–82a).

EPA Response to Comments

The Agency agrees that setting fuel specifications for alternative fuels for emission and fuel economy testing would reduce the uncertainty associated with certification using unspecified commercially representative fuels. However, EPA believes that, to the extent variability in fuel specifications can affect emissions, fuel specifications for methanol, natural gas, and other alternative fuels used for emissions testing (and, therefore, fuel economy testing since they are calculated from the same test) should be representative of fuels encountered in-use. Certified automobiles are expected to comply with emission standards under normal in-use conditions, which includes the use of fuels that are representative of those commercially available. The Administrator reserves the right to test vehicles using fuels representative of those that in-use vehicles will encounter.

Ideally, fuel specifications should be developed that are representative of in-use fuels. However, since the markets for these fuels for use in motor vehicles are not yet established, and the fuels that become commercially available could vary significantly in composition, a single set of specifications may not be representative of the fuels that could be used. Also, it is difficult to identify which compositions are representative in the absence of established markets.

On April 11, 1989, EPA published a final rulemaking in the Federal Register (54 FR 14426) which established emission standards and test procedures for methanol-fueled automobiles. In that rulemaking, methanol test fuels were required to be representative of in-use fuels. However, the methanol fuel market is not yet at a level of development to allow for the determination of a representative fuel. EPA has developed a package of proposed technical amendments (58 FR 11816, March 1, 1993) to the above-mentioned final rule to improve the quality of emissions data and increase the flexibility for manufacturers to meet the requirements. One of the proposals in this package is to allow a combination of chemical grade methanol and certification gasoline for test fuels in proportions that reflect the composition of the intended in-use fuel (currently this would be 85% methanol and 15% gasoline) until specifications for a fuel representative of in-use fuel can be determined. EPA plans to apply these provisions for both emissions and fuel economy testing purposes.

For natural gas, the issue of setting fuel specifications is being addressed in a separate rulemaking ("Standards for Emissions From Natural Gas-Fueled, and Liquified Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines * * *" NPRM published on November 5, 1992, 57 FR 52912). In the interim, EPA will allow a manufacturer to petition the Administrator to use a specific composition of natural gas, provided that the manufacturer can demonstrate that this fuel is similar in composition to currently available in-use fuel. If standard grade fuels emerge when methanol, natural gas, ethanol, and other alternative fuels become commercially available, EPA will consider such fuels for setting test fuel specifications.

C. Energy Efficiency of Dual-Fueled Automobiles

Summary of the Proposal

EPA proposed a method for determining whether a vehicle meets the AMFA energy efficiency requirements to be eligible for CAFE credit. The method proposed by EPA required each fuel economy data vehicle to be tested under both the city and highway test cycles using the alternative fuel, the petroleum fuel, and, for alcohol dual-fueled vehicles, a 50 percent by volume alcohol and 50 percent petroleum (gasoline or diesel) fuel mixture. The calculation of energy

efficiency that was proposed would require manufacturers to determine, and the Administrator to approve, the net heating values and densities of the alternative fuel, petroleum fuel, and 50/50 mixture.

Summary of the Comments

Many manufacturers expressed concern that the proposed testing to determine energy efficiency of dual-fueled automobiles is excessive and may be a deterrent to alternative-fueled vehicle development and production. The manufacturers recommended that the equal or superior energy efficiency determination could be adequately demonstrated when the vehicle is first certified. The comparison of the three fuels could be made one time, for each engine family and could be based on the highway test only. The regulations should allow EPA to waive the 50/50 mixture testing requirement if demonstrated M85 (or M100) tests indicate a significant increase in fuel efficiency when compared to gasoline tests in the same vehicle.

EPA Response to Comments

The AMFA does not specify how the energy efficiency is to be calculated. However, the intent of the Act is to encourage the use of alternative fuels and the energy efficiency requirement is a means of ensuring that dual-fueled automobiles are designed to be equally or more energy efficient while operating on the alternative fuel. Based on comments submitted by manufacturers, EPA realizes that the proposal to require the manufacturer to test each vehicle used for fuel economy purposes using the three fuels could be unnecessarily burdensome and costly for the manufacturer as compared to the test requirements for gasoline-fueled vehicles, which require tests using one test fuel. For example, if a vehicle, when fueled with an M85 blend, demonstrated significantly superior energy efficiency performance compared to when fueled with gasoline, it is likely to have superior energy efficiency performance when operating on the 50/50 blend as when operating on gasoline. EPA expects that in the vast majority of vehicles demonstrating a superior M85 energy efficiency performance, testing with a 50/50 blend would only serve to confirm expected performance. The energy efficiency requirements could still be equally served by lessening the testing requirements on the manufacturer in conjunction with provisions for EPA to reserve the right to audit test any vehicle used for fuel economy purposes.

Therefore, this final rule requires that to satisfy the equal or superior energy efficiency requirements of AMFA for favorable CAFE treatment eligibility for dual-fueled vehicles, manufacturers must: (1) Perform city and highway fuel economy tests on all vehicles used for fuel economy purposes using both gasoline and the alternative fuel, and, additionally for alcohol dual-fueled vehicles, (2) during initial certification, either perform city and highway fuel economy tests on one emission data vehicle (EDV) per engine family using the 50/50 alcohol/gasoline mixture, or provide a statement attesting that equal or superior energy efficiency is attained while using a 50/50 mixture compared to using gasoline. The EPA retains the right to audit test any vehicle used for fuel economy purposes to confirm the manufacturer's statement. This approach will reduce the test burden on the manufacturer while preserving the intent of the AMFA to ensure that vehicles are designed to be equally or more energy efficient while operating on both the alternative fuel and 50/50 alcohol/gasoline mixture than when operating on gasoline.

The recommendations regarding the sole use of the highway test cycle for determining energy efficiency may not ensure that the equal or superior energy efficiency requirements of the AMFA are met. City and highway energy efficiencies could differ due to engine calibration differences and other design differences. This may not assure that the city energy efficiency requirements for CAFE credit are met as a result of testing using the highway cycle. To better represent in-use driving conditions, the energy efficiency determination should be based on both the city and highway cycles. After experience is gained with the relationship between highway and city energy efficiency for alternative-fueled vehicles, this issue can be revisited.

D. Fuel Economy Calculations—Fuel Properties

Summary of the Proposal

The proposed fuel economy equation was based on fixed values for the fuel properties of carbon weight fraction and density. For determining energy efficiency, EPA proposed that the manufacturers would be required to determine the net heating values and densities of the alternative fuel, petroleum fuel, and a 50 percent alcohol, 50 percent gasoline mixture where appropriate. EPA proposed that upon reviewing the net heating values and densities submitted by the manufacturer, the Administrator would determine the net heating values and densities to be used in the energy efficiency determination.

Summary of the Comments

The MVMA and Ford recommend that actual methanol fuel properties be used in both the fuel economy calculation and energy efficiency equations with the option of using standard or "fixed" values if the methanol fuel property data are unavailable. The use of actual fuel properties for the gasoline calculations and standard fuel properties for the methanol calculations creates an inconsistency in the energy efficiency calculations since the proposed energy efficiency comparison equation is a ratio of these two values.

MVMA suggested two alternative methods to be used for determining the heating value for methanol fuel blends. The first is to measure the heating value using ASTM D 240, which uses a bomb calorimeter. The second method is to calculate the heating value using:

LHV(BTU/lb)=(mass fraction methanol×8560)+(mass fraction gasoline×LHV gasoline),

where the LHV gasoline is the heating value of the gasoline portion of the M85 fuel and is measured using ASTM D 3338.

Ford recommended the following equation to calculate fuel economy for methanol vehicles using measured values for the carbon weight fraction and density of the methanol blend:

$$(CWF \times SG \times 3777.623)/[(CWF_{exHC} \times HC)+(0.429 \times CO)+(0.273 \times CO_2)+(0.375 \times CH_3OH)+(0.400 \times HCHO)]$$

Ford recommended that the carbon weight fraction (CWF) of the methanol blend should be determined using ASTM D 3343 and the specific gravity of the methanol blend should be determined using ASTM D 1298. The equation proposed in the NPRM should be contained in the regulation only as an option; with the density of gasoline in the equation revised from 2796 to 2830.

Regarding the determination of the carbon weight fraction of exhaust hydrocarbons (CWF_{exHC}) in the denominator of the methanol fuel economy equation, manufacturers agreed that the effect of this term on fuel economy is very small and measurement of this value is difficult to obtain. They agreed that a standard value should be determined. However, some of the commenters stated that the standard value of 0.866 is not appropriate and the carbon weight fraction of the exhaust hydrocarbons of each blend should be specified and

based on test data. One manufacturer agreed that the hydrogen to carbon ratio of 1.85:1 (i.e., CWF_{exHC}=0.866) is adequate for calculating fuel economy.

EPA Response to Comments

Although fixed fuel properties were proposed for the determination of fuel economy for methanol-fueled vehicles in the NPRM, EPA requested comments on the appropriateness of using fixed fuel properties in place of measured fuel properties. The comments reflect a common desire among manufacturers to use measured fuel properties for the determination of fuel economy of methanol-fueled vehicles. Although the use of measured fuel properties is more burdensome, it is consistent with current gasoline fuel economy regulations and eliminates problems associated with energy efficiency comparisons between gasoline operation and alternative fuel operation. With minor revision, the fuel economy equation for methanol-fueled vehicles recommended by Ford is an appropriate equation if measured fuel properties are used. However, the use of ASTM D 3343 for the measurement of the carbon weight fraction of the methanol blend is not appropriate. This procedure applies to hydrocarbon fuels and is not appropriate for oxygenated fuels. Rather, the carbon weight fraction of the blend can be calculated by the following:

$CWF = (CWF_g \times \text{mass fraction gasoline}) + (CWF_m \times \text{mass fraction methanol})$

where:

CWF_g=carbon weight fraction of gasoline as measured by ASTM D 3343.

CWF_m=carbon weight fraction of methanol=0.375

mass fraction gasoline=$(G \times SG_g)/(G \times SG_g + M \times SG_m)$

mass fraction methanol = $(M \times SG_m)/(G \times SG_g + M \times SG_m)$

where:

G=volume fraction of gasoline

M=volume fraction of methanol

SG_g=specific gravity of gasoline as measured by ASTM D 1298

SG_m=specific gravity of methanol fuel as measured by ASTM D 1298

This method requires measurement of the fuel properties of the individual fuels prior to blending. EPA is currently investigating acceptable methods for measuring the carbon weight fraction of the fuels after blending. As these methods are developed and proven satisfactory, EPA plans to revise the regulations to include such methods. EPA will allow the use of other procedures for measuring the carbon weight fraction of the fuel blend if the manufacturer can show that the procedures are superior to or equally as accurate as those specified in the final rule. To provide flexibility and reduce the burden on manufacturers who may blend the fuels at the pump, the specific gravity of the blend can be optionally determined by measuring the specific gravity of the individual fuels before blending and combining those values as follows:

$SG = SG_g \times \text{volume fraction gasoline} + SG_m \times \text{volume fraction methanol}$

The correct value of the term in the numerator of the fuel economy equation which converts the specific gravity from dimensionless units to grams/gallon should be 3781.8 grams/gallon. This is the product of multiplying the density of pure water at 60°F of 0.99904 grams/cubic centimeter (reference ASTM D 4052) by the volume conversion of 3785.412 cubic centimeters/gallon. Therefore, the value suggested by Ford of 3777.623 is replaced by 3781.8 for the final rule.

The NPRM is unclear as to how the net heating value and the density of methanol/gasoline mixtures are to be determined. EPA agrees that test procedures should be specified in the regulations to eliminate this ambiguity. Therefore, for the final rule, ASTM D 240 is to be used for the determination of net heating value and ASTM D 1298 for the determination of density. However, the use of other procedures will be allowed if the manufacturer can show these procedures to be equal or superior to the specified procedures.

Regarding the determination of the carbon weight fraction of exhaust hydrocarbons (CWF_{exHC}), again the effect of this value on the determination of fuel economy is expected to be negligible. While the use of different values for different fuel blends would be technically more accurate than using the value of 0.866 for all blends, insufficient data is available to determine appropriate values at this time. In addition, the use of different values would add additional complexity to fuel economy calculations while having a negligible effect on fuel economy values. Therefore, the EPA does not believe that it is appropriate to assign different carbon weight fractions for exhaust hydrocarbons from various methanol/gasoline blends at this time. Until the carbon/hydrogen ratios of the exhaust hydrocarbon constituents can be better assessed, the carbon weight fraction of the exhaust hydrocarbons will be equal to the carbon weight fraction measured for the gasoline portion of the blend or, for neat methanol, equal to 0.866. As experience is gained with measuring the carbon/hydrogen ratios of exhaust hydrocarbons from vehicles fueled with methanol/gasoline blends, this issue can be revisited.

E. Fuel Economy Label Format Requirements

Statement of Proposal

The proposed fuel economy labeling requirements for alternative-fueled automobiles are those currently specified for gasoline-fueled and diesel-fueled automobiles with modification to satisfy AMFA requirements. For dedicated alternative-fueled automobiles, the EPA proposed that the fuel title (e.g. Methanol, Natural Gas) be located above the fuel pump logo and for dual-fueled automobiles, that the title "Dual Fuel" be positioned above the logo. For dedicated alternative-fueled automobiles the EPA proposed that the bottom border of the label contain the statement: "This vehicle operates on [insert appropriate fuel(s)] only". For dual-fueled automobiles, the statement: "This dual fuel vehicle operates on {[gasoline or diesel] or [list alcohols or natural gas]}" was proposed to be located on the bottom border of the label. EPA proposed that fuel economy labels for natural gas-fueled automobiles include the statement: "All fuel economy values on this label pertain to gasoline equivalent fuel economy. To convert these values into units of miles per 100 cubic feet of natural gas, multiply by 0.823." For dual-fueled automobiles, EPA proposed that the statement: "All fuel economy values on this label pertain to [gasoline or diesel] fuel usage. [List alcohols or natural gas] fuel usage will yield different values. See the Gas Mileage Guide for information on [list alcohols or natural gas] fuel usage." The 0.9 and 0.78 multiplicative factors currently used for adjusting the petroleum-fueled vehicle city and highway measured fuel economy values to better represent in-use fuel economy were proposed to be applied to alcohol-fueled, natural gas-fueled, and dual-fueled automobiles.

Summary of Comments

A number of manufacturers expressed concerns regarding the proposed fuel economy labeling requirements for alternative-fueled vehicles. One concern common to many manufacturers related to the requirement to have statements appear on the bottom border of the label. Since manufacturers use printed forms to generate fuel economy labels, the number of preprinted types of forms

that manufacturers would have to purchase would increase because of the differences in border wording for different vehicles. Instead, manufacturers recommended that these statements be written just above the bottom border, leaving the preprinted portion of the label unchanged. Manufacturers also recommended that the size of the fuel pump logo be reduced to accommodate fuel titles above the pump logo and that "Gas Mileage Information" be replaced by a more generic and appropriate title such as "Fuel Mileage Information".

Manufacturers recommended that EPA establish an optional label format to include the fuel economy values for dual-fueled vehicles while operated on the alternative fuel in addition to the fuel economy values while operated on gasoline as required by the AMFA. They recommended that these optional fuel economy values could take the place of the reference to having the customer obtain the information from the gas mileage guide.

One manufacturer recommended that the proposed label for natural gas vehicles, which includes a conversion factor of 0.823 to be used by the consumer to convert mpg to miles per 100 cubic feet of natural gas, should be changed so that the manufacturer would perform the calculation for the consumer. The manufacturer would then report the natural gas fuel economy on the lower right hand side of the label in units that are used at retail.

Several manufacturers commented that the multiplicative factors for label values for gasoline vehicles developed by EPA of 0.90 and 0.78 should also be applied to alcohol and natural gas fuel economy label values. However, these factors may have to be revised as more experience is gained with the use of alternative-fueled vehicles.

EPA Response to Comments

The EPA believes that the concerns of manufacturers regarding printing statements on the bottom border of the fuel economy label are valid. The purpose of the proposed location of the statement on the bottom border was to ensure that the statement was clearly visible and caught the eye of the consumer. However, this objective can still be reached if large print is used and the statement is printed just above the bottom border of the label. Therefore, for the final rule, EPA is requiring that this statement be located just above the bottom border of the label.

EPA agrees with the comments received in regard to the size of the fuel pump logo be slightly reduced to provide adequate space for the fuel title to be positioned above the logo. The slight reduction in logo size will not have any adverse impact on the effectiveness of the label in informing the consumer of the vehicle's fuel economy. In addition, the fuel pump logo statement "Gas Mileage Information" is not appropriate for vehicles powered by alternative fuels. However, in clarifying the comments received on this issue, the commenters who recommended the use of "Fuel Mileage" in place of Gas Mileage agreed with EPA that an even more appropriate term would be "Fuel Economy". Therefore, for the final rule, all label occurrences of the term "Gas Mileage" are replaced by "Fuel Economy".

