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WHO: The Office of the Federal Register.

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

WASHINGTON, DC

(TWO BRIEFINGS)

WHEN: November 21 at 9:00 am and 1:30 pm
WHERE: Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

NEW YORK, NY

WHEN: December 13, 9:30 am–12:30 pm
WHERE: National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY
RESERVATIONS: 1–800–347–1997

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Electronic Bulletin Board
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV94-948-2FIR]

Irish Potatoes Grown in Colorado; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that will generate funds to pay those expenses. Authorization of this budget enables the Colorado Potato Administrative Committee, San Luis Valley Office (Area II) (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: September 1, 1994, through August 31, 1995.

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 Dennis L. West, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, Oregon 97204, telephone 503-326-2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Colorado potatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes during the 1994-95 fiscal period, which began September 1, 1994, and ends August 31, 1995. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 285 producers of Colorado Area II potatoes under the marketing order and approximately 118 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Colorado Area II potato producers and handlers may be classified as small entities.

The budget of expenses for the 1994-95 fiscal period was prepared by the Colorado Potato Administrative Committee, San Luis Valley Office (Area II), the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Colorado Area II potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

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

In Colorado, both a State and a Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. All expenses in this category are financed under the State order. The jointly operated programs consume about equal administrative time and the two orders continue to split administrative costs equally.

The Committee met and unanimously recommended a 1994-95 budget of $65,924, which is $6,818 more than the previous year. Budget items for 1994-95 which have increased compared to those budgeted for 1993-94 (in parentheses) are: Executive Director's salary, $25,082 ($20,888), assistant's salary, $10,320 ($9,828), part-time salary, $3,822 ($3,640), telephone, $1,750 ($1,500), major purchase, $2,250 ($1,250), utilities, $2,900 ($700), and $750 for insurance, $2,425 for property

tax, $1,000 for maintenance, and $500 for miscellaneous, for which no funding was recommended last year. Items which have decreased compared to those budgeted for 1993–94 (in parentheses) are: Compliance $1,500 ($2,000), and $3,000 for employee benefits, $1,500 for rent, and $275 for repairs, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of $0.0036 per hundredweight, the same as last season. This rate, when applied to anticipated potato shipments of 14,250,000 hundredweight, will yield $51,300 in assessment income. This, along with $14,624 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds of $88,203 in the Committee's authorized reserve at the beginning of the 1993–94 fiscal period were within the maximum permitted by the order of two fiscal periods' expenses.

An interim final rule was published in the **Federal Register** on September 23, 1994 (59 FR 48785). That interim final rule added § 948.212 to authorize expenses and establish an assessment rate for the Committee. That rule provided that interested persons could file comments through October 24, 1994. No comments were received.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule 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 1994–95 fiscal period began on September 1, 1994. The marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was unanimously 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 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

Accordingly, the interim final rule amending 7 CFR part 948, which was published at 59 FR 48785 on September 23, 1994, is adopted as a final rule without change.

Dated: November 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–28089 Filed 11–14–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 979

[Docket No. FV94–979–1IFR]

Melons Grown in South Texas; Expenses

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures under Marketing Order No. 979 for the 1994–95 fiscal period. Authorization of this budget enables the South Texas Melon Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning October 1, 1994, through September 30, 1995. Comments received by December 15, 1994, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: 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 Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department 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. This action authorizes expenditures for the 1994–95 fiscal period, which began October 1, 1994, and ends September 30, 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 the date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of

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

There are approximately 40 producers of South Texas melons under this marketing order, and approximately 19 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1994–95 fiscal period was prepared by the South Texas Melon Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget.

The Committee, in a mail vote completed October 24, 1994, unanimously recommended a 1994–95 budget of $207,500 for personnel, office, and compliance expenses, the same as last year.

The assessment rate and funding for the research and promotion projects will be recommended at the Committee's organizational meeting later this fall. These funds, along with the administrative expenses for personnel, office, and compliance, will comprise the total budget. Funds in the reserve as of July 31, 1994, estimated at $326,518, were within the maximum permitted by the order of two fiscal periods' expenses. These funds will be adequate to cover any expenses incurred by the Committee prior to the approval of the assessment rate.

Since no assessment rate is being recommended at this time, no additional costs will be imposed on handlers. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The fiscal period began on October 1, 1994, and the Committee needs to have approval to pay its expenses which are incurred on a continuous basis; (2) this action is similar to that taken at the beginning of the 1993–94 fiscal period; 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 in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 is revised to read as follows:

Authority: 7 U.S.C. 691–674.

2. A new § 979.217 is added to read as follows:

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

§ 979.217 Expenses.

Expenses of $207,500 by the South Texas Melon Committee are authorized for the fiscal period ending September 30, 1995. Unexpended funds may be carried over as a reserve.

Dated: November 8, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–28088 Filed 11–14–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–30–AD; Amendment 39–9057; AD 94–22–08]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspections of the strut skin in the area of the precooler exhaust vent for cracks on the inboard and outboard struts, and repair, if necessary. This amendment requires inspections of an expanded area for certain airplanes, and inspections of airplanes on which a skin doubler has been installed as terminating action for the existing AD. This amendment is prompted by reports of strut skin fatigue cracks and heat damage found aft of the edges of skin doublers installed on certain Model 747 series airplanes. The actions specified by this AD are intended to prevent separation of an engine due to overheating and subsequent cracking of the engine strut.

DATES: Effective December 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 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: Tim Backman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2776; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39)

by superseding AD 87–04–21, amendment 39–5543 (52 FR 3793, February 6, 1987), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on June 14, 1994 (59 FR 30543). The action proposed to require, for certain airplanes, repetitive visual inspections to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from nacelle station (NAC STA) 230 to NAC STA 300 in the inboard and outboard struts of certain airplanes, or in the area of the precooler exhaust vent from the edge of the skin doubler to NAC STA 300 in the inboard and outboard struts of certain other airplanes, and repair, if necessary.

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, Boeing, requests that the aft limit of the inspection zones specified in paragraphs (b) and (c) of the proposal be changed from NAC STA 300 to NAC STA 286. The commenter indicates that expansion of the inspection zone to NAC STA 300 was based on one report of a blown duct. This incident was reported immediately. The commenter contends that the damage that occurred was the result of a system malfunction and, therefore, inspection should not be required beyond NAC STA 286. In light of this information, the FAA concurs with the commenter's request. Paragraphs (b) and (c) and NOTES 1 and 2 of the final rule have been revised to indicate that the aft limit of the expanded inspection zone only extends to NAC STA 286.