The AMFA clearly mandates that the label for dual-fueled vehicles contain the fuel economy values when operated on gasoline or diesel fuel, and that additional information be contained in the Gas Mileage Guide regarding operation on the alternative fuel. The information required to be published in the Gas Mileage Guide includes: the energy efficiency and cost of operation of such automobiles when operated on gasoline or diesel fuels as compared to operation of alcohol or natural gas; the driving range of such automobiles when operated on gasoline or diesel fuel as compared to such automobiles when operated on alcohol or natural gas; information regarding the miles per gallon achieved by dual-fueled automobiles when operated on alcohol; and an explanation of how the information may be expected to change when the automobile is operated on mixtures of alcohol and gasoline or diesel fuel (15 U.S.C. 2006(b)(3)). This information will most likely be of interest to a consumer who is deciding whether or not to purchase a dual-fueled vehicle. Congress recognized that it would be impractical to incorporate all of this information on the fuel economy label and required that, at a minimum, the label contain gasoline fuel economy information while alternative fuel information is contained in the Gas Mileage Guide. However, the AMFA does not specifically prohibit other label formats.

To avoid consumer confusion and frustration with dual-fueled vehicle labeling, EPA agrees with commenters that it would be beneficial to include fuel economy values while operating on the alternative fuel in addition to those while operating on gasoline on the same label. This could help avoid problems which would occur when a model is offered for sale before the Gas Mileage Guide is available for a particular model year. However, it would not be practical to design an optional label that would contain all the information that the AMFA requires to be contained in the Gas Mileage Guide. Therefore, EPA is providing an optional label format for dual-fueled vehicles that contains limited information on the fuel economy while operated on the alternative fuel. Also, this optional label will contain a statement that refers to the availability of additional information in the Gas Mileage Guide.

The AMFA mandates that the fuel economy label values for dedicated natural gas-fueled vehicles are the values used for CAFE purposes multiplied by 0.15. This requires that the fuel economy value units are in terms of miles per equivalent gallon of gasoline for natural gas-fueled automobiles. The most appropriate units in terms of consumer usefulness are dependent on how the fuel will be sold at retail (e.g., per volume, per weight, per equivalent gallon gasoline). Since the vehicle fuel market for natural gas is not yet established, the most appropriate label units are not known at this time. Therefore, the statement: "To convert these values into units of miles per 100 cubic feet of natural gas, multiply by 0.823." will only be required if natural gas as a motor vehicle fuel is sold on a volume (cubic feet) basis. As an option, the manufacturer can perform the calculation for the consumer and display the values on the label in the following format: "The fuel economy in units of miles per [insert units used in retail] is estimated to be [insert city fuel economy value] in the city, and [insert highway fuel economy value] on the highway." This format can also be used if natural gas is sold in terms of units other than gallon equivalent of gasoline or cubic feet. Also, for the optional label format for natural gas dual-fueled vehicles, the fuel economy units while operating on natural gas will be based on units used at retail.

The EPA agrees with manufacturers' comments regarding the necessity to reevaluate the multiplicative city and highway fuel economy adjustment factors for label values to better represent in-use fuel economy when more experience and data are available for alternative-fueled vehicles.

F. Gas Guzzler Tax Applicability to Alternative-Fueled Vehicles

Statement of Proposal

The Alternative Motor Fuels Act did not address the applicability of the so-called "gas guzzler tax" to dedicated or dual alternative-fueled vehicles. The Energy Tax Act of 1978, 26 U.S.C. 4064, authorizes the Secretary of the Treasury

(after consultation with the Secretary of Transportation) to include in the gas guzzler tax program automobiles fueled with any product of petroleum or natural gas if such inclusion is consistent with the need of the nation to conserve energy. While alternative fuels thus could be included in the gas guzzler tax program, the Secretary of Treasury has not included such fuels by regulation under this section to date, and dedicated alternative-fueled automobiles thus do not appear to be currently subject to the gas guzzler tax. However, since dual-fueled automobiles can operate on gasoline, the applicability of the gas guzzler tax under current law is less clear. The EPA solicited comments regarding whether alternative-fueled automobiles or dual-fueled automobiles should be included in the gas guzzler tax program, but did not make any proposals in the NPRM. These comments were submitted to the Internal Revenue Service for their consideration.

Summary of Comments

Several automobile manufacturers provided comments recommending that dedicated and dual alternative-fueled vehicles not be included in the gas guzzler tax program. These manufacturers stated that the purpose of the AMFA is to facilitate widespread use of alternative fuels through incentives and that subjecting these vehicles to the gas guzzler tax program would contravene the goals of the AMFA. The Senate bill originally included a section intended to "clarify that the lower energy content of the alternative fuels covered by this bill do not trigger the so-called 'gas-guzzler' tax provisions of current law." However, this section was deleted since taxes are revenue related matters that most appropriately should originate in the House of Representatives. Senator Rockefeller stated in the Congressional Record–Senate of April 15, 1988, page S. 4101: "in deleting section 8 from S.1518 that we believe the interpretation of the law should remain exactly as it was with section 8 in the bill."

ARCO recommended that any motor fuel tax be applied equally to all motor fuels including alternative fuels to preserve the energy conservation intent of the Energy Tax Act of 1978. ARCO suggested that dual-fueled vehicles be subject to the gas guzzler tax based on the fuel economy when operated on gasoline. This will appropriately tax vehicles that are designed to run on the alternative fuel but will most likely operate inefficiently on gasoline. The generation of CAFE credits provided by the AMFA would likely result in the production of gas-guzzling vehicles. ARCO provided an example that showed that a M85 dual-fueled vehicle which has an mpg rating of 20 while operating on gasoline and 16 while operating on M85 would have a calculated fuel economy under the CAFE credit provisions of the AMFA of 34 mpg. They state for this example, at 34 mpg, that the dual-fueled vehicle would not be taxed as a gas guzzler. However, at 20 mpg gasoline fuel economy, ARCO feels that the tax would be justifiable and consistent with the intent of the Energy Tax Act to conserve energy.

NESEA stated that because of the positive attributes of alternative-fueled vehicles and the urgency of switching away from oil-fueled cars, alternative-fueled and dual-fueled vehicles should be included in the gas guzzler tax program as this is an excellent first step in acknowledging the real costs of running gasoline powered vehicles.

EPA Position

The EPA does not have the authority to decide which vehicles and fuels are subject to the gas guzzler tax program. This authority lies with the Department of Treasury. The IRS agreed that EPA's decision to label dual-fueled automobiles for gas guzzler tax purposes based on the fuel economy while operating on gasoline is in accordance with the law. Therefore, EPA will label dual-fueled vehicles using the current regulations for gasoline-fueled vehicles contained in 40 CFR part 600, § 600.513.

V. Technical Amendments

To save the time and printing costs involved in publishing them under a separate notice, the following technical amendments to the 40 CFR parts 86 and 600 are included in this final rule. Technical amendments described under items A and B below were proposed in the NPRM. EPA received no comments on these amendments and therefore will be included in the final rule as proposed. Technical amendments described under items C, D, and E, were not included in the NPRM. By issuing these technical amendments directly as a final rule, EPA is foregoing the issuance of an NPRM and the opportunity for public comment on the proposal provided by the NPRM rulemaking process. Such a curtailed procedure is permitted by 5 U.S.C. 553(b) and section 307(d) of the Clean Air Act when issuance of a proposal and public comments would be impracticable, unnecessary, or contrary to the public interest. The Agency is publishing this action without prior proposal because these are non-controversial corrections that rectify minor errors and omissions in the Part 600 regulations in a manner that does not substantively change the requirements of the final rule. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b) for a determination that the issuance of an NPRM is unnecessary.

A. A formaldehyde concentration term is being added to the dilution factor equation located in 40 CFR 86.144–90(c)(7)(ii) and 86.144–94(c)(7)(ii). Although the magnitude of the formaldehyde concentration is very low, it is possible that an assumption of zero concentration could lead to a slight change in calculated fuel economy. There is no reason why the formaldehyde concentration term should be left out of the equation. With this amendment, all measured carbon-containing compounds will be included in the dilution factor equation.

B. The symbol "x" is struck from the dilution factor equation on 40 CFR 86.144–90(c)(7)(ii) and 86.144–94(c)(7)(ii) the first time it appears in the equation. The first time "x" appears in the equation, it is used to represent multiplication. All other occurrences of "x" in the equation represent the measured fuel composition parameter: $C_xH_yO_z$. By dropping the first occurrence of "x", only the latter meaning is retained. The multiplication function can be assumed by virtue of a number adjacent to a variable enclosed in parenthesis.

C. Part 600.513–91 (b)(2)(xii) currently reads "(xii) At least 12.5 mpg, the gas guzzler tax statement shall show a tax of $7,700". This has been mistyped; "At least" should read "Less than". Therefore, the statement is amended to read: "Less than 12.5 mpg, the gas guzzler tax statement shall show a tax of $7,700".

D. To clarify the definition of the "c" factor in 40 CFR 600.513(a)(2) the current language which reads: "$c=1.300\times10^{-3}$ for the 1986 and later model years" is amended to read: "c=gas guzzler adjustment factor = 1.300×10^{-3} for the 1986 and later model years".

E. To correct the references for calculating the "FE" and "a_g" terms in CFR 40 600.513–91(a)(2) each occurrence of the phrase "in accordance with paragraph (a)(2) of the section" is replaced by the phrase: "in accordance with § 600.207".

F. In its *Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Gaseous and Particulate Emission Regulations for 1994 and Later Model Year Light-Duty Vehicles and Light-Duty Trucks; Final*

Rule (also known as Tier 1), 56 FR 25724 (June 5, 1991), EPA adopted the term "heavy light duty truck" (HLDT) for light duty trucks with a gross vehicle weight rating (GVWR) greater than 6000 lbs. Pursuant to the definition of test weight in section 216(8) of the Clean Air Act, as amended in 1990, the Tier I rule also adopted the term "adjusted loaded vehicle weight" (ALVW) (the average of curb weight and GVWR) and required that ALVW be used for emission testing of HLDTs for one-half the fleet in model year 1996 and the entire fleet beginning in model year 1997. Prior to this time, emissions test weights were determined based on loaded vehicle weight (LVW), which is curb weight plus 300 lbs., and this weight was also used for fuel economy testing conducted at the same time. ALVW is higher than LVW. Testing at a higher weight would negatively impact fuel economy values. Increasing the test weight would therefore have the practical effect of increasing the stringency of the fuel economy standard, which might be addressed by adjusting the standard. Under the Motor Vehicle Information and Cost Savings Act (MVICSA), 15 U.S.C. 2003(d)(1), fuel economy is to be measured in accordance with testing procedures established by the EPA Administrator by rule. Also under that provision, fuel economy tests are, to the extent practicable, to be conducted in conjunction with emissions tests under the Clean Air Act. The National Highway Traffic and Safety Administration (NHTSA) is responsible for setting the fuel economy standards. 15 U.S.C. 2002(b).

In its *Light Truck Average Fuel Economy Standards for Model Year 1995; Proposed Rule*, 57 FR 61377 (December 24, 1992), NHTSA requested comments on the issue of test weight for light trucks over 6000 lbs. GVWR in the context of setting the MY 1995–97 light truck fuel economy standards. GM, Ford, Chrysler, American Automobile Manufacturers Association and Rover Group all supported the continuation of fuel economy testing at LVW. In its *Light Truck Average Fuel Economy Standards for Model Year 1995; Final Rule*, 58 FR 18019 (April 7, 1993), NHTSA quoted extensively from a January 7, 1993 letter from EPA to industry trade associations explaining that EPA would consider comments during the NHTSA rulemaking regarding the proper test weight for fuel economy testing when developing EPA guidance or rulemaking on this subject. The EPA letter was further quoted as stating that EPA plans to defer to NHTSA's policy decisions on issues such as the competitiveness effects of the alternatives and would follow NHTSA's resolution of the CAFE issue with conforming amendments to its regulations or policy.

NHTSA then concluded in that notice that the preferable solution would be to retain LVW as the test weight for fuel economy purposes. This conclusion was based, in part, on comments expressing the concern that changing the test weight for only a portion of the light truck fleet would cause consumer confusion and affect the competitiveness of manufacturers with a higher proportion of sales of the heavier light trucks. NHTSA finally quoted from a March 4, 1993 letter from EPA to NHTSA that if NHTSA decided against adjusting the CAFE standard to reflect a higher test weight, EPA would undertake "the regulatory and guidance revisions needed to allow dual testing."

Accordingly, EPA is today promulgating a technical amendment to provide that while ALVW is required for emission testing of HLDTs, it is not required for fuel economy testing of such vehicles. Manufacturers may, instead, continue to use LVW as the test weight for fuel economy testing. Vehicle manufacturers, however, have had and continue to have the option of performing simultaneous emissions and fuel economy testing using heavier test weights (ALVW in this case). Therefore, for HLDTs, separate testing using ALVW for emissions and LVW for fuel economy, or combined emissions and fuel economy testing using ALVW is acceptable. However, fuel economy adjustments will not be made to account for potentially lower fuel economy values due to the use of the heavier test weight (ALVW). This technical amendment changes 40 CFR 600.006–89 (b)(1) (i) and (h) and footnote 4 to the table found at 40 CFR 86.129–94(a) to specify the test weight basis for heavy light duty trucks.

The Agency also reiterates that despite the change in the HLDT emission test weight basis, vehicle manufacturers must still assure that fuel economy data vehicles comply with the applicable exhaust emission standards. The Administrator reserves the right to require the manufacturer to either test using ALVW or submit the vehicle for testing by the Administrator for emission standards compliance using ALVW for HLDTs.

This action is being taken without prior proposal because EPA believes that this technical amendment is noncontroversial and has been subject to notice and comment through NHTSA's rulemaking and EPA's January 7, 1993 letter referring interested parties to the NHTSA proposed rule and advising that EPA would consider comments from that rulemaking. For these reasons, EPA believes that a prior EPA proposal is unnecessary under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B).

Nevertheless, the public is advised that this action will be effective October 3, 1994, unless notice is received by September 2, 1994, that someone wished to submit adverse or critical comments. If such notice is received, this action will be withdrawn and two subsequent documents will be published. One document, which will be published before the effective date, will withdraw the final action. Another document will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received by September 2, 1994. Consequently, this procedure still allows the opportunity for public comment under the Administrative Procedure Act, but provides an expedited procedure for final action where a rulemaking is not expected to be controversial, public comment has already been received by another federal agency, and no adverse comment is expected.

VI. Administrative Requirements

A. Administrative Designation

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 1, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This regulation was submitted to the Office of Management and Budget (OMB) for review under the old Executive Order 12291. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866. OMB reviewed this document under Executive Order 12866 and had no comment.

B. Reporting & Recordkeeping Requirement

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR NO. 783.29) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA, 401 M Street, SW., 2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

This collection of information has an estimated reporting burden averaging 14,600 hours per response and an estimated annual recordkeeping burden averaging 1,250 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information. The regulations do not impose any new significant reporting or recordkeeping burden. They provide for the inclusion of alternative-fueled automobiles in the current fuel economy programs. The reporting and recordkeeping burdens associated with fuel economy of alternative-fueled and current automobiles are identical with the exception of minor changes in fuel economy label wording for alternative-fueled automobiles. In addition, it is difficult to accurately separate the total burden of the fuel economy program, because much of the testing and data input for determining fuel economy is coincident to that of the emissions program. In summary, the current impact of the final regulations' testing, recordkeeping and reporting burden is negligible.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–2136); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The fuel economy regulation revisions herein provide Corporate Average Fuel Economy (CAFE) credits to manufacturers of alternative-fueled vehicles who are subject to the CAFE program, most of which are large automobile manufacturers and therefore will not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Administrative practice and procedure, Electric power, Energy conservation, Fuel economy, Gasoline, Incorporation by reference, Labeling, Reporting and recordkeeping requirements.

Authority: 15 U.S.C. 2001, 2002, 2003, 2005, 2006, 2013; 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a).

Dated: April 13, 1994.

Carol M. Browner,

Administrator.

Appendix to Preamble

TABLE OF CHANGES MADE TO VARIOUS SUBPARTS

Section	Change	Reason
1. Part 86, Authority	None.	
2. § 86.129–94 [4]	Addition of text to clarify test weight basis for heavy light-duty trucks.	Technical amendments.
3. § 86.144–90,(c)(7)(ii)	Addition of formaldehyde concentration term to DF equation and clarification of "x" term.	Technical amendments.
4. § 86.144–94, (c)(7)(ii)	Addition of formaldehyde concentration term to DF equation and clarification of "x" term.	Technical amendments.
5. Part 600, Authority	Addition of citations	Incorporate all authority citations.
6. § 600.001–93	Addition of section 600.001–93	Do.
7. § 600.002–93	Addition of section 600.002–93	Do.
8. § 600.004–77	Addition of text to clarify section reference structure	Clarification.
9. § 600.006–89, (b)(1) (i), (h).	Addition of text to clarify test weight basis for heavy light - duty trucks.	Technical amendments.
10. § 600.007–80, (f)	Add words "and for which emission standards apply"	Add language to clarify requirements for vehicle acceptability.
11. § 600.011–93	Addition of section 600.011–93	Do.
12. § 600.101–93	Addition of section 600.101–93	Do.
13. § 600.107–93	Addition of section 600.107–93	Do.
14. § 600.111–93	Addition of section 600.111–93	Do.
15. § 600.113–93	Addition of section 600.113–93	Add fuel economy equation for methanol-fueled and methanol dual fuel vehicles.
16. § 600.201–93	Addition of section 600.201–93	Incorporation of alcohol fueled, natural gas fueled, alcohol dual fuel, and natural gas dual fuel vehicles into the regulations.
17. § 600.206–93	Addition of section 600.206–93	Do.

TABLE OF CHANGES MADE TO VARIOUS SUBPARTS—Continued

Section	Change	Reason
18. § 600.207–93	Addition of section 600.207–93	Do.
19. § 600.209–95	Addition of section 600.209–93	Do.
20. § 600.301–95	Addition of section 600.301–94	Do.
21. § 600.307–95	Addition of section 600.307–94	Do.
22. § 600.501–93	Addition of section 600.501–93	Do.
23. § 600.510–93	Addition of section 600.510–93	Do.
24. § 600.513–91, (a), (a)(2), (b)(2)(xii).	Add text regarding dual fuel vehicles, clarify FE, a_g, and c terms, correct tax applicability <12 mpg..	Incorporate dual fuel vehicles and Technical amendments.
25. Appendix VIII	Addition of example label formats for alternative-fueled vehicles..	Do.

[4] For model year 1994 and later heavy light-duty trucks not subject to the Tier 0 standards of § 86.094–9 of subpart A, test weight basis is as follows: for emissions tests, the basis shall be adjusted loaded vehicle weight, as defined in § 86.094–2 of subpart A; and for fuel economy tests, the basis shall be loaded vehicle weight, as defined in § 86.082–2 of subpart A, or, at the manufacturer's option, adjusted loaded vehicle weight as defined in § 86.094–2 of subpart A. For all other vehicles, test weight basis shall be loaded vehicle weight, as defined in § 86.082–2 of subpart A.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, 301(a), of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

2. Section 86.129–94 is amended by revising footnote 4 to the table in paragraph (a) to read as follows:

§ 86.129–94 Road load power, test weight, inertia weight class determination, and fuel temperature profile.

* * * * *

(a) * * *

* * * * *

3. Section 86.144–90 is amended by revising the dilution factor equation in paragraph (c)(7)(ii) to read as follows:

§ 86.144–90 Calculations; exhaust emissions.

* * * * *

(c) * * *

(7) * * *

(ii)

$$DF = \frac{100\left(\frac{X}{x + y/2 + 3.76(x + y/4 - z/2)}\right)}{CO_{2e} + \left(HC_e + CO_e + C_{CH_3OHe} + C_{HCHOe}\right)10^{-4}}$$

* * * * *

4. Section 86.144–94 is amended by revising the dilution factor equation in paragraph (c)(7)(ii) to read as follows:

§ 86.144–94 Calculations; exhaust emissions.

* * * * *

(c) * * *

(7) * * *

(ii)

$$DF = \frac{100\left(\frac{X}{x + y/2 + 3.76(x + y/4 - z/2)}\right)}{CO_{2e} + \left(HC_e + CO_e + C_{CH_3OHe} + C_{HCHOe}\right)10^{-4}}$$

* * * * *

PART 600—FUEL ECONOMY OF MOTOR VEHICLES

5. The authority citation for part 600 is revised to read as follows:

Authority: 15 U.S.C. 2001, 2002, 2003, 2005, 2006, and 2013.

Subpart A—[Amended]

6. A new § 600.001–93 is added to subpart A to read as follows:

§ 600.001–93 General applicability.

(a) The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

(b) (1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

7. A new § 600.002–93 is added to subpart A to read as follows:

§ 600.002–93 Definitions.

(a) As used in this subpart, all terms not defined in this section shall have the meaning given them in the Act:

(1) *Act* means Part I of Title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*).

(2) *Administrator* means the Administrator of the Environmental Protection Agency or his authorized representative.

(3) *Secretary* means the Secretary of Transportation or his authorized representative.

(4) *Automobile* means:

(i) Any four-wheel vehicle propelled by a combustion engine using onboard fuel, or by an electric motor drawing current from rechargeable storage batteries or other portable energy storage devices (rechargeable using energy from a source off the vehicle such as residential electric service);

(ii) Which is manufactured primarily for use on public streets, roads, or highways (except any vehicle operated on a rail or rails);

(iii) Which is rated at not more than 8,500 pounds gross vehicle weight, which has a curb weight of not more than 6,000 pounds, and which has a basic vehicle frontal area of not more than 45 square feet; or

(iv) Is a type of vehicle which the Secretary determines is substantially used for the same purposes.

(5) *Passenger automobile* means any automobile which the Secretary determines is manufactured primarily for use in the transportation of no more than 10 individuals.

(6) *Model year* means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(7) *Federal emission test procedure* refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in Part 86 for the respective model year, which are used to derive city fuel economy data.

(8) *Federal highway fuel economy test procedure* refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in Subpart B of this part and which are used to derive highway fuel economy data.

(9) *Fuel* means:

(i) Gasoline and diesel fuel for gasoline- or diesel-powered automobiles; or

(ii) Electrical energy for electrically powered automobiles; or

(iii) Alcohol for alcohol-powered automobiles; or

(iv) Natural gas for natural gas-powered automobiles.

(10) *Fuel economy* means:

(i) The average number of miles traveled by an automobile or group of automobiles per volume of fuel consumed as computed in § 600.113 or § 600.207; or

(ii) The equivalent petroleum-based fuel economy for an electrically powered automobile as determined by the Secretary of Energy.

(11) *City fuel economy* means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal emission test procedure.

(12) *Highway fuel economy* means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal highway fuel economy test procedure.

(13) *Combined fuel economy* means:

(i) The fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.55 and 0.45 respectively.

(ii) For electric vehicles, the term means the equivalent petroleum-based fuel economy value as determined by the calculation procedure promulgated by the Secretary of Energy.

(14) *Average fuel economy* means the unique fuel economy value as computed under § 600.510 for a specific class of automobiles produced by a manufacturer that is subject to average fuel economy standards.

(15) *Certification vehicle* means a vehicle which is selected under § 86.084–24(b)(1) of this chapter and used to determine compliance under § 86.084–30 of this chapter for issuance of an original certificate of conformity.

(16) *Fuel economy data vehicle* means a vehicle used for the purpose of determining fuel economy which is not a certification vehicle.

(17) *Label* means a sticker that contains fuel economy information and is affixed to new automobiles in accordance with subpart D of this part.

(18) *Dealer* means a person who resides or is located in the United States, any territory of the United States, or the District of Columbia and who is engaged in the sale or distribution of new automobiles to the ultimate purchaser.

(19) *Model type* means a unique combination of car line, basic engine, and transmission class.

(20) *Car line* means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roof line, number of doors, seats, or windows, except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different car lines than passenger cars.

(21) *Basic engine* means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator. For electric vehicles, basic engine means a unique combination of manufacturer and electric traction motor, motor controller, battery configuration, electrical charging system, energy storage device, and other components as specified by the Administrator.

(22) *Transmission class* means a group of transmissions having the following common features: Basic transmission type (manual, automatic, or semi-automatic); number of forward gears used in fuel economy testing (e.g., manual four-speed, three-speed automatic, two-speed semi-automatic); drive system (e.g., front wheel drive, rear wheel drive; four wheel drive), type of overdrive, if applicable (e.g., final gear ratio less than 1.00, separate overdrive unit); torque converter type, if applicable (e.g., non-lockup, lockup, variable ratio); and other transmission characteristics that may be determined to be significant by the Administrator.

(23) *Base level* means a unique combination of basic engine, inertia weight class and transmission class.

(24) *Vehicle configuration* means a unique combination of basic engine, engine code, inertia weight class, transmission configuration, and axle ratio within a base level.

(25) *Engine code* means a unique combination, within an engine-system combination (as defined in Part 86 of this chapter), of displacement, carburetor (or fuel injection) calibration, distributor calibration, choke calibration, auxiliary emission control devices, and other engine and emission control system components specified by the Administrator. For electric vehicles, engine code means a unique combination of manufacturer, electric traction motor, motor configuration, motor controller, and energy storage device.

(26) *Inertia weight class* means the class, which is a group of test weights, into which a vehicle is grouped based on its loaded vehicle weight in

accordance with the provisions of part 86 of this chapter.

(27) *Transmission configuration* means the Administrator may further subdivide within a transmission class if the Administrator determines that sufficient fuel economy differences exist. Features such as gear ratios, torque converter multiplication ratio, stall speed, shift calibration, or shift speed may be used to further distinguish characteristics within a transmission class.

(28) *Axle ratio* means the number of times the input shaft to the differential (or equivalent) turns for each turn of the drive wheels.

(29) *Auxiliary emission control device (AECD)* means an element of design as defined in part 86 of this chapter.

(30) *Rounded* means a number shortened to the specific number of decimal places in accordance with the "Round Off Method" specified in ASTM E 29 (Incorporated by reference as specified in § 600.011–93).

(31) *Calibration* means the set of specifications, including tolerances, unique to a particular design, version of application of a component, or component assembly capable of functionally describing its operation over its working range.

(32) *Production volume* means, for a domestic manufacturer, the number of vehicle units domestically produced in a particular model year but not exported, and for a foreign manufacturer, means the number of vehicle units of a particular model imported into the United States.

(33) *Body style* means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e., front, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations in 49 CFR part 571. Station wagons and light trucks are identified as car lines.

(34) *Hatchback* means a passenger automobile where the conventional luggage compartment, i.e., trunk, is replaced by a cargo area which is open to the passenger compartment and accessed vertically by a rear door which encompasses the rear window.

(35) *Pickup truck* means a nonpassenger automobile which has a passenger compartment and an open cargo bed.

(36) *Station wagon* means a passenger automobile with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, a tailgate, and one or more rear seats readily removed or folded to facilitate cargo carrying.

(37) *Gross vehicle weight rating* means the manufacturer's gross weight rating for the individual vehicle.

(38) *Ultimate consumer* means the first person who purchases an automobile for purposes other than resale or leases an automobile.

(39) *Van* means any light truck having an integral enclosure fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

(40) *Base vehicle* means the lowest priced version of each body style that makes up a car line.

(41) *Nonpassenger automobile* means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 49 CFR 523.5.

(42) *Four-wheel-drive general utility vehicle* means a four-wheel-drive, general purpose automobile capable of off-highway operation that has a wheelbase not more than 110 inches and that has a body shape similar to a 1977 Jeep CJ–5 or CJ–7, or the 1977 Toyota Land Cruiser, as defined by the Secretary of Transportation at 49 CFR 553.4.

(43) *Test weight* means the weight within an inertia weight class which is used in the dynamometer testing of a vehicle, and which is based on its loaded vehicle weight in accordance with the provisions of part 86 of this chapter.

(44) *Secretary of Energy* means the Secretary of Energy or his authorized representative.

(45) *Electric traction motor* means an electrically powered motor which provides tractive energy to the wheels of a vehicle.

(46) *Energy storage device* means a rechargeable means of storing tractive energy on board a vehicle such as storage batteries or a flywheel.

(47) *Motor controller* means an electronic or electro-mechanical device to convert energy stored in an energy storage device into a form suitable to power the traction motor.

(48) *Electrical charging system* means a device to convert 60Hz alternating electric current, as commonly available in residential electric service in the United States, to a proper form for recharging the energy storage device.

(49) *Battery configuration* means the electrochemical type, voltage, capacity (in Watt-hours at the c/3 rate), and physical characteristics of the battery used as the tractive energy device.

(50) *Drive system* is determined by the number and location of drive axles (e.g., front wheel drive, rear wheel drive, four wheel drive) and any other feature of the drive system if the Administrator determines that such other features may result in a fuel economy difference.

(51) *Subconfiguration* means a unique combination within a vehicle configuration of equivalent test weight, road-load horsepower, and any other operational characteristics or parameters which the Administrator determines may significantly affect fuel economy within a vehicle configuration.

(52) *Alcohol* means a mixture containing 85 percent or more by volume methanol, ethanol, or other alcohols, in any combination.

(53) *Alcohol-fueled automobile* means an automobile designed to operate exclusively on alcohol.

(54) *Alcohol dual fuel automobile* means an automobile:

(i) Which is designed to operate on alcohol and on gasoline or diesel fuel;

(ii) Which provides equal or greater energy efficiency as calculated in accordance with § 600.510(g)(1) while operating on alcohol as it does while operating on gasoline or diesel fuel;

(iii) Which, for model years 1993 through 1995, provides equal or superior energy efficiency, as determined in § 600.510(g)(2) while operating on a mixture of alcohol and gasoline or diesel fuel containing 50 percent gasoline or diesel fuel as it does while operating on gasoline or diesel fuel; and

(iv) Which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation in 49 CFR 538.

(55) "Natural gas-fueled automobile" means an automobile designed to operate exclusively on natural gas.

(56) "Natural gas dual fuel automobile" means an automobile:

(i) Which is designed to operate on natural gas and on gasoline or diesel fuel;

(ii) Which provides equal or greater energy efficiency as calculated in § 600.510(g)(1) while operating on natural gas as it does while operating on gasoline or diesel fuel; and

(iii) Which, in the case of passenger automobiles, meets or exceeds the minimum driving range established by the Department of Transportation in 49 CFR part 538.

(b) [Reserved]

8. Section 600.004–77 of subpart A is revised to read as follows:

§ 600.004–77 Section numbering, construction.

(a) The model year of initial applicability is indicated by the section number. The two digits following the

hyphen designate the first model year for which a section is effective. A section is effective until superseded.

Example: Section 600.111–78 applies to the 1978 and subsequent model years until superseded. If a § 600.111–81 is promulgated, it would take effect beginning with the 1981 model year; § 600.111–78 would apply to model years 1978 through 1980.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

9. Section 600.006–89 of subpart A is amended by revising paragraph (b)(1)(i) and adding paragraph (h) to read as follows:

§ 600.006–89 Data and information requirements for fuel economy vehicles.

* * * * *

(b)(1) * * *

(i) A description of the vehicle, exhaust emission test results, applicable deterioration factors, adjusted exhaust emission levels, and test fuel property values as specified in § 600.113–93 except as specified in paragraph (h) of this section.

* * * * *

(h) For light-duty fuel economy trucks over 6000 lbs GVWR, the manufacturer must submit emissions data generated while using the following test weight basis:

(1) Adjusted Loaded Vehicle Weight (ALVW) as defined in § 86.094–2 of this chapter; or

(2) Loaded Vehicle Weight (LVW) as defined in § 86.082–2 of this chapter, in which case the Administrator reserves the right to either require the manufacturer to test using ALVW and submit the data or submit the vehicle for testing by the Administrator for emission standards compliance.

10. Section 600.007–80 of subpart A is amended by revising paragraph (f) introductory text to read as follows:

§ 600.007–80 Vehicle acceptability.

* * * * *

(f) All vehicles used to generate fuel economy data, and for which emission standards apply, must be covered by a certificate of conformity under part 86 of this chapter before:

* * * * *

11. Section 600.011–93 is added to subpart A to read as follows:

§ 600.011–93 Reference materials.

(a) *Incorporation by reference.* The documents in paragraph (b) of this section have been incorporated by reference. The 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 inspected at USEPA, OAR, 401 M Street, SW., Washington DC 20460, or at the Office of the Federal Register, 800 N. Capitol Street, NW., suite 700, Washington, DC.

(b) The following paragraphs and tables set forth the material that has been incorporated by reference in this part.

(1) *ASTM material.* The following table sets forth material from the American Society for Testing and Materials which has been incorporated by reference. The first column lists the number and name of the material. The second column lists the section(s) of this part, other than § 600.011, in which the matter is referenced. Copies of these materials may be obtained from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

Document number and name	40 CFR part 600 Preference
ASTM E 29–67 (Reapproved 1973) Standard Recommended Practice for Indicating which Places of Figures are to be Considered Significant in Specified Limiting Values.	600.002–93(a)(30); 600.113–93(d)
ASTM D 1298–85 (Reapproved 1990) Standard Practice for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method.	600.113–93(c)(1)(i), (c)(2)(i)(A), (c)(2)(i)(B), (c)(2)(ii); 600.510–93 (g)(1)(ii)(B), (g)(2)(ii)(B).
ASTM D 3343–90 Standard Test Method for Estimation of Hydrogen Content of Aviation Fuels	600.113–93(c)(1)(ii), (c)(2)(ii).
ASTM D 3338–92 Standard Test Method for Estimation of Net Heat of Combustion of Aviation Fuels	600.113–93(c)(1)(iii).
ASTM D 240–92 Standard Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter	600.113–93(c)(2)(iii); 600.510–93 (g)(1)(ii)(A), (g)(2)(ii)(A).

(2) [Reserved]

Subpart B—[Amended]

12. A new § 600.101–93 is added to subpart B to read as follows:

§ 600.101–93 General applicability.

The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

13. A new § 600.107–93 is added to subpart B to read as follows:

§ 600.107–93 Fuel specifications.

(a) The test fuel specifications for gasoline-fueled automobiles are given in § 86.113(a) (1) and (2) of this chapter.

(b) The test fuel specifications for diesel-fueled automobiles are given in § 86.113(b) (1) through (3) of this chapter.

(c) The test fuel specifications for methanol fuel used in Otto-cycle automobiles are given in § 86.113(a) (3) and (4) of this chapter.