This commenter also requests that the FAA revise paragraph (c) of the proposed rule to exclude airplanes on which a large doubler was installed during production (airplane line numbers 587 and subsequent). The applicability of proposed paragraph (c) includes airplanes modified during production or in accordance with Boeing Service Bulletin 747–54–2091. The commenter notes that for 12 years there have been no in-service problems aft of the existing doubler to beyond NAC STA 286. The commenter also states that the Maintenance Review Board (MRB) report recommends a visual inspection of the strut side skin during regularly scheduled "C" checks. The commenter adds that, for airplanes retrofitted in service, data show that heat damage occurred in the area between NAC STA 270 and NAC STA 286 prior to installation of the doubler. The commenter states that one small crack has been reported aft of the large replacement doubler installed in accordance with Boeing Service Bulletin 747–54–2091; however, that crack is believed to have occurred as a result of previous damage.

The FAA does not concur with the commenter's request. This AD was prompted by reports of skin cracks and heat damage found aft of the edges of doublers installed in accordance with Boeing Service Bulletin 747–54–2091. The doubler configuration installed during production of these airplanes is identical to that installed in accordance with Boeing Service Bulletin 747–54–2091. The FAA finds that, regardless of whether the doubler was installed during production or in accordance with the Boeing service bulletin, cracking can occur in the subject area and the inspection of the expanded area specified in paragraph (c) of this AD must be accomplished on both groups of airplanes to ensure that the unsafe condition is positively addressed.

The commenter requests that the compliance times specified in paragraph (c) of the proposed rule be revised from 120 days to 15 months. Paragraph (c) of the proposal would require a visual inspection to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from the edge of the doubler to NAC STA 300 on the inboard and outboard struts of certain airplanes and on the outboard struts of other airplanes. The commenter states that service data indicate that, for airplanes on which either no doubler or a temporary doubler has been installed, no stringer cracking has occurred in the presence of large skin cracks forward of NAC STA 270. The commenter explains that, for the outboard strut, skin stresses aft of NAC STA 270 are lower due to increased thickness of the skin and, if cracking should occur, the crack growth rate would be low. The commenter also notes that the MRB report recommends detailed visual inspections of the side skin at every "C" check interval, which is approximately every 15 months. In addition, the commenter states that service history amplifies the fact that zero time reinforcement of the side skin during the production stage forestalls primary damage to the adjacent skin.

The FAA does not concur with the commenter's request. The FAA has received reports of softening of the skin aft of the large doubler end at NAC STA 270 on both the inboard and the thicker-skinned outboard struts due to overheating. The FAA also has received reports of cracking in multiple fastener holes in that area of the struts. In light of these reports, the FAA has determined that 120 days represents the maximum interval of time allowable wherein the inspection can reasonably be accomplished and an acceptable level of safety can be maintained.

For the same reasons given as justification for its previous request, the commenter also requests that the compliance time specified in paragraph (b)(2) of the proposal be extended from 12 to 15 months. The commenter adds that the struts on these airplanes were designed to handle 3g side loads, which is well above normal operating loads.

The FAA does not concur with the commenter's request. AD 87–04–21 required inspections of the strut in accordance with Revision 1 of Boeing Service Bulletin 747–54–2091; however, that revision of the service bulletin does not specify procedures for inspections of the internal structure of the strut. The FAA has received numerous reports of cracked stiffeners due to heat damage; such cracks could only be seen during an inspection of the internal structure, as required by paragraph (b) of this AD. In light of these reports, and in consideration of the degree of urgency associated with addressing the subject unsafe condition, the FAA has determined that the compliance time, as proposed, represents the maximum interval in which the inspections can be accomplished in a timely manner within the fleet and still maintain an adequate level of safety.

The commenter requests that paragraphs (b) and (c) of the proposal be revised to remove the requirement to perform inspections of the internal structure of the strut from NAC STA 270 to NAC STA 286. The commenter references its justification for the previous two comments. The commenter adds that service history indicates that cracking will develop in the strut skin before it will develop in the strut stiffener or frame structure in this area. In addition, since service history demonstrates that stringer cracks are preceded by skin cracks, the commenter believes it is reasonable to expect that any sizable stringer damage will be found if a skin crack is observed during a visual inspection. The commenter adds that operators have the option to inspect internally at routine intervals.

The FAA does not concur. The FAA has received reports of skin cracking that has been associated with cracked stiffeners (internal structure) in the area forward of NAC STA 270. Although the skin is thicker aft of NAC STA 270 than forward of it, skin cracks have been found aft of NAC STA 270 that could

likely be associated with stiffener cracks. Some skin cracking also initiated in multiple fastener holes in the area from NAC STA 270 to NAC STA 286 due to heat damage. In light of these reports, the FAA has determined that, in order to provide an acceptable level of safety, detailed visual inspections of the internal structure of the strut from NAC STA 270 to NAC STA 286 are necessary to detect possible damage in that area.

The same commenter requests that paragraph (e) of the proposed rule be revised to allow continued flight with a skin crack, heat discoloration, wrinkle, or previously stop-drilled crack in the precooler exhaust, provided that the length of the crack does not exceed one inch. The commenter indicates that service history demonstrates that some degree of damage is acceptable with continued monitoring inspections at an interval of 15 months. The commenter states that suspected heat damage of the side skin can be verified by conductivity checks. In addition, standard industry practice allows wrinkles to be two times the thickness (depending on design) and stop-drilling holes to slow crack growth as a time-limited repair. The commenter considers the time-limited repair acceptable for a maximum period of 18 months.

The FAA does not concur. The FAA has issued a number of AD's that address cracking and corrosion of lugs, links, fuse pins, and webs on the struts of Model 747 series airplanes [for example, AD 93–17–07, amendment 39–8678 (58 FR 45827, August 31, 1993); AD 92–24–51, amendment 39–8439 (57 FR 60118, December 18, 1992); and AD 86–07–06, amendment 39–5270 (51 FR 10821, March 31, 1986)]. In some cases where the structure surrounding the previously stop-drilled crack, the skin crack, heat discoloration, or wrinkle is shown by service history to be free from cracks and corrosion, continued flight without repair of these items may have been acceptable. However, in light of the numerous problems associated with the strut on these airplanes, continued flight without repair of previously stop-drilled cracks, skin cracks, heat discoloration, or wrinkles cannot be allowed in the case of this AD without compromising the continued operational safety of the affected airplanes. However, the FAA would consider a request for an adjustment of the compliance time, in accordance with the provision of paragraph (g) of this AD, provided that appropriate justification accompanies the request.