(d) The test fuel specifications for methanol fuel used in diesel cycle automobiles are given in § 86.113(b) (4) through (6) of this chapter.

(e) The test fuel specifications for mixtures of petroleum and methanol fuels for methanol dual fuel vehicles are given in § 86.113(d) of this chapter.

(f) The specification range of the fuels to be used under paragraphs (c) and (d) of this section shall be reported in accordance with § 86.090–21(b)(3) of this chapter.

14. A new § 600.111–93 is added to subpart B to read as follows:

§ 600.111–93 Test procedures.

(a) The test procedures to be followed for generation of the city fuel economy data are those prescribed in §§ 86.127 through 86.138 of this chapter, as applicable, except as provided for in paragraph (d) of this section. (The evaporative loss portion of the test procedure may be omitted unless

specifically required by the Administrator.)

(b) The test procedures to be followed for generation of the highway fuel economy data are those specified in paragraphs (b) through (j) of this section.

(1) The Highway Fuel Economy Dynamometer Procedure consists of preconditioning highway driving sequence and a measured highway driving sequence.

(2) The highway fuel economy test is designated to simulate non-metropolitan driving with an average speed of 48.6 mph and a maximum speed of 60 mph. The cycle is 10.2 miles long with 0.2 stop per mile and consists of warmed-up vehicle operation on a chassis dynamometer through a specified driving cycle. A proportional part of the diluted exhaust emission is collected continuously for subsequent analysis of hydrocarbons, carbon monoxide, carbon dioxide using a constant volume (variable dilution) sampler. Diesel dilute exhaust is continuously analyzed for hydrocarbons using a heated sample line and analyzer. Methanol and formaldehyde samples are collected and individually analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(3) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle must be functioning during all procedures in this subpart. The Administrator may authorize maintenance to correct component malfunction or failure.

(c) *Transmission.* The provisions of § 86.128 of this chapter apply for vehicle transmission operation during highway fuel economy testing under this subpart.

(d) *Road load power and test weight determination.* Section 86.129 of this chapter applies for determination of road load power and test weight for highway fuel economy testing. The test weight for the testing of a certification vehicle will be that test weight specified by the Administrator under the provisions of part 86 of this chapter. The test weight for a fuel economy data vehicle will be that test weight specified by the Administrator from the test weights covered by that vehicle configuration. The Administrator will base his selection of a test weight on the relative projected sales volumes of the various test weights within the vehicle configuration.

(e) *Vehicle preconditioning.* The Highway Fuel Economy Dynamometer Procedure is designed to be performed immediately following the Federal Emission Test Procedure, §§ 86.127 through 86.138 of this chapter. When conditions allow, the tests should be scheduled in this sequence. In the event the tests cannot be scheduled within three hours of the Federal Emission Test Procedure (including one hour hot soak evaporative loss test, if applicable) the vehicle should be preconditioned as in paragraph (e) (1) or (2) of this section, as applicable.

(1) If the vehicle has experienced more than three hours of soak (68 °F–86 °F) since the completion of the Federal Emission Test Procedure, or has experienced periods of storage outdoors, or in environments where soak temperature is not controlled to 68 °F–86 °F, the vehicle must be preconditioned by operation on a dynamometer through one cycle of the EPA Urban Dynamometer Driving Schedule, § 86.115 of this chapter.

(2) In unusual circumstances where additional preconditioning is desired by the manufacturer, the provisions of § 86.132(a)(3) of this chapter apply.

(f) *Highway fuel economy dynamometer procedure.* (1) The dynamometer procedure consists of two cycles of the Highway Fuel Economy Driving Schedule (§ 600.109(b)) separated by 15 seconds of idle. The first cycle of the Highway Fuel Economy Driving Schedule is driven to precondition the test vehicle and the second is driven for the fuel economy measurement.

(2) The provisions of paragraphs (b), (c), (e), (f), (g) and (h) of § 86.135 *Dynamometer procedure* of this chapter, apply for highway fuel economy testing.

(3) Only one exhaust sample and one background sample are collected and analyzed for hydrocarbons (except diesel hydrocarbons which are analyzed continuously), carbon monoxide, and carbon dioxide. Methanol and formaldehyde samples (exhaust and dilution air) are collected and analyzed for methanol-fueled vehicles (measurement of methanol and formaldehyde may be omitted for 1993 through 1994 model year methanol-fueled vehicles provided a HFID calibrated on methanol is used for measuring HC plus methanol).

(4) The fuel economy measurement cycle of the test includes two seconds of idle indexed at the beginning of the second cycle and two seconds of idle indexed at the end of the second cycle.

(g) *Engine starting and restarting.* (1) If the engine is not running at the initiation of the highway fuel economy test (preconditioning cycle), the start-up procedure must be according to the manufacturer's recommended procedures.

(2) False starts and stalls during the preconditioning cycle must be treated as in § 86.136(d) and (e) of this chapter. If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to § 86.079–25 of this chapter, and the vehicle may be rescheduled for test. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

(h) *Dynamometer test run.* The following steps must be taken for each test:

(1) Place the drive wheels of the vehicle on the dynamometer. The vehicle may be driven onto the dynamometer.

(2) Open the vehicle engine compartment cover and position the cooling fans(s) required. Manufacturers may request the use of additional cooling fans for additional engine compartment or under-vehicle cooling and for controlling high tire or brake temperatures during dynamometer operation.

(3) Preparation of the CVS must be performed before the measurement highway driving cycle.

(4) Equipment preparation. The provisions of § 86.137(b)(3) through (6) of this chapter apply for highway fuel economy test except that only one exhaust sample collection bag and one dilution air sample collection bag need be connected to the sample collection systems.

(5) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in § 600.109(b).

(6) When the vehicle reaches zero speed at the end of the preconditioning cycle, the driver has 17 seconds to prepare for the emission measurement cycle of the test. Reset and enable the roll revolution counter.

(7) Operate the vehicle over one Highway Fuel Economy Driving Schedule cycle according to the dynamometer driving schedule specified in § 600.109(b) while sampling the exhaust gas.

(8) Sampling must begin two seconds before beginning the first acceleration of the fuel economy measurement cycle and must end two seconds after the end of the deceleration to zero. At the end of the deceleration to zero speed, the roll or shaft revolutions must be recorded.

(i) For methanol dual fuel automobiles, the procedures of § 600.111 (a) and (b) shall be performed for each of the required test fuels:

(1) Gasoline or diesel fuel as specified in § 600.107 (a) and (b); and

(2) Methanol fuel as specified in § 600.107 (c) and (d); and

(3) A mixture containing 50% gasoline or diesel and 50% methanol by volume, applicable during model years 1993 through 1995; or

(4) In lieu of testing using the mixture containing 50% gasoline or diesel and 50% methanol by volume, the manufacturer must provide a written statement attesting that the equal or superior energy efficiency is attained while using the 50% gasoline or diesel and 50% methanol mixture compared to using gasoline.

15. A new § 600.113–93 is added to subpart B to read as follows:

§ 600.113–93 Fuel economy calculations.

The Administrator will use the calculation procedure set forth in this section for all official EPA testing of vehicles fueled with gasoline, diesel, or methanol fuel. The calculations of the weighted fuel economy values require input of the weighted grams/mile values for HC, CO, and CO_2, and, additionally for methanol fueled automobiles CH_3OH and HCHO for both the city fuel economy test and the highway fuel economy test. Additionally, the specific gravity, carbon weight fraction and net heating value of the test fuel must be determined. The city and highway fuel economy values shall be calculated as specified in this section. A sample appears in Appendix II to this part.

(a) Calculate the weighted grams/mile values for the city fuel economy test for HC, CO, and CO_2, and, additionally for methanol-fueled automobiles, CH_3OH and HCHO as specified in § 86.144 of this chapter. Measure and record the test fuel's properties as specified in paragraph (c) of this section.

(b)(1) Calculate the mass values for the highway fuel economy test for HC, CO, and CO_2, and CH_3OH and HCHO where applicable, as specified in § 86.144(b) of this chapter. Measure and record the test fuel's properties as specified in paragraph (c) of this section.

(2) Calculate the grams/mile values for the highway fuel economy test for HC, CO, and CO_2, and CH_3OH and HCHO where applicable, by dividing the mass values obtained in paragraph (b)(1) of this section, by the actual distance traveled, measured in miles, as specified in § 86.135(h) of this chapter.

(c)(1) Gasoline test fuel properties shall be determined by analysis of a fuel sample taken from the fuel supply. A sample shall be taken after each addition of fresh fuel to the fuel supply. Additionally, the fuel shall be resampled once a month to account for any fuel property changes during storage. Less frequent resampling may be permitted if EPA concludes, on the basis of manufacturer-supplied data, that the properties of test fuel in the manufacturer's storage facility will remain stable for a period longer than one month. The fuel samples shall be analyzed to determine the following fuel properties:

(i) Specific gravity per ASTM D 1298 (Incorporated by reference as specified in § 600.011–93).

(ii) Carbon weight fraction per ASTM D 3343 (Incorporated by reference as specified in § 600.011–93).

(iii) Net heating value (Btu/lb) per ASTM D 3338 (Incorporated by reference as specified in § 600.011–93).

(2) Methanol test fuel shall be analyzed to determine the following fuel properties:

(i) Specific gravity using either:

(A) ASTM D 1298 (incorporated by reference as specified in § 600.011–93) for the blend or:

(B) ASTM D 1298 (incorporated by reference as specified in § 600.011–93) for the gasoline fuel component and also for the methanol fuel component and combining as follows:

$SG = SG_g \times$ volume fraction gasoline $+ SG_m \times$ volume fraction methanol.

(ii)(A) Carbon weight fraction using the following equation:

$$CWF = CWF_g \times MF_g + 0.375 \times MF_m$$

Where:

CWF_g=Carbon weight fraction of gasoline portion of blend per ASTM D 3343 (incorporated by reference as specified in § 600.011–93).

MF_g=Mass fraction gasoline=$(G \times SG_g)/(G \times SG_g + M \times SG_m)$

MF_m=Mass fraction methanol=$(M \times SG_m)/(G \times SG_g + M \times SG_m)$

Where:

G=Volume fraction gasoline

M=Volume fraction methanol

SG_g=Specific gravity of gasoline as measured by ASTM D 1298 (Incorporated by reference as specified in § 600.011–93).

SG_m=Specific gravity of methanol as measured by ASTM D 1298 (Incorporated by reference as specified in § 600.011–93).

(B) Upon the approval of the Administrator, other procedures to measure the carbon weight fraction of the fuel blend may be used if the manufacturer can show that the procedures are superior to or equally as accurate as those specified in this paragraph (c)(2)(ii).

(iii) Net heating value (BTU/lb) per ASTM D 240 (Incorporated by reference as specified in § 600.011–93).

(d) Calculate the city fuel economy and highway fuel economy from the grams/mile values for HC, CO, CO_2, and CH_3OH and HCHO where applicable, and, the test fuel's specific gravity, carbon weight fraction and net heating value. The emission values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded in accordance with § 86.084–26(a)(6)(iii) of this chapter. The CO_2 values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded to the nearest gram/mile. The specific gravity and the carbon weight fraction (obtained per paragraph (c) of this section) shall be recorded using three places to the right of the decimal point. The net heating value (obtained per paragraph (c) of this section) shall be recorded to the nearest whole Btu/lb. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29 (Incorporated by reference as specified in § 600.011–93).

(e)(1) For gasoline-fueled automobiles, the fuel economy in miles per gallon is to be calculated using the following equation:

$$mpg = \{5174 \times 10^4 \times CWF \times SG\} / [((CWF \times HC) + (0.429 \times CO) + (0.273 \times CO_2)) \times ((0.6 \times SG \times NHV) + 5471)]$$

Where:

HC=Grams/mile HC as obtained in paragraph (d) of this section.

CO=Grams/mile CO as obtained in paragraph (d) of this section.

CO_2=Grams/mile CO_2 as obtained in paragraph (d) of this section.

CWF=Carbon weight fraction of test fuel as obtained in paragraph (d) of this section.

NHV=Net heating value by mass of test fuel as obtained in paragraph (d) of this section.

SG=Specific gravity of test fuel as obtained in paragraph (d) of this section.

(2) Round the calculated result to the nearest 0.1 miles per gallon.

(f)(1) For diesel-fueled automobiles, calculate the fuel economy in miles per gallon of diesel fuel by dividing 2778 by the sum of three terms:

(i) 0.866 multiplied by HC (in grams/miles as obtained in paragraph (d) of this section);

(ii) 0.429 multiplied by CO (in grams/mile as obtained in paragraph (d) of this section); and

(iii) 0.273 multiplied by CO_2 (in grams/mile as obtained in paragraph (d) of this section).

(2) Round the quotient to the nearest 0.1 mile per gallon.

(g) For methanol-fueled automobiles and automobiles designed to operate on mixtures of gasoline and methanol, the fuel economy in miles per gallon is to be calculated using the following equation:

$$mpg = (5174 \times 10^4 \times CWF \times SG) / [((CWF \times HC) + (0.429 \times CO) + (0.273 \times CO_2)) \times ((0.6 \times SG \times NHV) + 5471)]$$

Where:

CWF=Carbon weight fraction of the fuel as determined in paragraph (c)(2)(ii) of this section.

SG=Specific gravity of the fuel as determined in paragraph (c)(2)(i) of this section.

CWF_{exHC}=Carbon weight fraction of exhaust hydrocarbons= CWF_g as determined in (c)(2)(ii) of this section (for M100 fuel, CWF_{exHC}=0.866).

HC=Grams/mile HC as obtained in paragraph (d) of this section.

CO=Grams/mile CO as obtained in paragraph (d) of this section.

CO_2=Grams/mile CO_2 as obtained in paragraph (d) of this section.

CH_3OH=Grams/mile CH_3OH (methanol) as obtained in paragraph (d) of this section.

HCHO=Grams/mile HCHO (formaldehyde) as obtained in paragraph (d) of this section.

Subpart C—[Amended]

16. A new § 600.201–93 is added to subpart C to read as follows:

§ 600.201–93 General applicability.

The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

17. A new § 600.206–93 is added to subpart C to read as follows:

§ 600.206–93 Calculation and use of fuel economy values for gasoline-fueled, diesel-fueled, electric, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel vehicle configurations.

(a) Fuel economy values determined for each vehicle, and as approved in § 600.008 (b) or (f), are used to determine city, highway, and combined fuel economy values for each vehicle configuration (as determined by the Administrator) for which data are available.

(1) If only one set of city and highway fuel economy values is accepted for a vehicle configuration, these values, rounded to the nearest tenth of a mile per gallon, comprise the city and highway fuel economy values for that configuration.

(2) If more than one city or highway fuel economy value is accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration for which the data were generated using sales projections supplied in accordance with § 600.207(a)(3).

(ii) Within each group of data, all values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon in order to determine city and highway fuel economy values for each subconfiguration at which the vehicle configuration was tested.

(iii) All city fuel economy values and all highway fuel economy values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. The resultant values, rounded to the nearest 0.0001 mile per gallon, are the city and highway fuel economy values for the vehicle configuration.

(3) The combined fuel economy value for a vehicle configuration is calculated by harmonically averaging the city and highway fuel economy values, as determined in § 600.206(a) (1) or (2), weighted 0.55 and 0.45 respectively, and rounded to the nearest 0.0001 mile per gallon. A sample of this calculation appears in Appendix II to this part.

(4) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a) (1) through (3) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each configuration.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

(b) If only one equivalent petroleum-based fuel economy value exists for an electric configuration, that value, rounded to the nearest tenth of a mile per gallon, will compose the petroleum-based fuel economy for that configuration.

(c) If more than one equivalent petroleum-based fuel economy value exists for an electric vehicle configuration, all values for that vehicle configuration are harmonically averaged and rounded to the nearest 0.0001 mile per gallon for that configuration.

18. A new § 600.207–93 is added to subpart C to read as follows:

§ 600.207–93 Calculation of fuel economy values for a model type.

(a) Fuel economy values for a base level are calculated from vehicle configuration fuel economy values as determined in § 600.206(a) for low-altitude tests.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each base level for vehicles intended for sale in California and for each base level for vehicles intended for sale in the rest of the states.

(2) In order to highlight the fuel efficiency of certain designs otherwise included within a model type, a manufacturer may wish to subdivide a model type into one or more additional model types. This is accomplished by separating subconfigurations from an existing base level and placing them into a new base level. The new base level is identical to the existing base level except that it shall be considered, for the purposes of this paragraph, as containing a new basic engine. The manufacturer will be permitted to designate such new basic engines and base level(s) if:

(i) Each additional model type resulting from division of another model type has a unique car line name and that name appears on the label and on the vehicle bearing that label;

(ii) The subconfigurations included in the new base levels are not included in any other base level which differs only by basic engine (i.e., they are not included in the calculation of the original base level fuel economy values); and

(iii) All subconfigurations within the new base level are represented by test data in accordance with § 600.010(c)(ii).

(3) The manufacturer shall supply total model year sales projections for each car line/vehicle subconfiguration combination.

(i) Sales projections must be supplied separately for each car line-vehicle subconfiguration intended for sale in California and each car line/vehicle subconfiguration intended for sale in the rest of the states if required by the

Administrator under paragraph (a)(1) of this section.

(ii) Manufacturers shall update sales projections at the time any model type value is calculated for a label value.

(iii) The requirements of this paragraph may be satisfied by providing an amended application for certification, as described in § 86.084–21 of this chapter.

(4) Vehicle configuration fuel economy values, as determined in § 600.206(a), are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy value from that vehicle configuration constitutes the fuel economy for that base level.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon.

(5) The procedure specified in § 600.207(a) will be repeated for each base level, thus establishing city, highway, and combined fuel economy values for each base level.

(6) For the purposes of calculating a base level fuel economy value, if the only vehicle configuration(s) within the base level are vehicle configuration(s) which are intended for sale at high altitude, the Administrator may use fuel economy data from tests conducted on these vehicle configuration(s) at high altitude to calculate the fuel economy for the base level.

(7) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (a)(1) through (6) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each base level.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

(b) For each model type, as determined by the Administrator, a city, highway, and combined fuel economy value will be calculated by using the projected sales and fuel economy values for each base level within the model type.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each model type for vehicles intended for sale in California and for each model type for vehicles intended for sale in the rest of the states.

(2) The sales fraction for each base level is calculated by dividing the projected sales of the base level within the model type by the projected sales of the model type and rounding the quotient to the nearest 0.0001.

(3) The city fuel economy values of the model type (calculated to the nearest 0.0001 mpg) are determined by dividing one by a sum of terms, each of which corresponds to a base level and which is a fraction determined by dividing:

(i) The sales fraction of a base level; by

(ii) The city fuel economy value for the respective base level.

(4) The procedure specified in paragraph (b)(3) of this section is repeated in an analogous manner to determine the highway and combined fuel economy values for the model type.

(5) For alcohol dual fuel automobiles and natural gas dual fuel automobiles the procedures of paragraphs (b)(1) through (4) of this section shall be used to calculate two separate sets of city, highway, and combined fuel economy values for each model type.

(i) Calculate the city, highway, and combined fuel economy values from the tests performed using gasoline or diesel test fuel.

(ii) Calculate the city, highway, and combined fuel economy values from the tests performed using alcohol or natural gas test fuel.

19. A new § 600.209–95 is added to subpart C to read as follows:

§ 600.209–95 Calculation of fuel economy values for labeling.

(a) For the purposes of calculating the city model type fuel economy value for labeling the manufacturer shall:

(1)(i) For general labels for gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles multiply the city model type fuel economy value determined in § 600.207 (b), by 0.90, rounding the product to the nearest whole mpg; or

(ii) For general labels for alcohol dual fuel and natural gas dual fuel automobiles:

(A) Multiply the city model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.207 (b)(5)(i) by 0.90, rounding the product to the nearest whole mpg; and

(B) Multiply the city model type fuel economy calculated from the tests performed using alcohol or natural gas test fuel as determined in § 600.207 (b)(5)(ii) by 0.90, rounding the product to the nearest whole mpg; or

(2)(i) For specific labels for gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles, multiply the city model type fuel economy value determined in § 600.206 (a)(2)(iii), by 0.90, rounding the product to the nearest whole mpg; or

(ii) For specific labels for alcohol dual fuel and natural gas dual fuel automobiles:

(A) Multiply the city model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.206 (a)(2)(iii) and (4)(i) by 0.90, rounding the product to the nearest whole mpg; and

(B) Multiply the city model type fuel economy calculated from the tests performed using alcohol or natural gas test fuel as determined in § 600.206 (a)(2)(iii) and (4)(ii) by 0.90, rounding the product to the nearest whole mpg.

(b) For the purposes of calculating the highway model type fuel economy value for labeling the manufacturer shall:

(1)(i) For general labels for gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles, multiply the highway model type fuel economy value determined in § 600.207 (b), by 0.78, rounding the product to the nearest whole mpg; or

(ii) For general labels for alcohol dual fuel and natural gas dual fuel automobiles:

(A) Multiply the highway model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.207 (b)(5)(i) by 0.78, rounding the product to the nearest whole mpg; and

(B) Multiply the highway model type fuel economy calculated from the tests performed using alcohol or natural gas test fuel as determined in § 600.207 (b)(5)(ii) by 0.78, rounding the product to the nearest whole mpg; or

(2)(i) For specific labels for gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles, multiply the highway model type fuel economy value determined in § 600.206 (a)(iii), by 0.78, rounding the product to the nearest whole mpg; or

(ii) For specific labels for alcohol dual fuel and natural gas dual fuel automobiles:

(A) Multiply the highway model type fuel economy calculated from the tests performed using gasoline or diesel test fuel as determined in § 600.206 (a)(2)(iii) and (4)(i) by 0.78, rounding the product to the nearest whole mpg; and

(B) Multiply the highway model type fuel economy calculated from the tests

performed using alcohol or natural gas test fuel as determined in § 600.206 (a)(2)(iii) and (4)(ii) by 0.78, rounding the product to the nearest whole mpg.

(c) If the resulting city value determined in paragraph (a) of this section exceeds the resulting highway value determined in paragraph (b) of this section, the city value will be set equal to the highway value.

(d) For the purposes of calculating the combined fuel economy for a model type, to be used in determining annual fuel costs under § 600.307, the manufacturer shall (except as provided for in paragraph (d)(2) of this section):

(1)(i) For gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles, harmonically average the unrounded city and highway values, determined in paragraphs (a)(1)(i) and (b)(1)(i), or (a)(2)(i) and (b)(2)(i) of this section weighted 0.55 and 0.45 respectively, and round to the nearest whole mpg. (An example of this calculation procedure appears in Appendix II of this part); or

(ii) For alcohol dual fuel and natural gas dual fuel automobiles, harmonically average the unrounded city and highway values from the tests performed using gasoline or diesel test fuel as determined in paragraphs (a)(1)(ii)(A) and (b)(1)(ii)(A), or (a)(2)(ii)(A) and (b)(2)(ii)(A) of this section.

(2) If the resulting city value determined in paragraph (a) of this section exceeds the resulting highway value determined in paragraph (b) of this section, the combined fuel economy will be set equal to the highway value, rounded to the nearest whole mpg.

Subpart D—[Amended]

20. A new § 600.301–95 is added to subpart D to read as follows:

§ 600.301–95 General applicability.

(a) The provisions of this subpart are applicable to 1995 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel, and natural gas dual fuel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

21. A new § 600.307–95 is added to subpart D to read as follows:

§ 600.307–95 Fuel economy label format requirements.

(a)(1) Fuel economy labels must be:

(i) Rectangular in shape with a minimum height of 4.5 inches (114 mm) and a minimum length of 7.0 inches (178 mm) as depicted in Appendix VIII of this part.

(ii) Printed in a color which contrasts with the paper color.

(iii) The label shall have a contrasting border at least 0.25 inches (6.4 mm) wide.

(2) The top 50 percent of the total fuel economy label area shall contain only the following information and in the same format depicted in the label format in Appendix VIII of this part:

(i) The titles "CITY MPG" and "HIGHWAY MPG", centered over the applicable fuel economy estimates, in bold caps 10 points in size.

(ii)(A) For gasoline-fueled, diesel-fueled, alcohol-fueled, and natural gas-fueled automobiles, the city and highway fuel economy estimates calculated in accordance with § 600.209 (a) and (b).

(B) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the city and highway fuel economy estimates for operation on gasoline or diesel fuel as calculated in § 600.209 (a)(1)(ii)(A) or (2)(ii)(A) and § 600.209 (b)(1)(ii)(A) or (2)(ii)(A).

(iii) The fuel pump logo.

(iv) The phrase "Compare this [vehicle/truck] to others in the FREE FUEL ECONOMY GUIDE available at the dealer," shall be "dropped-out" of the top border as depicted in the sample label format in Appendix VIII of this part. The phase shall be in lower case in a medium condensed type except for the words "FREE FUEL ECONOMY GUIDE" which shall be capitalized in a bold condensed type and no smaller than 12 points in size.

(v)(A) For alcohol-fueled automobiles, the title "(insert appropriate fuel (example "METHANOL "(M85))")". The title shall be positioned above the fuel pump logo and shall be in upper case in a bold condensed type and no smaller than 12 points in size.

(B) For natural gas-fueled automobiles, the title "NATURAL GAS*". The title shall be positioned above the fuel pump logo and shall be in uppercase in a bold condensed type and no smaller than 12 points in size.

(C) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the title "DUAL FUEL*". The title shall be positioned above the fuel pump logo and shall be in upper case in a bold condensed type and no smaller than 12 points in size.

(vi)(A) For alcohol-fueled automobiles, the title "(insert appropriate fuel (example "M85"))" centered above the title "CITY MPG" and above the title "HIGHWAY MPG" in bold caps 10 points in size.

(B) For natural gas-fueled automobile, the title "GASOLINE EQUIVALENT" centered above the title "CITY MPG" and above the title "HIGHWAY MPG" in bold caps 10 points in size.

(C) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the title "GASOLINE" centered above the title "CITY MPG" and above the title "HIGHWAY MPG" in bold caps 10 points in size.

(3) The bottom 50 percent of the label shall contain the following information:

(i) The [vehicle/truck] description, as described in paragraph (c) or (d) of this section, when applicable.

(ii)(A) A statement: "Actual mileage will vary with options, driving conditions, driving habits and [vehicle's/truck's] condition. Results reported to EPA indicate that the majority of [vehicles/trucks] with these estimates will achieve between _____ and _____ mpg in the city, and between _____ and _____ mpg on the highway."

(B) The range values for this statement are to be calculated in accordance with the following:

(1) The lower range values shall be determined by multiplying the city and highway estimates by 0.85, then rounding to the next lower integer value.

(2) The upper range values shall be determined by multiplying the city and highway estimates by 1.15 and rounding to the next higher integer value.

(iii)(A) A statement: "For comparison shopping, all [vehicles/trucks] classified as [insert category as determined in § 600.315] have been issued mileage ratings ranging from _____ to _____ mpg city and _____ to _____ mpg highway." (The range values are those determined in accordance with § 600.311.); or, when applicable,

(B) A statement: "A range of fuel economy values for other [vehicles/trucks] classified as [insert category as determined in § 600.315] is not available at this time." or by the statement: "Not available."

(iv)(A) The statement: "Estimated Annual Fuel Cost:" followed by the appropriate value calculated in accordance with paragraph (g) or (h) of this section. The estimated annual fuel cost value for alcohol dual fuel automobiles and natural gas dual fuel vehicles to appear on the fuel economy

label shall be that calculated based on operating the vehicle on gasoline or diesel fuel as determined in § 600.307(g) and (h). At the manufacturers option, the label may also contain the estimated annual fuel cost value based on operating the vehicle on the alternative fuel.

(B) At the manufacturers option, it may include the fuel cost and the annual mileage interval used to determine the annual fuel cost.

(v) For the 1986 model year only, the statement: "Under EPA's previous fuel economy program, used prior to the 1985 model year, this [vehicle/truck] would have received a single estimate of [insert unadjusted city value rounded to the nearest whole mpg, as determined in § 600.207(b)] mpg."

(vi)(A) The Gas Guzzler statement, when applicable (see paragraph (f) of this section), must be centered on a separate line between the bottom border and the Estimated Annual Fuel Cost statements. The words "Gas Guzzler" shall be highlighted.

(B) The type size shall be at least as large as the largest type size in the bottom 50 percent of the label.

(vii)(A) For alcohol-fueled, and natural gas-fueled automobiles, the statement: "*This vehicle operates on [insert appropriate fuel(s)] only." shall appear above the bottom border. The phrase shall be in lower case in a medium condensed type except for the fuels listed which shall be capitalized in a bold condensed type no smaller than 12 points in size.

(B) For natural gas-fueled automobiles, the statements: "All fuel economy values on this label pertain to gasoline equivalent fuel economy. To convert these values into units of miles per 100 cubic feet of natural gas, multiply by 0.823." At the manufacturers option, the statement "To convert these values into units of miles per 100 cubic feet of natural gas, multiply by 0.823." may be replaced by the statement "The fuel economy in units of miles per [insert units used in retail] is estimated to be [insert city fuel economy value] in the city, and [insert highway fuel economy value] on the highway.

(C) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the statement: "This vehicle operates on [insert gasoline or diesel as appropriate] and [insert other fuel(s) as appropriate]." shall appear above the bottom border. The phrase shall be in lower case in a medium condensed type except for the words "gasoline" or "diesel" (as appropriate) and the other fuels listed, which shall be capitalized in a bold condensed type no smaller than 12 points in size.

(viii) For alcohol dual fuel automobiles and natural gas dual fuel automobiles, the statement: "All fuel economy values on this label pertain to [insert gasoline or diesel as appropriate] fuel usage. [insert other fuel(s) as appropriate] fuel(s) usage will yield different values. See the FREE FUEL ECONOMY GUIDE for information on [insert other fuel(s)] ." At the manufacturers option, the above statements may be replaced by the statement "The fuel economy while using [insert appropriate fuel (example "M85)] is estimated to be [insert city fuel economy value and appropriate units] in the city and [insert highway fuel economy value and appropriate units] on the highway. See the FREE FUEL ECONOMY GUIDE for other information on [insert appropriate fuel].

(4) The maximum type size for the statements located in the lower 50 percent of the label shall not exceed 10 points in size, except as provided for in paragraphs (a)(3)(vii)(A) and (B) of this section.

(b)(1) The city mpg number shall be displayed on the left and the highway mpg number displayed on the right.

(2)(i) Except for the digit "one," each mpg digit shall measure at least 0.35 inches by 0.6 inches (9x15mm) in width and height respectively.

(ii) The digit "one," shall measure at least 0.2 inches by 0.6 inches (5x15mm) in width and height respectively.

(3) The strike width of each mpg digit shall be at least 0.075 inches (1.9mm).

(4)(i) MPG digits not printed as a single character shall be made of a matrix of smaller characters. This matrix shall be at least four characters wide by five characters high (with the exception of three characters wide for the numerical character denoting "one".)

(ii) The small characters shall be made of successive overstrikes to form a reasonably dark and continuous line that approximates a single large character.

(5)(i) If manufacturer chooses to enlarge the label from that depicted in Appendix VIII of this part, the logo and the fuel economy label values, including the titles "CITY MPG" and "HIGHWAY MPG," must be increased in the same proportion.

(ii) The area bounded by the bottom of the fuel pump logo to the top of the border must continue to represent at least 50 percent of the available label area.

(c) The vehicle description on general labels will be as follows:

(1) Model year;

(2) Vehicle car line;

(3) Engine displacement, in cubic inches, cubic centimeters, or liters whichever is consistent with the customary description of that engine;

(4) Number of engine cylinders or rotors;

(5) Additional engine description, if necessary to distinguish otherwise identical model types, as approved by the Administrator;

(6) Fuel metering system, including number of carburetor barrels, if applicable;

(7) Transmission class;

(8) Catalyst usage, if necessary to distinguish otherwise identical model types; and

(9) California emission control system usage, if applicable and if the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states.

(d) The vehicle description on specific labels will be as follows:

(1) The descriptions of paragraph (c) of this section;

(2) Inertia weight class;

(3) Axle ratio; and

(4) Other engine or vehicle parameters, if approved by the Administrator.

(e) Where the fuel economy label is incorporated with the pricing information sticker, the applicable vehicle description, as set forth in paragraph (c) or (d) of this section, does not have to be repeated if the information is readily found on the Motor Vehicle Information and Cost Savings Act label.

(f)(1) For fuel economy labels of passenger automobile model types requiring a tax statement under § 600.513, the phrase "* * * Gas Guzzler Tax: $_____ * * *".

(2) The tax value required by this paragraph shall be based on the combined fuel economy value for the model type calculated in accordance with § 600.207 and rounded to the nearest 0.1 mpg. Adjustments in accordance with § 600.209 will not be used to determine the tax liability.

(g) *General labels.* The annual fuel cost estimate for operating an automobile included in a model type shall be computed by using values for the fuel cost per volume (gallon for liquid fuels, cubic foot for gaseous fuels) and average annual mileage, predetermined by the Administrator, and the fuel economy determined in § 600.209(d).

(1) The annual fuel cost estimate for a model type is computed by multiplying:

(i) Fuel cost per gallon (natural gas must be expressed in units of cost per equivalent gallon, where 100 SCF = 0.823 equivalent gallons) expressed in dollars to the nearest 0.05 dollar; by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year; by

(iii) The average, rounded to the nearest 0.0001 gallons per mile (natural gas must be expressed in units of gallons equivalent per mile where 100 SCF=0.823 equivalent gallons) of the fuel economy value determined in § 600.209(d) for a model type.

(2) The product computed in paragraph (g)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on general labels for the model type.

(h) *Specific labels.* The annual fuel cost estimate for operating an automobile included in a vehicle configuration will be computed by using the values for the fuel cost per volume (gallon for liquid fuels, cubic feet for gaseous fuels) and average mileage and the fuel economy determined in paragraph (h)(1)(iii) of this section.