The manufacturer has advised that it is currently developing a modification program for the engine strut that will positively address the unsafe condition addressed by this AD. Once this modification program is developed, approved, and available, the FAA may consider additional rulemaking.

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

There are approximately 250 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD.

The inspections that were required previously by AD 87–04–21, and retained in this AD, take approximately 4 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of that inspection requirement on U.S. operators is estimated to be $880, or $220 per airplane.

The new inspections that will be added by this new AD action will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the new inspection requirements of this AD on U.S. operators is estimated to be $880, or $220 per airplane.

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 removing amendment 39–5543 (52 FR 3793, February 6, 1987), and by adding a new airworthiness directive (AD), amendment 39–9057, to read as follows:

94–22–08 Boeing: Amendment 39–9057. Docket 94–NM–30–AD. Supersedes AD 87–04–21, Amendment 39–5543.

Applicability: Model 747 series airplanes equipped with General Electric CF6 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of an engine due to overheating and subsequent cracking of the engine strut, accomplish the following:

(a) For airplanes listed in Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984: Prior to the accumulation of 10,000 total hours time-in-service, or within the next 7½ months after March 13, 1987 (the effective date of AD 87–04–21, Amendment 39–5543), whichever occurs later, perform a visual inspection to detect cracks of the strut skin in the area of the precooler exhaust vent on the inboard and outboard struts of Group 1 airplanes, and on the outboard struts of Group 2 airplanes, as defined in the service bulletin, in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984; Revision 2, dated March 24, 1988; Revision 3, dated July 27, 1989; Revision 4, dated December 14, 1989; or Revision 5, dated April 26, 1990. After the effective date of this AD, the inspection shall be accomplished in accordance with paragraph (b) of this AD.

(1) If no crack is found, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 15 months, until the inspection required by paragraph (b) or (c) of this AD, as applicable, is accomplished.

(2) If any crack is found, prior to further flight, repair in accordance with FAA-approved data, and repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 15 months, until the inspection required by paragraph (b) or (c) of this AD, as applicable, is accomplished.

(b) For airplanes on which a frame stiffener and a skin doubler have not been installed during production or in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984; Revision 2, dated March 24, 1988; Revision 3, dated July 27, 1989; Revision 4, dated December 14, 1989; or Revision 5, dated April 26, 1990: Perform a visual inspection to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from nacelle station (NAC STA) 230 to NAC STA 286 on the inboard and outboard struts of Group 1 airplanes and on the outboard struts of Group 2 airplanes, in accordance with the inspection procedures described in Figure 3 of Boeing Service Bulletin 747–54–2091, Revision 5, dated April 26, 1990; at the time specified in paragraph (b)(1) or (b)(2) of this AD, whichever occurs later. Accomplishment of this inspection terminates the repetitive inspections required by paragraph (a) of this AD.

(1) Prior to the accumulation of 10,000 total hours time-in-service on the airplane strut, or within 120 days after the effective date of this AD, whichever occurs later. Or

(2) Within 12 months after the immediately preceding inspection accomplished in accordance with paragraph (a) of this AD.

Note 1: Paragraph (b) of this AD specifies an inspection zone that is expanded beyond the zone described in Revision 5 of the service bulletin to cover a 30-inch width from NAC STA 230 to NAC STA 286.

(c) For airplanes on which a frame stiffener and a skin doubler have been installed during production or in accordance with Boeing Service Bulletin 747–54–2091, Revision 1, dated October 22, 1984; Revision 2, dated March 24, 1988; Revision 3, dated July 27, 1989; Revision 4, dated December 14, 1989; or Revision 5, dated April 26, 1990: Within 120 days after the effective date of this AD, perform a visual inspection to detect cracks, heat discoloration, or wrinkles of the strut skin and internal structure in the area of the precooler exhaust vent from the edge of the doubler to NAC STA 286 on the inboard and outboard struts of Group 1 airplanes and on the outboard struts of Group 2 airplanes, in accordance with the inspection procedures described in Figure 3 of Boeing Service Bulletin 747–54–2091, Revision 5, dated April 26, 1990.

Note 2: Paragraph (c) of this AD specifies an inspection zone that is expanded beyond the zone described in Revision 5 of the service bulletin to cover a 30-inch width from the doubler edge to NAC STA 286.

(d) If no crack, heat discoloration, or wrinkle is found during the inspection required by paragraph (b) or (c) of this AD, repeat that inspection thereafter at intervals not to exceed 15 months.

(e) If any crack, heat discoloration, wrinkle, or previously stop-drilled crack is found during the inspection required by paragraph (b) or (c) of this AD, prior to further flight, repair using either the small skin doubler and frame stiffener or the large skin doubler and frame stiffener specified in Boeing Service Bulletin 747–54–2901, Revision 5, dated April 26, 1990, in accordance with that service bulletin; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Thereafter, repeat that inspection at intervals not to exceed 15 months.

(f) Installation of a frame stiffener and a skin doubler referred to in Boeing Service Bulletin 747–54–2091 as "terminating action" does not constitute terminating action for the inspection requirements of this AD.

(g) 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) 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.

(i) The actions shall be done in accordance with the following Boeing service bulletins, which contain the specified effective pages:

Service Bulletin referenced and date	Page number	Revision level shown on page	Date shown on page
747–54–2091, Revision 1, October 22, 1984	1, 3–12	1	October 22, 1984.
	2, 13–20	Original	January 27, 1984.
747–54–2091, Revision 2, March 24, 1988	1, 4–37	2	March 31, 1988.
	2	Original	January 27, 1984.
	3	1	October 22, 1984.
747–54–2091, Revision 3, July 27, 1989	1–24, 26–36.	3	July 27, 1989.
	25	2	March 31, 1988.
747–54–2091, Revision 4, December 14, 1989	1–5	4	December 14, 1989.
	6–24, 26–36.	3	July 27, 1989.
	25	2	March 31, 1988.
747–54–2091, Revision 5, April 26, 1990	1–38	5	April 26, 1990.

The incorporation by reference of these documents 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.

(j) This amendment becomes effective on December 15, 1994.

Issued in Renton, Washington, on October 25, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–26874 Filed 11–14–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–206–AD; Amendment 39–9060; AD 94–22–10]

Airworthiness Directives; de Havilland Model DHC–8–100 and DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain de Havilland Model DHC–8–100 and DHC–8–300 series airplanes, that requires a revision to the Airplane Flight Manual (AFM) to advise flight crew members that certain cockpit indications may reveal faulty anti-collision strobe light units, and to provide procedures for subsequent flight crew action. This amendment also requires a modification that eliminates the need for the AFM revision. This amendment is prompted by reports that the function of the proximity switch electronics unit (PSEU) may be adversely affected during operation of the white anti-collision lights. The actions specified by this AD are intended to ensure correct operation of the PSEU and its associated systems.

DATES: Effective December 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Aerospace Engineer, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

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 de Havilland Model DHC–8–100 and DHC–8–300 series airplanes was published in the **Federal Register** on APRIL 4, 1994 (59 FR 15873). That action proposed to require a revision to the Airplane Flight Manual (AFM) to advise flight crew members that certain cockpit indications may reveal faulty anti-collision strobe light units, and to provide procedures for subsequent flight crew action. It also proposed to require a modification that eliminates the need for the AFM revision.

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

One commenter supports the proposal.

Another commenter requests that the proposal be revised to permit accomplishment of the modification in accordance with later revisions of the referenced service bulletin that may be approved in the future by Transport Canada. The commenter states that this would allow operators to use the most current information when performing the required modification. The FAA does not concur. To include the phrase, "or later approved revisions," in an AD when referring to a service bulletin, violates Office of the Federal Register (OFR) regulations regarding approval of materials that are "incorporated by reference" in rules. In general terms, these OFR regulations require that either the service document contents be published as part of the actual AD language, or that the service document be submitted for approval by the OFR as "referenced" material, in which case it may be only referred to in the text of an AD. The AD may only refer to the service document that was actually submitted and approved by the OFR for "incorporation by reference." In order for operators to use later revisions of the referenced document (issued after the publication of the AD), either the AD must be revised to reference the specific later revisions, or operators must request the approval of them as an alternative method of compliance with this AD [under the provisions of paragraph (d)].

This same commenter suggests that the proposal be revised to make only the replacement of the power supplies mandatory, not the replacement of the strobe light assemblies. The commenter points out that Modification 8/1273, as would be required by proposed paragraph (c), requires that both the currently-installed strobe light assembly and power supply be replaced with a Whelen strobe light assembly and power supply. The commenter states that (1) the addressed unsafe condition is known to be caused by a capacitor failure in the Grimes power supply only, not in the Grimes strobe light assemblies; and (2) the Whelen power supplies work in conjunction with the Grimes strobe light assemblies. Therefore, the commenter reasons that only the replacement of the Grimes power supply is necessary to correct the unsafe condition, and that the replacement of the light assemblies should be at the operator's discretion. The FAA does not concur. Both the Grimes and Whelen anti-collision light systems (including both the power supply and strobe light assembly) are approved under individual Technical Standard Orders (TSO), for which de Havilland has compliance data approved only for the installation of each as an individual system; currently, there is no compliance data approved for installation of a "mixed system" (i.e., Whelen power supplies with Grimes strobe light assemblies, or vice versa). In light of this, the FAA has determined that the complete Grimes system (including both the power supply and the strobe light assembly) must be replaced with a complete Whelen system.

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.

The FAA estimates that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts for installation of Modification 8/1273 at all three locations will cost approximately $1,397 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $168,498, or $2,277 per airplane.

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:

94–22–10 de Havilland, Inc.: Amendment 39–9060. Docket 93–NM–206–AD.

Applicability: Model DHC–8–102, –103, –302, and –311 series airplanes, serial numbers 003 through 214 inclusive; on which Modification 8/1273 (as described in de Havilland Service Bulletin S/B No. 8–33–19, Revision 'A', dated May 31, 1993) has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure correct operation of the proximity switch electronics unit (PSEU) and its associated systems, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

"The electrical power supplies for the white anti-collision lights may fail and cause the following abnormalities:

—flashing of the landing gear green locked down advisory lights during cruise;
—fluctuation of cabin pressurization rate needle during cruise; and
—retraction and extension of roll and ground spoilers during ground operation.

The failure may also result in loss of nose landing gear steering subsequent to landing, and loss of wheel brakes below 35–40 knots.

If any of these abnormal indications are observed, select A/COL light switch-RED. Leave the switch in this position for the remainder of the flight."

(b) If the flight crew reports the occurrence of any of the cockpit indications stated in paragraph (a) of this AD: Prior to the next flight, perform the maintenance procedures to confirm and isolate the faulty power supply unit, in accordance with paragraph III., Part B, Accomplishment Instructions of de Havilland Alert Service Bulletin S.B. A8–33–33, dated May 31, 1993.

(1) If any power supply unit is determined to be faulty, prior to further flight, replace the unit with a new or serviceable "Grimes" unit or a new "Whelen" system in accordance with the alert service bulletin.

(2) If the specific unit causing the faults cannot be determined, prior to further flight, replace all three units with new or serviceable "Grimes" units or a new "Whelen" system in accordance with the alert service bulletin. Installation of a new "Whelen" system at all three locations constitutes terminating action for the requirements of this AD, and after installation, the AFM revision required by paragraph (a) of this AD may be removed.

(c) Within 6 months after the effective date of this AD, install Modification 8/1273 (which entails replacement of the existing anti-collision strobe lights, brackets, and power supplies with the " 'Whelen' Anti-Collision Strobe Light System") at all three locations, in accordance with de Havilland Service Bulletin S/B No. 8–33–19, Revision "A", dated May 31, 1993. Following installation, the AFM revision required by paragraph (a) of this AD may be removed.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(e) Special flight permits may be issued in accordance with 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 actions shall be done in accordance with de Havilland Alert Service Bulletin S.B. A8–33–33, dated May 31, 1993; and de Havilland Service Bulletin S/B No. 8–33–19, Revision "A", dated May 31, 1993; as applicable. 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 de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 15, 1994.

Issued in Renton, Washington, on October 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27051 Filed 11–14–94; 8:45 am]

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14 CFR Part 39

[Docket No. 94–NM–51–AD; Amendment 39–9063; AD 94–23–01]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes, that currently requires inspection of the wing rear spar lower cap aft tang fastener and the wing trailing edge access door sill to detect fatigue cracking, and repair, if necessary. This amendment requires installation of a crack preventative modification of the wing rear spar lower cap, and follow-on inspections. This amendment is prompted by reports of additional cracking found in the current inspection area. The actions specified by this AD are intended to prevent propagation of cracks in the subject area, which could compromise the structural integrity of the airplane.