(1) The annual fuel cost estimate for vehicle configuration is computed by multiplying:

(i) Fuel cost per gallon (natural gas must be expressed in units of cost per equivalent gallon, where 100 SCF=0.823 equivalent gallons) expressed in dollars to the nearest 0.05 dollar; by

(ii) Average annual mileage, expressed in miles per year to the nearest 1,000 miles per year; by

(iii) The inverse, rounded to the nearest 0.0001 gallons per mile (natural gas must be expressed in units of gallon equivalent per mile, where 100 SCF=0.823 equivalent gallons) of the fuel economy value determined in § 600.206(a)(2)(iii) for a vehicle configuration (city and highway values will be adjusted by the factors in § 600.209(a) and (b) and combined according to § 600.209(d) before the calculation).

(2) The product computed in paragraph (h)(1) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on specific labels for that vehicle configuration.

Subpart F—[Amended]

22. A new § 600.501–93 is added to subpart F to read as follows:

§ 600.501–93 General applicability.

(a) The provisions of this subpart are applicable to 1993 and later model year gasoline-fueled, diesel-fueled, alcohol-fueled, natural gas-fueled, alcohol dual fuel and natural gas dual fuel automobiles.

(b)(1) Manufacturers that produce only electric vehicles are exempt from the requirement of this subpart, except with regard to the requirements in those sections pertaining specifically to electric vehicles.

(2) Manufacturers with worldwide production (excluding electric vehicle production) of less than 10,000 gasoline-fueled and/or diesel powered passenger automobiles and light trucks may optionally comply with the electric vehicle requirements in this subpart.

23. A new § 600.510–93 is added to subpart F to read as follows:

§ 600.510–93 Calculation of average fuel economy.

(a) Average fuel economy will be calculated to the nearest 0.1 mpg for the classes of automobiles identified in this section, and the results of such calculations will be reported to the Secretary of Transportation for use in determining compliance with the applicable fuel economy standards.

(1) An average fuel economy calculation will be made for the category of passenger automobiles that is domestically manufactured as defined in § 600.511(d)(1).

(2) An average fuel economy calculation will be made for the category of passenger automobiles that is not domestically manufactured as defined in § 600.511(d)(2).

(3) An average fuel economy calculation will be made for the category of light trucks that is domestically manufactured as defined in § 600.511(e)(1).

(4) An average fuel economy calculation will be made for the category of light trucks that is not domestically manufactured as defined in § 600.511(e)(2).

(b) For the purpose of calculating average fuel economy under paragraph (c), of this section:

(1) All fuel economy data submitted in accordance with § 600.006(e) or § 600.502(c) shall be used.

(2) The combined city/highway fuel economy will be calculated for each model type in accordance with § 600.207 of this section except that:

(i) Separate fuel economy values will be calculated for model types and base levels associated with car lines that are:

(A) Domestically produced; and

(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart, will be used instead of sales projections;

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to correct gallons of diesel fuel to equivalent gallons of gasoline;

(iv) The fuel economy value will be rounded to the nearest 0.1 mpg; and

(v) At the manufacturer's option, those vehicle configurations that are selfcompensating to altitude changes may be separated by sales into high-altitude sales categories and low-altitude sales categories. These separate sales categories may then be treated (only for the purpose of this section) as separate configurations in accordance with the procedure of paragraph § 600.207(a)(4)(ii).

(3) The fuel economy value for each vehicle configuration is the combined fuel economy calculated according to § 600.206 except that:

(i) Separate fuel economy values will be calculated for vehicle configurations associated with car lines that are:

(A) Domestically produced; and

(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart will be used instead of sales projections; and

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline.

(c) Except as permitted in paragraph (d) of this section, the average fuel economy will be calculated individually for each category identified in paragraph (a) of this section as follows:

(1) Divide the total production volume of that category of automobiles; by

(2) A sum of terms, each of which corresponds to a model type within that category of automobiles and is a fraction determined by dividing:

(i) The number of automobiles of that model type produced by the manufacturer in the model year; by

(ii) For gasoline-fueled and diesel-fueled model types, the fuel economy calculated for that model type in accordance with paragraph (b)(2) of this section; or

(iii) For alcohol-fueled model types, the fuel economy value calculated for that model type in accordance with (b)(2) of this section divided by 0.15 and rounded to the nearest 0.1 mpg; or

(iv) For natural gas-fueled model types, the fuel economy value calculated for that model type in accordance with (b)(2) of this section divided by 0.15 and rounded to the nearest 0.1 mpg; or

(v) For alcohol dual fuel model types, for model years 1993 through 2004, the harmonic average of the following two terms; the result rounded to the nearest 0.1 mpg:

(A) The combined model type fuel economy value for operation on gasoline or diesel fuel as determined in § 600.207(b)(5)(i); and

(B) The combined model type fuel economy value for operation on alcohol fuel as determined in § 600.207(b)(5)(ii) divided by 0.15 provided the requirements of § 600.510 (g) are met; or

(vi) For natural gas dual fuel model types, for model years 1993 through 2004, the harmonic average of the following two terms; the result rounded to the nearest 0.1 mpg:

(A) The combined model type fuel economy value for operation on gasoline or diesel as determined in § 600.207(b)(5)(i); and

(B) The combined model type fuel economy value for operation on natural gas as determined in § 600.207(b)(5)(ii) divided by 0.15 provided the requirements of paragraph (g) of this section are met.

(d) The Administrator may approve alternative calculation methods if they are part of an approved credit plan under the provisions of 15 U.S.C. 2003.

(e) For passenger categories identified in paragraphs (a) (1) and (2) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$AFE_{adj} = AFE[((0.55 \times a \times c) + (0.45 \times c) + (0.5556 \times a) + 0.4487) / ((0.55 \times a) + 0.45)] + IW$

Where:

AFE_{adj} = Adjusted average combined fuel economy, rounded to the nearest 0.1 mpg.

AFE = Average combined fuel economy as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.

a = Sales-weight average (rounded to the nearest 0.0001 mpg) of all model type highway fuel economy values (rounded to the nearest 0.1 mpg) divided by the sales-weighted average (rounded to the nearest 0.0001 mpg) of all model type city fuel economy values (rounded to the nearest 0.1 mpg). The quotient shall be rounded to 4 decimal places. These average fuel economies shall be determined using the methodology of paragraph (c) of this section.

c = 0.0022 for the 1986 model year.

c = A constant value, fixed by model year. For 1987, the Administrator will specify the c value after the necessary laboratory humidity and test fuel data become available. For 1988 and later model years, the Administrator will specify the c value after the necessary laboratory humidity and test fuel data become available.

$IW = (9.2917 \times 10^{-3} \times SF_{3\,IWC} \times FE_{3\,IWC}) - (3.5123 \times 10^{-3} \times SF_{4\,ETW} \times FE_{4\,IWC})$

Note: Any calculated value of IW less than zero shall be set equal to zero.

$SF_{3\,IWC}$ = The 3000 lb. inertia weight class sales divided by total sales. The quotient shall be rounded to 4 decimal places.

$SF_{4\,ETW}$ = The 4000 lb. equivalent test weight category sales divided by total sales. The quotient shall be rounded to 4 decimal places.

$FE_{4\,IWC}$ = The sales-weighted average combined fuel economy of all 3000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

$FE_{4\,IWC}$ = The sales-weighted average combined fuel economy of all 4000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

(f) The Administrator shall calculate and apply additional average fuel economy adjustments if, after notice and opportunity for comment, the Administrator determines that, as a result of test procedure changes not previously considered, such correction is necessary to yield fuel economy test results that are comparable to those obtained under the 1975 test procedures. In making such determinations, the Administrator must find that:

(1) A directional change in measured fuel economy of an average vehicle can be predicted from a revision to the test procedures;

(2) The magnitude of the change in measured fuel economy for any vehicle or fleet of vehicles caused by a revision to the test procedures is quantifiable from theoretical calculations or best available test data;

(3) The impact of a change on average fuel economy is not due to eliminating the ability of manufacturers to take advantage of flexibility within the existing test procedures to gain measured improvements in fuel economy which are not the result of actual improvements in the fuel economy of production vehicles;

(4) The impact of a change on average fuel economy is not solely due to a greater ability of manufacturers to reflect in average fuel economy those design changes expected to have comparable effects on in-use fuel economy;

(5) The test procedure change is required by EPA or is a change initiated by EPA in its laboratory and is not a change implemented solely by a manufacturer in its own laboratory.

(g)(1) Alcohol dual fuel automobiles and natural gas dual fuel automobiles must provide equal or greater energy efficiency while operating on alcohol or natural gas as while operating on gasoline or diesel fuel to obtain the CAFE credit determined in paragraphs (c)(2)(v) and (vi) of this section. The following equation must hold true:

$E_{alt}/E_{pet} > \text{or} = 1$

Where:

$E_{alt} = [FE_{alt}/(NHV_{alt} \times D_{alt})] \times 10^6$ = energy efficiency while operating on alternative fuel rounded to the nearest 0.01 miles/million BTU.

$E_{pet} = [FE_{pet}/(NHV_{pet} \times D_{pet})] \times 10^6$ = energy efficiency while operating on gasoline or diesel (petroleum) fuel rounded to the nearest 0.01 miles/million BTU.

FE_{alt} is the fuel economy [miles/gallon for liquid fuels or miles/100 standard cubic feet for gaseous fuels] while operated on the alternative fuel as determined in § 600.113;

FE_{pet} is the fuel economy [miles/gallon] while operated on petroleum fuel (gasoline or diesel) as determined in § 600.113;

NHV_{alt} is the net (lower) heating value [BTU/lb] of the alternative fuel;

NHV_{pet} is the net (lower) heating value [BTU/lb] of the petroleum fuel;

D_{alt} is the density [lb/gallon for liquid fuels or lb/100 standard cubic feet for gaseous fuels] of the alternative fuel;

D_{pet} is the density [lb/gallon] of the petroleum fuel.

(i) The equation must hold true for both the city and highway fuel economy values for each test of each test vehicle.

(ii)(A) The net heating value for alcohol fuels shall be determined per ASTM D 240 (Incorporated by reference as specified in § 600.011–93).

(B) The density for alcohol fuels shall be determined per ASTM D 1298 (Incorporated by reference as specified in § 600.011–93).

(iii) The net heating value and density of gasoline are to be determined by the manufacturer in accordance with § 600.113(c).

(2) For model years 1993 through 1995, alcohol dual fuel automobiles designed to operate on mixtures of alcohol and gasoline must, in addition to paragraph (g)(1) of this section, to obtain the CAFE credit determined in paragraphs (c)(2)(v) and (vi) of this section, provide equal or superior energy efficiency while operating on a mixture of 50% alcohol, 50% gasoline by volume, as while operating on gasoline fuel. The following equation must hold true:

E_{50}/E_g>or=1

Where:

$E_{50}=[FE_{50}/(NHV_{50}\times D_{50})]\times 10^6$=energy efficiency while operating on 50% alcohol, 50% gasoline rounded to the nearest 0.01 miles/million BTU.

$E_g=[FE_g/(NHV_g\times D_g)]\times 10^6$=energy efficiency while operating on gasoline fuel rounded to the nearest 0.01 miles/million BTU.

FE_{50} is the fuel economy [miles/gallon] while operated on 50% alcohol, 50% gasoline as determined in § 600.113;

FE_g is the fuel economy [miles/gallon] while operated on gasoline as determined in § 600.113;

NHV_{50} is the net (lower) heating value [BTU/lb] of the 50/50 blend;

NHV_g is the net (lower) heating value [BTU/lb] of gasoline;

D_{50} is the density [lb/gallon] of the 50/50 blend;

D_g is the density [lb/gallon] of the gasoline.

(i) To demonstrate that the equation holds true for each engine family, the manufacturer will:

(A) Test one test vehicle in each engine family on both the city and highway cycles; or

(B) In lieu of testing, provide a written statement attesting that equal or superior energy efficiency is attained while using a 50% alcohol, 50% gasoline mixture compared to using 100% gasoline.

(ii)(A) The net heating value for the 50% alcohol, 50% gasoline mixture shall be determined by ASTM D 240 (Incorporated by reference as specified in § 600.011–93).

(B) The density for the 50% alcohol, 50% gasoline mixture shall be determined per ASTM D 1298 (Incorporated by reference as specified in § 600.011–93).

(iii) The net heating value and density of gasoline are to be determined by the manufacturer in accordance with § 600.113(c).

(3) Alcohol dual fuel passenger automobiles and natural gas dual fuel passenger automobiles manufactured during model years 1993 through 2004 must meet the minimum driving range requirements established by the Secretary of Transportation (49 CFR part 538) to obtain the CAFE credit determined in paragraphs (c)(2)(v) and (vi) of this section.

(h) For each of the model years 1993 through 2004, and for each category of automobile identified in paragraph (a) of this section, the maximum increase in average fuel economy determined in paragraph (c) of this section attributable to alcohol dual fuel automobiles and natural gas dual fuel automobiles shall be 1.2 miles per gallon or as provided for in paragraph (i) of this section.

(1) The Administrator shall calculate the increase in average fuel economy to determine if the maximum increase provided in paragraph (h) of this section has been reached. The Administrator shall calculate the average fuel economy for each category of automobiles specified in paragraph (a) of this section by subtracting the average fuel economy values calculated in accordance with this section by assuming all alcohol dual fuel and natural gas dual fuel automobiles are operated exclusively on gasoline (or diesel) fuel from the average fuel economy values determined in paragraphs (b)(2)(vi), (b)(2)(vii), and (c) of this section. The difference is limited to the maximum increase specified in paragraph (h) of this section.

(i) In the event that the Secretary of Transportation lowers the corporate average fuel economy standard applicable to passenger automobiles below 27.5 miles per gallon for any model year during 1993 through 2004, the maximum increase of 1.2 mpg per year specified in paragraph (h) of this section shall be reduced by the amount the standard was lowered, but not reduced below 0.7 mpg per year.

24. Section 600.513–91 is amended by revising paragraphs (a) introductory text, (a)(2), and (b)(2)(xii) to read as follows:

§ 600.513–91 Gas guzzler tax.

(a) This section applies only to passenger automobiles sold after December 27, 1991, regardless of the model year of those vehicles. For alcohol dual fuel and natural gas dual fuel automobiles, the fuel economy while such automobiles are operated on gasoline will be used for Gas Guzzler Tax assessments.

(1) * * *

(2) For 1991 and later model year passenger automobiles, the combined general label model type fuel economy value used for Gas Guzzler Tax assessments shall be calculated in accordance with the following equation, rounded to the nearest 0.1 mpg:

$$FE_{adj}=FE\ [((0.55\times a_g\times c)+(0.45\times c)+(0.5556\times a_g)+0.4487)/((0.55\times a_g)+0.45)]+IW_g$$

Where:

FE_{adj}=Fuel economy value to be used for determination of gas guzzler tax assessment rounded to the nearest 0.1 mpg.

FE=Combined model type fuel economy calculated in accordance with § 600.207, rounded to the nearest 0.0001 mpg.

a_g=Model type highway fuel economy, calculated in accordance with § 600.207, rounded to the nearest 0.0001 mpg divided by the model type city fuel economy calculated in accordance with § 600.207, rounded to the nearest 0.0001 mpg. The quotient shall be rounded to 4 decimal places.

c=gas guzzler adjustment factor=1.300×10^{-3} for the 1986 and later model years.

$$IW_g=(9.2917\times 10^{-3}\times SF_{3IWCG}\ FE_{3IWCG})-(3.5123\times 10^{-3}\times SF_{4ETWG}\times FE_{4IWCG})$$

Note: Any calculated value of IW less than zero shall be set equal to zero.

SF_{3IWCG}=The 3000 lb. inertia weight class sales in the model type divided by the total model type sales; the quotient shall be rounded to 4 decimal places.

SF_{4ETWG}=The 4000 lb. equivalent test weight sales in the model type divided by the total model type sales, the quotient shall be rounded to 4 decimal places.

FE_{3IWCG}=The 3000 lb. inertial weight class base level combined fuel economy used to calculate the model type fuel economy rounded to the nearest 0.0001 mpg.

FE_{4IWCG}=The 4000 lb. inertial weight class base level combined fuel economy used to calculate the model type fuel economy f/rounded to the nearest 0.001 mpg.