DATES: Effective December 15, 1994.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of December 15, 1994.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, listed in the regulations was approved previously by the Director of the Federal Register as of October 23, 1991 (56 FR 50650, October 8, 1991).

ADDRESSES: The service information referenced in this AD may be obtained

from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative support, Dept. L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 91–21–05, amendment 39–8052 (56 FR 50650, October 8, 1991), which is applicable to certain McDonnell Douglas Model DC–10 series airplanes was published in the **Federal Register** on July 22, 1994 (59 FR 37443). That action proposed to require installation of a crack preventative modification of the wing rear spar lower cap, and follow-on inspections.

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

Both commenters support the proposed rule.

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 282 Model DC–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 175 airplanes of U.S. registry will be affected by this AD.

The currently required inspections take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the current inspection requirements of this AD on U.S. operators is estimated to be $84,000, or $480 per airplane, per inspection.

The modification will take approximately 12 work hours to accomplish, at an average labor rate of $60 per work hour. Required parts will cost between $3,730 and $6,730 per airplane, depending upon the airplane model. Based on these figures, the total cost impact of the modification requirement of this AD on U.S. operators is estimated to be between $4,450 and $7,450 per airplane.

The post-modification inspections will take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the total cost impact of the post-modification inspection requirements of this AD on U.S. operators is estimated to be $126,000, or $720 per airplane, per inspection.

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:

94–23–01 McDonnell Douglas: Amendment 39–9063. Docket 94–NM–51–AD. Supersedes AD 91–21–05, Amendment 39–8052.

Applicability: Model DC–10–10, –10F, and –15 series airplanes, fuselage numbers through 379 inclusive; and Model DC–10–30, –30F, and –40 series airplanes, fuselage numbers through 275 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure the structural integrity of these airplanes, accomplish the following:

(a) Except as provided in paragraphs (b) through (e) of this AD, prior to the accumulation of 7,000 total landings or within 30 days after October 23, 1991 (the effective date of AD 91–21–05, amendment 39–8051), whichever occurs later, conduct the initial inspections specified in either paragraph (a)(1), (a)(2), or (a)(3) of this AD.

(1) Conduct an eddy current inspection of the wing rear spar lower cap aft tang, and a dye penetrant inspection of the wing trailing edge access door sill located between X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option III of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. In addition, within 1,500 landings after performing the eddy current and dye penetrant inspections, conduct the inspections specified in either paragraph (a)(2) or (a)(3) of this AD, and repeat them thereafter as indicated. Or

(2) Conduct an ultrasonic inspection of the area around the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option II of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 1,900 landings until the modification required by paragraph (g) of this AD is accomplished. Or

(3) Conduct an eddy current inspection of the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option I of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 3,300 landings until the modification required by paragraph (g) of this AD is accomplished.

(b) The requirements of paragraph (c) of this AD apply to airplanes on which both of the following actions have been accomplished:

(1) A dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=422.000 has been accomplished prior to October 23, 1991, in accordance with McDonnell Douglas Service Bulletin 57–61, Revision 2, dated August 15, 1990; and

(2) An eddy current inspection of the wing rear spar lower cap aft tang has been accomplished prior to October 23, 1991, per DC–10 Supplemental Inspection Document, Principal Structural Element (PSE) 57.10.007 and 57.10.008, in accordance with McDonnell Douglas Service Bulletin 57–61, Revision 2, dated August 15, 1990.

(c) For airplanes specified in paragraph (b) of this AD: Conduct the initial inspections specified in either paragraph (c)(1) or (c)(2) of this AD within 1,500 landings after accomplishing the inspections (dye penetrant and eddy current) specified in paragraph (b) of this AD, or within 30 days after October 23, 1991, whichever occurs later.

(1) Conduct an ultrasonic inspection of the area around the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option II of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 1,900 landings until the modification required by paragraph (g) of this AD is accomplished. Or

(2) Conduct an eddy current inspection of the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option I of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 3,300 landings until the modification required by paragraph (g) of this AD is accomplished.

(d) The requirements of paragraph (e) of this AD apply to airplanes on which both of the following actions have been accomplished:

(1) A dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=422.000 has been accomplished prior to October 23, 1991, in accordance with McDonnell Douglas Service Bulletin 57–61, Revision 2, dated August 15, 1990; and

(2) An eddy current inspection of the wing rear spar lower cap aft tang fastener holes located between stations X_{ors}=417.000 and X_{ors}=422.000 has been accomplished prior to October 23, 1991, per DPS 4.735–9, in accordance with McDonnell Douglas Service Bulletin 57–61, Revision 2, dated August 15, 1990.

(e) For airplanes specified in paragraph (d) of this AD: Conduct the initial inspections specified in either paragraph (e)(1) or (e)(2) of this AD within 3,300 landings after the accomplishment of the inspection specified in paragraph (d)(1) of this AD, or within 30 days after October 23, 1991, whichever occurs later.

(1) Conduct an ultrasonic inspection of the area around the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option II of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 1,900 landings until the modification required by paragraph (g) of this AD is accomplished. Or

(2) Conduct an eddy current inspection of the six wing rear spar lower cap aft tang fastener holes, and a dye penetrant inspection of the wing trailing edge access door sill located between stations X_{ors}=417.000 and X_{ors}=424.000, in accordance with Option I of McDonnell Douglas Alert Service Bulletin A57–123, dated July 25, 1991, or Revision 1, dated June 8, 1993. Repeat these inspections thereafter at intervals not to exceed 3,300 landings until the modification required by paragraph (g) of this AD is accomplished.

(f) If any crack(s) is found during any inspection conducted in accordance with paragraphs (a) through (e) of this AD, prior to further flight, repair in a manner approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(g) Prior to the accumulation of 10,000 total landings, or within 5 years after the effective date of this AD, whichever occurs later, accomplish the crack preventative modification in accordance with McDonnell Douglas Service Bulletin 57–123, dated June 8, 1993. Accomplishment of this modification constitutes terminating action for the inspection requirements of paragraphs (a) through (e) of this AD.

(h) Prior to the accumulation of 10,000 total landings after the accomplishment of the crack preventative modification required by paragraph (g) of this AD, conduct an inspection of the wing rear spar lower cap in accordance with McDonnell Douglas Service Bulletin 57–123, dated June 8, 1993. Repeat this inspection thereafter in accordance with the following schedule. Any crack(s) found during any inspection required by this paragraph must be repaired, prior to further flight, in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(1) For Model DC–10–10, –10F, and –15 series airplanes: Repeat the inspection at intervals not to exceed 4,550 landings.

(2) For Model DC–10–30 and –30F series airplanes: Repeat the inspection at intervals not to exceed 2,810 landings.

(3) For Model DC–10–40 series airplanes: Repeat the inspection at intervals not to exceed 3,400 landings.

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

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

(j) 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.

(k) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin A57–123, Revision 1, dated June 8, 1993; McDonnell Douglas Service Bulletin 57–123, dated June 8, 1993; and McDonnell Douglas Service Bulletin 57–61, Revision 2, dated August 15, 1990. The incorporation by reference of McDonnell Douglas Alert Service Bulletin 57–61, dated July 25, 1991, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51 as of October 23, 1991 (56 FR 50650, October 8, 1991). The incorporation by reference of the remainder of the service documents listed above is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative support, Dept. L51 M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on December 15, 1994.

Issued in Renton, Washington, on November 1, 1994.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27473 Filed 11–14–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 94–NM–62–AD; Amendment 39–9064; AD 94–23–02]

Airworthiness Directives; McDonnell Douglas Model DC–10–30 and –30F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–30 and –30F series airplanes, that requires replacement of cargo door latch spool

fitting attach bolts fabricated from H–11 steel with Inconel bolts. This amendment is prompted by a report of a broken latch spool fitting attach bolt found on a cargo door on a Model DC–9 series freighter airplane. The actions specified by this AD are intended to prevent inadvertent opening of a cargo door while the airplane is in flight, and subsequent loss of pressurization and reduced controllability of the airplane.

DATES: Effective December 15, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. LS1, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–121L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

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 eight specific McDonnell Douglas Model DC–10–30 and –30F series airplanes, was published in the **Federal Register** on July 21, 1994 (59 FR 37183). That action proposed to require replacement of cargo door latch spool fitting attach bolts fabricated from H–11 steel with Inconel bolts.

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

Both commenters support the proposed rule.

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 8 Model DC–10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 6 airplanes of U.S. registry will be affected by this AD, that it will take approximately 86 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $10,682 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $95,052, or $15,842 per airplane.

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**.

Adoption of the Amendment

List of Subjects in 14 CFR Part 39

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

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:

94–23–02 McDonnell Douglas: Amendment 39–9064. Docket 94–NM–62–AD.

Applicability: Model DC–10–30 and –30F series airplanes having fuselage numbers 409, 412, 416, 419, 422, 433, 434, and 435, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent opening of a cargo door while the airplane is in flight, and subsequent loss of pressurization and reduced controllability of the airplane, accomplish the following:

(a) Within 2 years after the effective date of this AD, replace all H–11 cargo door latch spool fitting attach bolts with Inconel bolts, in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A52–212, Revision 4, dated November 3, 1993.

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

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

(c) Special flight permits may be issued in accordance with 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) The replacement shall be done in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A52–212, Revision 4, dated November 3, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. LS1, M.C. 2–98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 15, 1994.

Issued in Renton, Washington, on November 1, 1994.

S. R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–27474 Filed 11–14–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 93

[Docket No. 27834; Amdt. No. 93–71]

High Density Airports; Slot Use and Loss Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Federal Aviation Regulations pertaining to the slot use and loss provisions for air carrier and commuter operator slots (i.e., instrument flight rules (IFR) takeoff and landing reservations) at John F. Kennedy International Airport (JFK), LaGuardia Airport, O'Hare International Airport (O'Hare), and Washington National Airport. This action codifies the agency's historical practice of treating as used any slot held but not actually operated on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January. The amendment will permit carriers and commuters to choose which flights to operate at any of the High Density Rule airports during certain days of the winter holiday season without jeopardizing the status of the slots under the "use or lose" requirement.

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone number (202) 267–3491.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–200, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267–3484. Communications must identify the amendment or docket number.

Background

The High Density Traffic Airport Rule or "High Density Rule," 14 CFR in part 93, subpart K, was promulgated in 1969 to reduce delays at five congested airports: JFK, LaGuardia, O'Hare, Washington National, and Newark International (33 FR 17896; December 3, 1968). The regulation limits the number of IFR operations at each airport, by hour or half hour, during certain hours of the day. It provides for the allocation to carriers of operational authority, or a "slot", for each IFR landing or takeoff during a specific 30- or 60-minute period. The restrictions were lifted at Newark in the early 1970's.

On July 28, 1994, the FAA published a Notice of Proposed Rulemaking proposing to exempt certain holidays from being included in the bimonthly calculations for slot use (59 FR 38508). Traditionally, air carriers and commuters reduce their scheduled operations on the following holidays: Thanksgiving Day, the Friday following Thanksgiving Day, Christmas Day, and New Year's Day. Since December 1986, commuter slot operators have been allowed to discontinue temporarily the use of slots for Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January of the new year. This policy was extended to air carrier operators for the 1993 holiday season.

Discussion of Comments

The comment period closed on September 26, 1994, with six comments filed. Comments were filed by two associations, three air carriers, and the Port Authority of New York and New Jersey (PONYNJ).

The Regional Airline Association (RAA), USAir Shuttle, and the PONYNJ fully support the amendment as proposed. The Airline Transport Association (ATA) supported the proposal, but recommended a modification. ATA requested that the time period for waiving the "use-or-lose" provisions be extended from the proposed date of January 2 to the first Saturday in January. ATA supported its recommendation by stating that certain travel patterns at holidays relate more directly to weekends than they do to specific calendar dates, particularly return travel dates. ATA stated that if January 2 falls on a Thursday, typically travelers will seek to incorporate the adjoining weekend period into their holiday vacation schedules. ATA argued that as a result of the above, travel demand on the Friday and Saturday will continue to "reflect dramatically reduced" levels. ATA contended that without extending the waiver period through the first weekend in January, the problem of forced inefficient operations will continue to exist 5 years out of every 7 years. USAir and American Airlines supported the proposed amendment with the incorporation of ATA's modification.

ATA, USAir, and American Airlines also raised several other issues, such as adoption of a 5-day (Monday–Friday) 80 percent "use-or-lose" rule, and the return of weekend slots to air carriers that had previously returned the weekend slots to the FAA because of the 80% "use-or-lose" requirement. These issues are beyond the scope of this rulemaking and are more appropriately addressed in Docket No. 27664, which includes a comprehensive review of the HDR. We have included a copy of ATA's, USAir's, and American Airline's comments in that Docket for further consideration.