(b) * * *

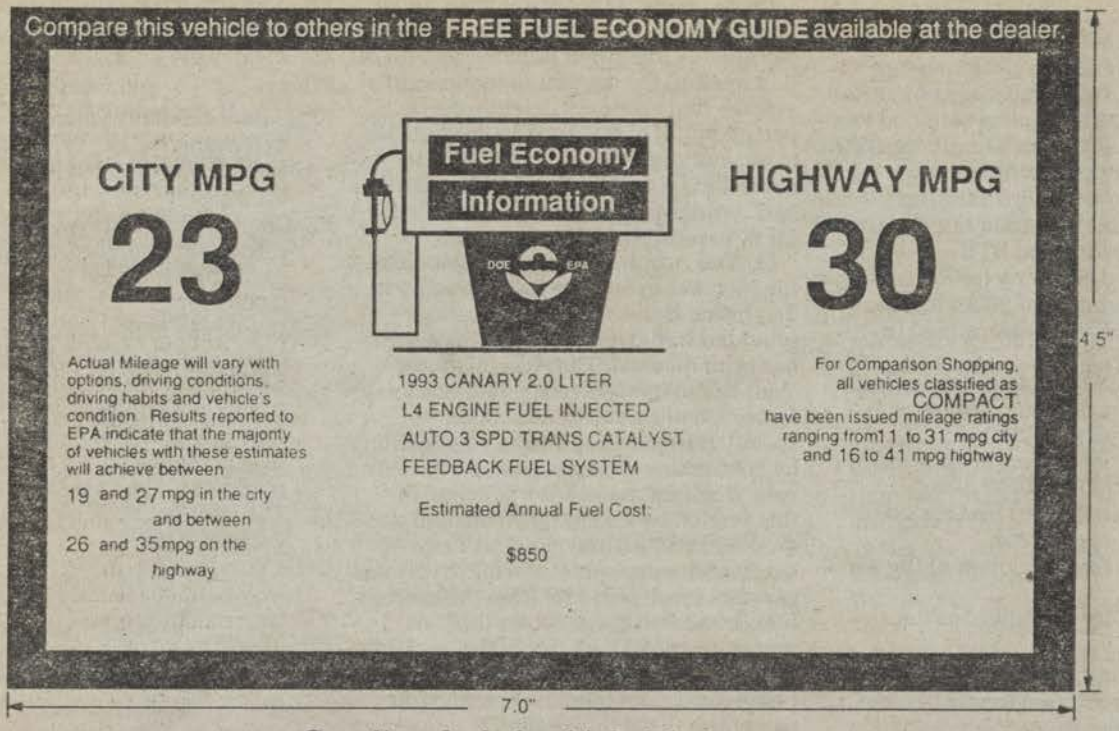
(2) * * *

(xii) Less than 12.5 mpg, the Gas Guzzler Tax statement shall show a tax of $7,700.

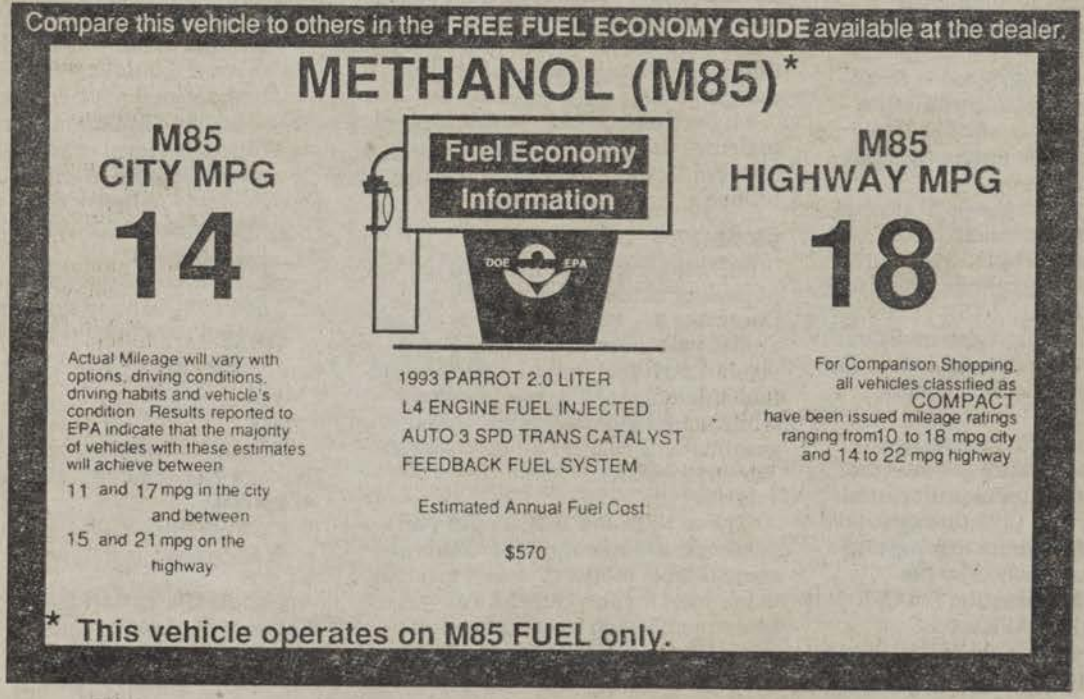
25. Appendix VIII to part 600 is revised to read as follows:

Appendix VIII to Part 600—Fuel Economy Label Formats

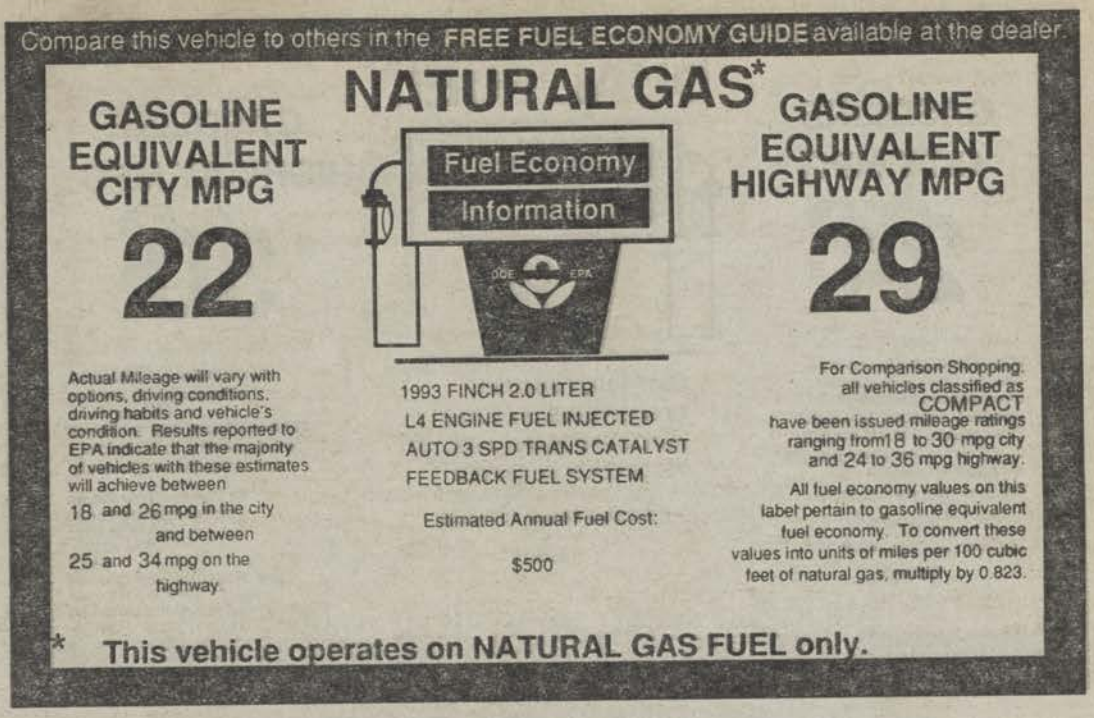
BILLING CODE 6560–50–P



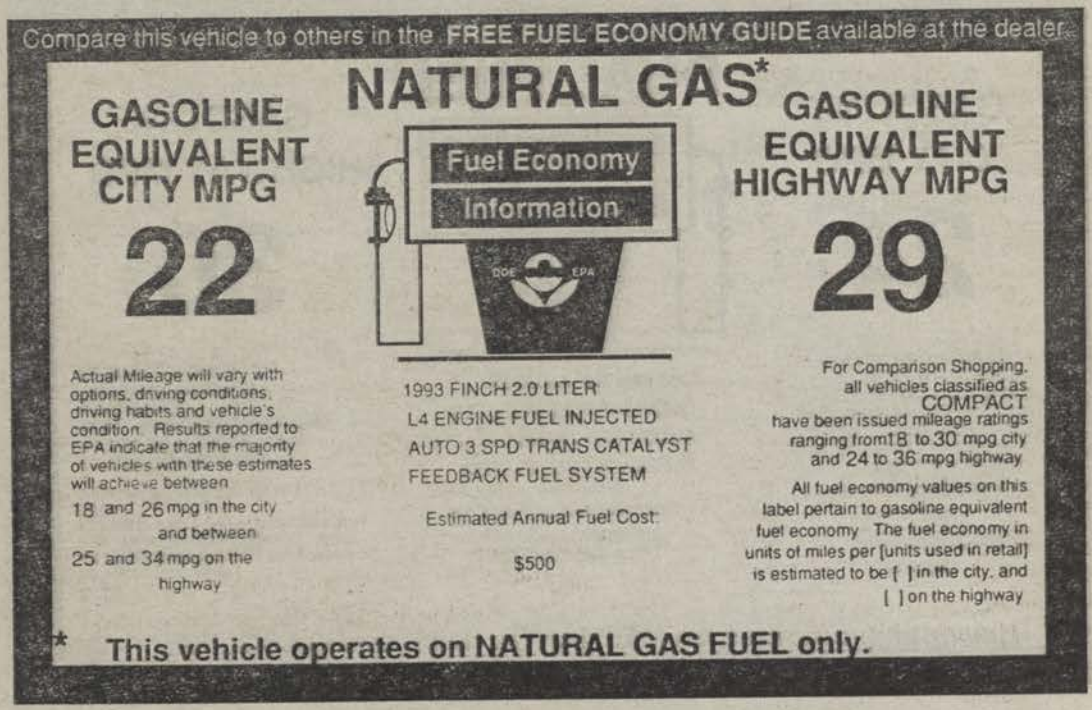
a. Gasoline-fueled vehicle label



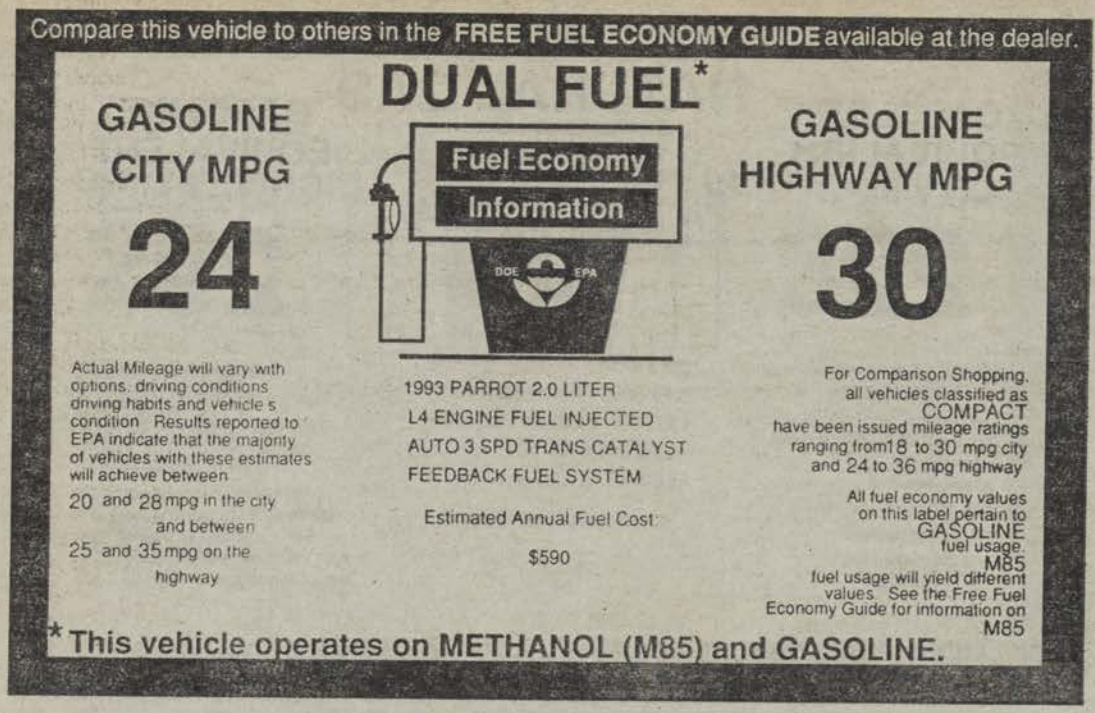
b. Dedicated M85-fueled vehicle label



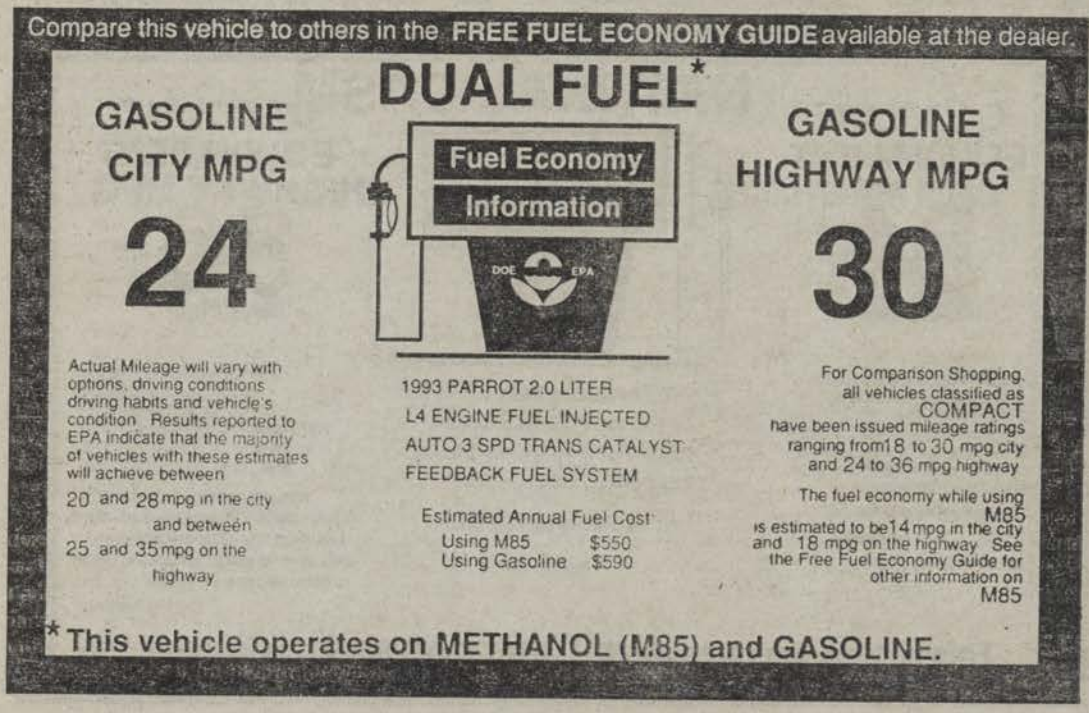
c. Dedicated natural gas-fueled vehicle label



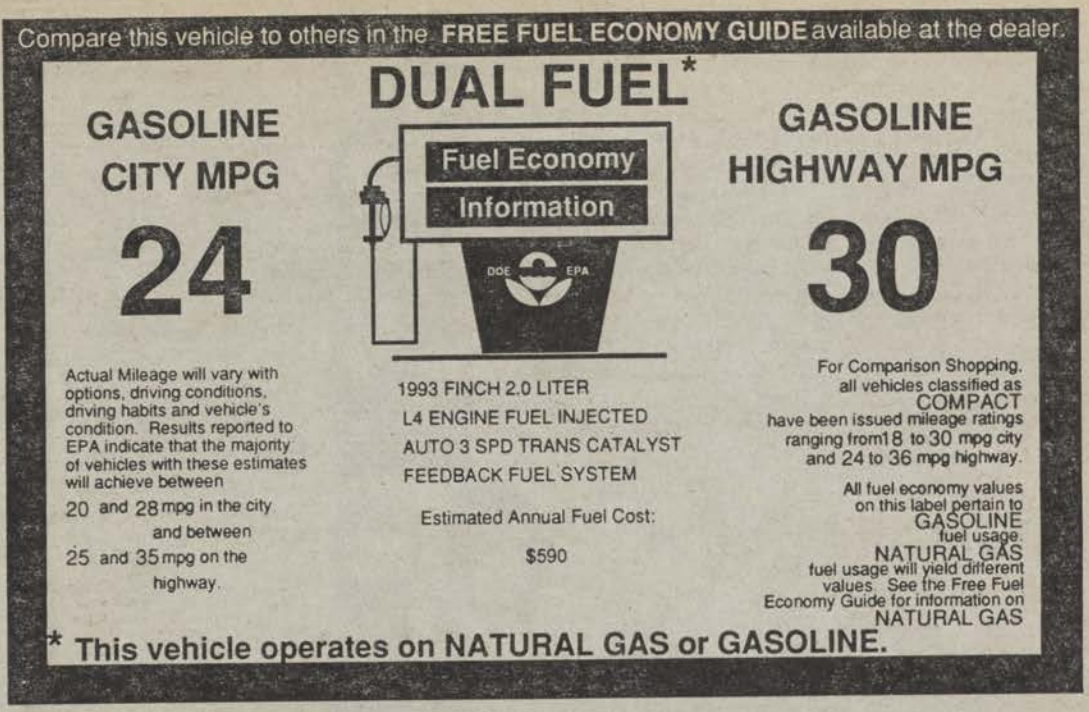
d. Dedicated natural gas-fueled vehicle label - optional