The FAA finds persuasive ATA's argument to extend to the first Saturday in January the period for which the "use-or-lose" requirement is waived. The FAA agrees that the potential for travelers to include the adjoining weekend into holiday travel plans is great, and this potential increases the closer the holiday falls to the weekend. Therefore, the FAA has modified the original proposal to extend the affected time period from December 24 through the first Saturday in January.

The FAA has determined that this amendment will not result in any additional flights or capacity at the four High Density Traffic Airports. This amendment is in the public interest because it will permit air carrier and commuter operators to choose which flights to operate during the winter holiday season with out jeopardizing the status of the slots under the "use or lose" requirement.

Good Cause Justification for Effective Date Less Than 30 Days After Publication

This amendment is being adopted less than 30 days after publication because delay could have a significant economic impact on airlines without increasing the level of safety. In this case, the regulation affects flights on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January. Therefore, the FAA finds that good cause exists under § 553(d)(3) of the Administrative Procedure Act for the regulation to be effective in less than 30 days.

Regulatory Evaluation

The FAA has determined that this rulemaking is not a "significant regulatory action" as defined by Executive Order 12866 (Regulatory Planning and Review). The costs and benefits associated with this

amendment to part 93 of the Federal Aviation Regulations (FAR) are shown below.

Benefits

This amendment will permit air carrier and commuter operators to not operate certain flights at any of the High Density Rule airports during certain days of the winter holiday season but to still count those flights toward their slot usage requirement. The benefits will be primarily cost savings to the airlines.

Costs

This rule will not result in any added costs to the affected air carriers. The FAA specifically requested comments on the issue that fewer landings at the airports affected by this rulemaking could result in reduced airport revenues derived from landing fees. No comments were received concerning this issue.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities. The FAA estimates that no small entity would incur incremental compliance costs. Therefore, the FAA has determined a regulatory flexibility analysis is not necessary.

International Trade Impact Assessment

The amendment will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the amendment will neither impose costs on aircraft operators nor on U.S. or foreign aircraft manufacturers.

Federalism Implications

The amendment set forth 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 regulation will not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

This amendment provides for no changes to the required reporting of information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget has approved the information collection provisions of subpart S through August 31, 1995. OMB Approval Number 2120–0524 has been assigned to subpart S.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not significant under Executive Order 12286. In addition, the FAA certifies that this regulation 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. This regulation is not considered a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation of the regulation, including a final Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR part 93

Air traffic control, Airports, Navigation (air), Reporting and recordkeeping requirements.

The Amendment

Accordingly, pursuant to the authority delegated to me the FAA amends part 93 of the Federal Aviation Regulations (14 CFR part 93) as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 et seq.; 49 U.S.C. 106(g).

2. In § 93.227, paragraph (a) is revised and a new paragraph (l) is added to read as follows:

§ 93.227 Slot use and loss.

(a) Except as provided in paragraphs (b), (c), (d), (g), and (l) of this section, any slot not utilized 80 percent of the time over a 2-month period shall be recalled by the FAA

* * * * *

(l) The FAA will treat as used any slot held by a carrier at a High Density Traffic Airport on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

* * * * *

Issued in Washington, DC on November 9, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–28303 Filed 11–10–94; 2:01 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. (94–88)]

Decision Following a Petition by Domestic Interested Parties Concerning the Location and Method of Country of Origin Marking for Imported Cast Iron Soil Pipes

AGENCY: U.S. Customs Service, Department of Treasury.

ACTION: Final interpretative rule.

SUMMARY: This document gives notice that Customs has made a determination pursuant to a petition filed by domestic interested parties that cast iron soil pipes like the samples submitted to Customs and that are subject to the requirements of section 304(c), Tariff Act of 1930, as amended, are not legibly marked in a conspicuous location to indicate their country of origin by die stamping the letters covered by tar at the edge or lip of the pipe.

EFFECTIVE DATE: The marking requirements set forth in this decision for cast iron soil pipe shall become effective as to merchandise entered or withdrawn from warehouse or consumption December 15, 1994. After that date, cast iron soil pipe like the sample submitted to Customs pursuant to this petition entered for consumption or withdrawn from warehouse for consumption and not marked to indicate their country of origin consistent with this decision and other marking requirements of the Tariff Act and Customs Regulations shall be assessed marking duties.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Office of Regulations and Rulings, U.S. Customs Service, (202) 482–7010.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place

as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product.

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. As provided in section 134.41, Customs Regulations (19 CFR 134.41), the country of origin marking is considered to be conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

Section 207 of the Trade and Tariff Act of 1984, (Pub. L. 98–573), amended 19 U.S.C. 1304 to require, without exception, that all pipe, tube, and pipe fittings of iron or steel be marked to indicate the proper country of origin by means of die stamping, cast-in-mold lettering, etching, or engraving. 19 U.S.C. 1304(c). In 1986, Congress enacted Public Law 99–514 which amended 19 U.S.C. 1304(c) to authorize alternative methods of marking if, because of the nature of an article, it is technically or commercially infeasible to mark by one of the four prescribed methods. The amendment, codified at 19 U.S.C. 1304(c)(2), provided that in such case, "the article may be marked by an equally permanent method of marking such as paint stenciling or in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles."

On December 8, 1993, as part of the North American Free Trade Agreement ("NAFTA") Implementation Act, Congress again amended the country of origin marking provisions on pipe. Public Law No. 103–182. Section 207(a) of the Act revised the requirements for marking the country of origin for pipes of iron, steel, or stainless steel by adding a fifth acceptable statutory method of marking, continuous paint stenciling. In addition, 19 U.S.C. 1304(c)(2) was amended by eliminating the reference in the statute which indicated that paint stenciling was an example of an equally permanent method of marking that could be used if it was technically or commercially infeasible to mark by one of the other statutory methods.

Counsel for the domestic petitioners, U.S. manufacturers of cast iron soil pipe, first raised the question of whether the country of origin marking on imported cast iron soil pipe was legible and/or in a conspicuous location in 1992. Petitioners submitted a sample and photographs of imported pipe manufactured in Venezuela. After reviewing the sample and considering the information submitted, Customs concluded that the country of origin marking on the sample satisfied 19 U.S.C. 1304 because the pipe was marked by one of the mandated statutory methods for marking pipe, die stamping. We stated, in a letter dated March 31, 1993, that the marking on the end of the pipe was in a conspicuous location and was legible. We further advised that if the domestic producers did not agree with Customs position, they could file a domestic interested party petition in accordance with 19 U.S.C. 1516 and 19 CFR Part 175.