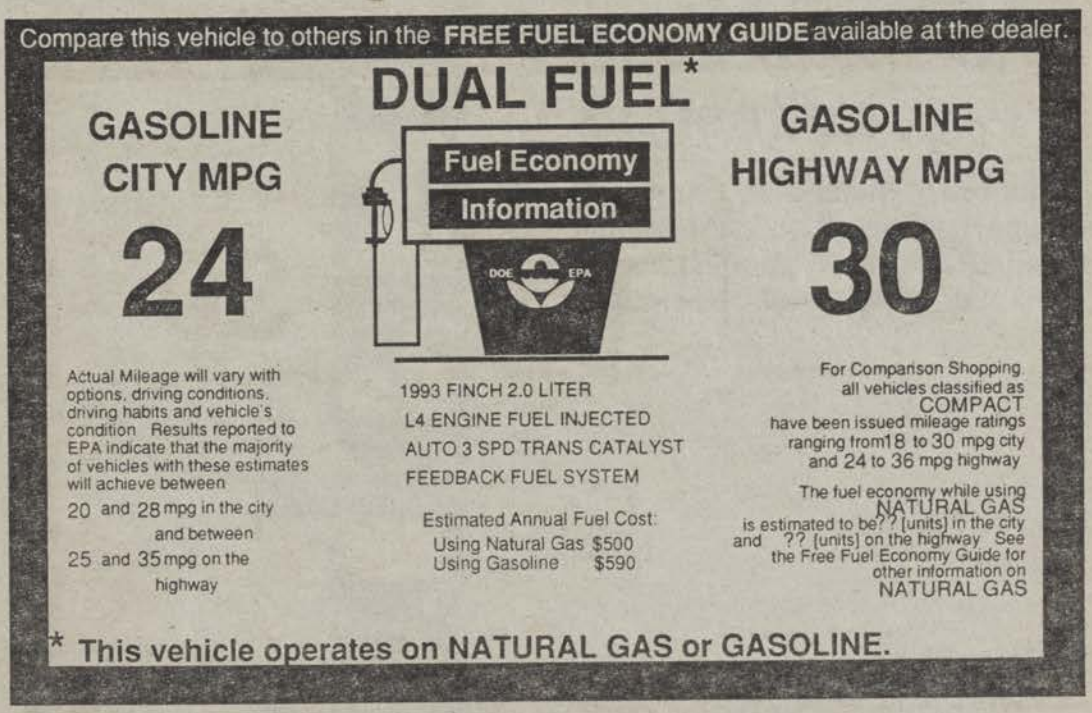
e. Methanol dual fuel vehicle label



f. Methanol dual fuel vehicle label - optional



g. Natural gas dual fuel vehicle label



h. Natural gas dual fuel vehicle label - optional

[FR Doc. 94–18312 Filed 8–2–94; 8:45 am]
BILLING CODE 6560–50–C

federal register

Wednesday
August 3, 1994

Part III

Department of Education

Reporting of Cash Expenditures and Submission of Payment Requests for Federal Funds That Will Expire on September 30, 1994; Notice

DEPARTMENT OF EDUCATION

Reporting of Cash Expenditures and Submission of Payment Requests for Federal Funds That Will Expire on September 30, 1994

AGENCY: Department of Education.

ACTION: Notice of deadline.

SUMMARY: The Secretary advises the public that the unexpended portions of contracts, grants, and cooperative agreements awarded by the Department of Education (ED) from appropriation funds that expired on September 30, 1989, will be deobligated and the unexpended funds canceled on September 30, 1994. This action is required by an amendment to title 31 of the United States Code that establishes procedures for closing appropriation accounts. This notice, to remind ED's recipients of the deadline and thereby minimize any financial difficulties they may encounter, is in addition to the notices sent directly to ED's recipients on a quarterly basis that emphasize the same information.

DATES: The deadlines for submitting reports of cumulative cash expenditures or requesting payments appear elsewhere in this notice.

FOR FURTHER INFORMATION CONTACT: For information regarding the contracts, grants, and cooperative agreements affected by the September 30, 1994 deadline, contact Shirley Jackson, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3083, FOB–6, Washington, DC 20202–4331. Telephone: (202) 401–1114. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Department of Education makes most payments for contracts, grants, and cooperative agreements through either the Department of Education Payment Management System (EDPMS) or the National Finance Center (NFC). ED requires recipients paid through EDPMS to report total cumulative cash expenditures in the period (monthly or quarterly, depending on the recipient's reporting status) in which the expenditures were incurred. This report is prepared by ED and sent to each recipient for completion and return to ED by a specified date.

Administrative payments by ED are made through the NFC. These include, but are not limited to, contracts, purchase orders, and travel payments. Requests for payment from the NFC must be submitted to the address indicated on the document that the recipient received from ED when it requested the services. For contract payments, the recipient must send a bill for services to the appropriate ED contracting officer. The requests must be made in a timely manner to receive payment.

Until enactment of Pub. L. 101–510 on November 5, 1990, appropriated funds generally remained available indefinitely to make payments of valid obligations. Pub. L. 101–510 established limits on the time during which payments could be made from appropriations available for only a limited period of time. Appropriations for most of ED's programs and administrative activities are included in this category.

As a result of Pub. L. 101–510, appropriations available for a limited period may be used for payments of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the Treasury Department and is unavailable for restoration for any purpose. The funds to be canceled on September 30, 1994, are those for appropriations that ceased to be available for Federal obligation on September 30, 1989. These include nearly all funds obligated by ED for contracts, grants, or cooperative agreements on or before that date.

If recipients do not report, on a timely basis, that all funds obligated by ED from an appropriation expiring on September 30, 1989, have been fully expended, the unexpended balance of the award will be deobligated and the funds canceled and returned to the Treasury Department.

To prevent the cancellation on September 30, 1994, of the unliquidated portions of obligations for which payments will be required, recipients of ED's contracts, grants, and cooperative agreements that were made from appropriations expiring on September 30, 1989, must submit cash expenditure reports or bills according to the following schedule:

EDPMS: For those contracts, grants, or cooperative agreements for which total cumulative cash expenditures have not been reported and recorded in EDPMS or its predecessor payment systems, the recipient must report the total cumulative cash expenditures to ED by August 31, 1994. ED sends a quarterly letter providing information to recipients regarding the process for recording cash expenditures.

NFC: For those recipients who receive payments through NFC, requests for payments must be received by ED for contracts, and by NFC for other types of payments, by August 15, 1994, so that payments can be made by September 30, 1994.

After September 30, 1994, any requests for payment associated with the obligations will be handled on a case-by-case basis; that is, any portion of obligations referred to in this notice for contracts, grants or cooperative agreements that was canceled may, within limits established in Pub. L. 101–510, be paid from funds currently available for award for the same purpose. If current funds are not available, the payment of canceled balances would depend on a new budget request and favorable congressional action upon that request.

Authority: Pub. L. 101–510.

Dated: July 27, 1994.

Richard W. Riley,

Secretary of Education.

[FR Doc. 94–18819 Filed 8–2–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
August 3, 1994

Part IV

The President

Proclamation 6709—50th Anniversary of the Warsaw Uprising

Federal Register
Vol. 59, No. 148
Wednesday, August 3, 1994

Presidential Documents

Title 3—

The President

Proclamation 6709 of August 1, 1994

50th Anniversary of the Warsaw Uprising

By the President of the United States of America

A Proclamation

On this day of remembrance, we pause together to recall the brutal path that has led to the triumph of freedom in Poland. We remember the brave men and women of the Polish Home Army who stood on the front lines of combat as their city was destroyed. We recall the children of Warsaw who braved sniper fire to deliver messages for the Resistance. We hold in our hearts the spirits of those who lost their lives. We grieve with their survivors. We speak to one another of those bloody days so that we may never know that sorrow again.

A half-century ago, the residents of Warsaw, Poland, could scarcely imagine that their city would restore its playgrounds for children or its gardens for flowers. For 63 monstrous days of Nazi aggression, it seemed impossible that a Polish arsenal stockpiled with courage, faith, and solidarity could prevail against the tanks, machine guns, and bombers of Hitler's tyranny. But since that time, when it seemed unfathomable to the valiant citizens of Warsaw that they would ever recapture freedom's light, the people of Poland have emerged victorious. Fifty years later, the weapons of Nazi terror are lost to history. Solidarity inspires us still.

Warsaw has earned the flowers that grace it today. Though battered by the chaos of the second World War and stifled by the strictures of the Cold War, the people of Poland have continued to rebuild their beloved capital. Brick by brick, building by building, the beauty and majesty that defined Warsaw for centuries are being reborn to a generation of Poles who have just recently discovered the blessings of freedom.

The courage and hope that carried their parents and grandparents through the darkest days of the 1944 uprising remain. The legacy of that battle stirs today's residents to embrace the challenges of liberty. And on the strength of that tradition, democracy now thrives in Warsaw.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 1, 1994, as the 50th Anniversary of the Warsaw Uprising. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of August, 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 nineteenth.

William J. Clinton

[FR Doc. 94–19093
Filed 8–2–94; 8:56 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 59, No. 148

Wednesday, August 3, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. 202–275–0920

FAX-ON-DEMAND

The daily Federal Register Table of Contents and the list of documents on public inspection are available on the National Archives fax-on-demand system. You must call from a fax machine. There is no charge for the service except for long distance telephone charges. 301–713–6905

FEDERAL REGISTER PAGES AND DATES, AUGUST

38875–39246.....1
39247–39412.....2
39413–39672.....3

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6709.....39671

7 CFR

406.....39413
906.....39414
922.....39415
923.....39415
924.....39415
981.....39417
997.....39419
998.....39421
1250.....38875
1413.....39247
1421.....39247
1427.....39251

Proposed Rules:
55.....38944
56.....38944
59.....38944
70.....38944
947.....39479
1205.....39480

8 CFR

103.....39394
204.....38876
211.....39394
216.....39394
235.....39394
242.....39394

9 CFR

318.....39254
319.....39254
381.....39254

10 CFR

73.....38889

Proposed Rules:
61.....39485

11 CFR

107.....39635
114.....39635
9008.....39635

12 CFR

701.....39423
707.....39425

Proposed Rules:
707.....39486

13 CFR

121.....39426

14 CFR

25.....39427
39.....39429, 39431, 39432
71.....39434, 39435
95.....39436
1260.....38900

Proposed Rules:
1.....39192
71.....39394
189.....39395

16 CFR

Proposed Rules:
1500.....39306

17 CFR

Proposed Rules:
270.....39311

18 CFR

284.....38901

19 CFR

210.....39020
211.....39020

21 CFR

210.....39255
211.....39255
520.....39438
556.....38901
558.....38901

Proposed Rules:
102.....39635
330.....39499

22 CFR

518.....39440

23 CFR

1212 256

24 CFR

200.....39394
905.....39402
960.....39402

Proposed Rules:
905.....39072
950.....39072

26 CFR

301.....38902

29 CFR

1952.....39257

30 CFR

216.....38904
218.....38904

Proposed Rules:
Ch. II.....38946

33 CFR

100.....39456
160.....39458

165 .....39456, 39460, 39461

36 CFR

Proposed Rules:
14.....39228

38 CFR

Proposed Rules:
17.....38947

39 CFR

11.....39257

40 CFR

50.....38906
80.....39258
81.....39394
86.....39638
180 .....39462, 39464, 39466, 39467
186.....39467
600.....39638
721 .....39292, 39293, 39295
799.....38917

Proposed Rules:
51.....39501
52.....39311
63.....38949
180 .....39502, 39504, 39505
185.....39505
186.....39505
721.....39311

42 CFR

400.....39296

Proposed Rules:
52.....39312

43 CFR

Public Land Orders:
725 (Revoked in part by PLO 7072).....39468
829 (Revoked in part by PLO 7071).....39468
7067.....39635
7071.....39468
7072.....39468
7073.....39469

Proposed Rules:
39.....39216
432.....39316
2820.....39228

44 CFR

64.....38921

46 CFR

4.....39469
68.....39635

47 CFR

18.....39471
22.....39299
64.....38922, 39300
69.....38922
73.....38930, 39301

Proposed Rules:
73 .....38949, 38950, 39317

48 CFR

225.....38931
252.....38931
519.....38931
552.....38931
1845.....38937
1852.....38937

Proposed Rules:
9.....39317
10.....39317
13.....39317
15.....39317
23.....39317
25.....39317
31.....39317
45.....39317
52.....39317
251.....39318
252.....39318
552.....38950
Ch. 9.....38951

49 CFR

571.....38938, 39472
575.....38938

Proposed Rules:
192.....39319, 39506
195.....39506
393.....39518
571.....39522
Ch. X.....39524

50 CFR

36.....39408
204.....39301
301.....39476, 39477
605.....38942
641.....39301
672.....39477, 39478
675.....39305
678.....38943

Proposed Rules:
Ch. I.....39316
17.....39524, 39532
29.....39228
222.....39540

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last List July 27, 1994

INFORMATION ABOUT THE SUPERINTENDENT OF DOCUMENTS' SUBSCRIPTION SERVICE

Know when to expect your renewal notice and keep a good thing coming. To keep our subscription prices down, the Government Printing Office mails each subscriber *only one renewal notice*. You can learn when you will get your renewal notice by checking the number that follows month/year code on the top line of your label *as shown in this example*:

A renewal notice will be sent approximately 90 days before this date.

```
AFR  SMITH212J              DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

A renewal notice will be sent approximately 90 days before this date.

```
AFRDO  SMITH212J            DEC94 R 1
JOHN SMITH
212 MAIN STREET
FORESTVILLE MD 20747
```

To be sure that your service continues without interruption, please return your renewal notice promptly. If your subscription service is discontinued, simply send your mailing label from any issue to the Superintendent of Documents, Washington, DC 20402–9372 with the proper remittance. Your service will be reinstated.

To change your address: Please SEND YOUR MAILING LABEL, along with your new address to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9373.

To inquire about your subscription service: Please SEND YOUR MAILING LABEL, along with your correspondence, to the Superintendent of Documents, Attn: Chief, Mail List Branch, Mail Stop: SSOM, Washington, DC 20402–9375.

To order a new subscription: Please use the order form provided below.

Order Processing Code: * 5468

Superintendent of Documents Subscription Order Form

Charge your order. It's easy! MasterCard VISA

To fax your orders (202) 512–2233

☐ **YES,** please enter my subscriptions as follows:

____ subscriptions to **Federal Register** (FR); *including* the daily Federal Register, monthly Index and LSA List of Code of Federal Regulations Sections Affected, at $490 ($612.50 foreign) each per year.

____ subscriptions to **Federal Register,** *daily only* (FRDO), at $444 ($555 foreign) each per year.

The total cost of my order is $_____. (Includes regular shipping and handling.) Price subject to change.

Company or personal name (Please type or print)

Additional address/attention line

Street address

City, State, Zip code

Daytime phone including area code

Purchase order number (optional)

For privacy, check box below:
☐ Do not make my name available to other mailers

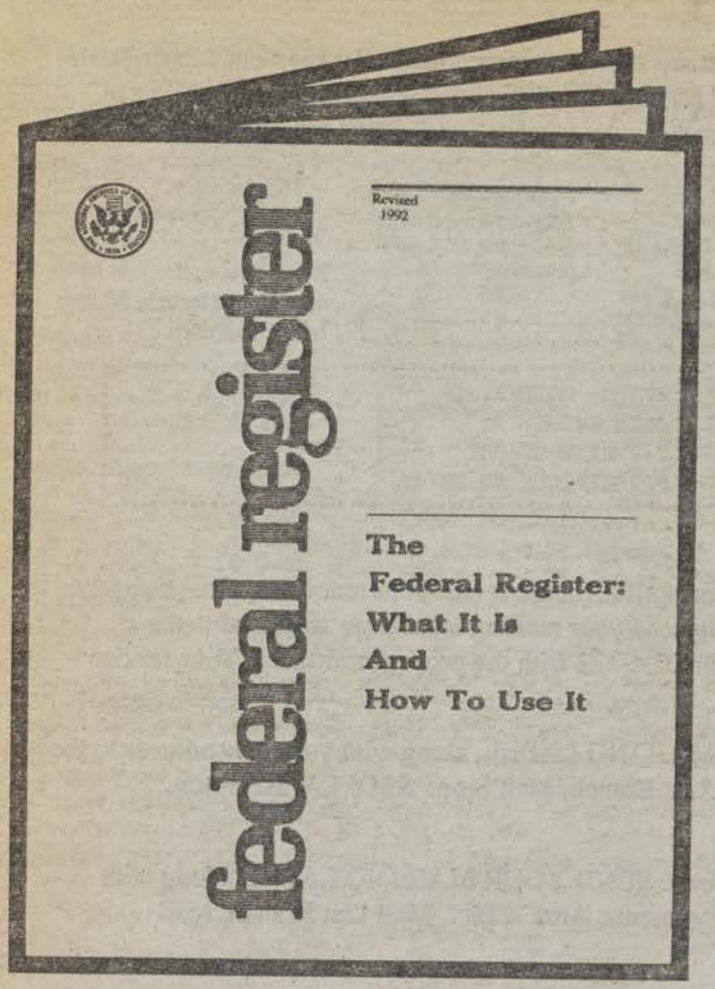
Check method of payment:
☐ Check payable to Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐ – ☐
☐ VISA ☐ MasterCard ☐☐☐☐ (expiration date)

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Thank you for your order!

Authorizing signature 1/94

Mail To: Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250–7954



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
*6173

☐ **YES**, please send me the following:

Charge your order. It's Easy!
MasterCard VISA
To fax your orders (202)-512-2250

_____ copies of The Federal Register-What It Is and How To Use It, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐
☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Printed on recycled paper