The Petition

The instant petition was initiated by letter dated October 6, 1993, and filed with Customs under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516) and Part 175, Customs Regulations (19 CFR Part 175). The petitioners are The American Brass and Iron Foundry and Charlotte Pipe and Foundry Company. The product at issue is cast iron soil pipe. As the name implies, it is pipe made of cast iron, and it is used primarily to convey waste water from sinks, showers, toilets, and other fixtures within buildings to municipal sewers. Both petitioners are U.S. companies which manufacture cast iron soil pipe like the imported product at issue.

Submitted with the petition were other supporting materials including numerous photographs, diagrams, and other technical specifications regarding the pipe. In addition, accompanying the petition, were numerous letters from plumbing supply businesses, plumbing contractors, and general contractors.

In explaining the merchandise, the petition points out that there are generally two different types of cast iron soil pipe: "hub and spigot" pipe and "no hub" (or "hubless pipe"). The hub spigot pipe has a bell-shaped hub in which a straight spigot pipe is inserted. A rubber gasket is inserted between the two pipes to secure the juncture. No hub pipe has two straight ends. A stainless steel coupling and a rubber gasket are placed over the juncture where the two straight pipes ends meet.

The cast iron pipe comes in a variety of standard sizes, with the pipe's inside diameter ranging from 1.5 to 15 inches. The pipe is generally produced in five- and 10-foot lengths. Plumbing subcontractors may cut the pipe to shorter lengths at a job site to make it fit to the needs of a particular building project. Besides the field cutting, the petitioners represent that there is no further processing done to the pipe. The pipe is sold to wholesalers of plumbing supplies who in turn, resell the pipe to plumbing subcontractors for installation in buildings under the auspices of general contractors. Sometimes the general contractor purchases pipe directly from the distributor and performs the installation with its own workforce.

The petitioners contend that Customs should rule that the country of origin marking on the imported cast iron soil pipe is unacceptable because it is not conspicuous or legible. The pipe is marked, as shown by the samples, by die stamping on the end or lip of the pipe. Counsel for the petitioners maintains that this marking is difficult to find because of its location at the end of the pipe and hard to read due to the small surface area of the pipe end and the minimal thickness of the raised lettering. With respect to the size of the marking, the petition states that the marking on the imported pipe ranges from .183 inches on 1.5 inch diameter pipe to a maximum of .73 inches on 15 inch diameter pipe and even on the largest pipes, the letters are less than one-inch high. It is also pointed out that the lettering is in a non-contrasting color and a tar coating will frequently cover the marking.

All the letters accompanying the petition from plumbing supply companies, plumbing subcontractors, and general contractors declare that the way the imported cast iron soil pipe is presently being marked is inadequate. The contractors and suppliers indicate that they usually prefer to buy U.S.-made pipe because of its high quality Furthermore, if there is a flaw in the product, the manufacturer can be located and it will either stand behind the product or be subject to the jurisdiction of the U.S. courts. In addition, a plumbing supply company points out that government construction jobs usually require American made goods. Moreover, frequently, even for non-government buildings, the engineering specifications call for U.S. made pipe. Several suppliers also mention that if a building inspector discovers that unapproved foreign-made pipe has been used at a job site, the pipe must be replaced at substantial cost.

Additionally, it is represented that sellers of foreign pipe can command a higher price if their customers are not aware of the pipe's origin. Since foreign-made pipe cost less, a considerable profit can be made if the origin is not adequately disclosed.

The plumbing contractors and suppliers express the opinion that marking on the end of the imported pipe is not legible because of the small surface area which requires that the letters of the marking be small. The letters are also covered with a thick tar coating which obliterates any space between the letters and pipe surface.

An additional point was made by a plumbing contractor who explained that the pipe is frequently stacked up with the hub face, with the country of origin marking on it, pressed against a wall. Because the pipe generally weighs between 45 and 85 pounds it is difficult to check every piece of pipe for country of origin marking. Often foreign pipe and domestic pipe is mixed together making it even harder to check the country of origin of all pieces of pipe. In addition, since the pipe must be moved away quickly so that other contractors can deliver their materials, there is often little time to check the country of origin marking at the end of the pipes.

Another contractor explained that after the pipes are installed, the marking on the hub face becomes impossible to read because the ends of a hub and spigot pipe are covered by a compression gasket and the ends of the no-hub pipe are obscured by no-hub couplings. Furthermore, because the pipe may be cut in the field, the country of origin marking at the end of the pipe may be eliminated on the installed pipe, and thus it becomes impossible to check the pipe for its country of origin. This is of special concern to the general contractors because they must verify that the subcontractors they hired used the proper materials in accordance with a building's specifications.

To avoid these problems, the contractors and plumbing supply companies request that Customs mandate that the country of origin of the pipe be paint stenciled on the barrel of the pipe.

Because of the way cast iron soil pipes are made, the petitioners contend, under present technology, the only statutory method for marking pipe, listed in 19 U.S.C. 1304(c), which will produce a legible and conspicuous marking is paint stenciling. First, the petitioners state that cast iron pipe is very brittle and any attempt to die stamp a marking into the barrel of the pipe would cause the metal to shatter. Likewise, petitioners also maintain that it is also technically and commercially infeasible to mark by cast-in-mold letters on the pipe barrel due to the centrifugal casting process used in making the pipe. Under this process, iron is injected into a permanent metal mold. After the metal is cooled, a clamp-like device (known as a gripper or puller) is inserted into the hollow center of the pipe and the pressure of the gripper against the inside walls of pipe allows it to be extracted from the mold. If the marking were cast into the mold and transferred onto the pipe barrel, the pipe could not be extracted because the indentation from the lettering would destroy the smooth surface of the pipe and prevent it from being extracted.

Finally, petitioners claim that etching or engraving the pipe would not produce a legible or conspicuous marking consistent with the requirements of 19 U.S.C. 1304. The letters of etched or engraved markings would be thin and would not have the bulk necessary to make them visible on a cast iron pipe. Moreover, the tar coating applied to the finished cast iron pipe would totally obscure any etched or engraved country of origin marking rendering the marking very difficult to read. However, no evidence or samples were submitted to support these claims.

Accordingly, the petitioners urge Customs to require that the country of origin marking on cast iron soil pipe be done through paint stenciling following the standards developed by the American Society for Testing and Materials ("ASTM") or the Cast Iron Soil Pipe Institute.

Discussion of Comments and Issues

After receipt of the petition, in accordance with the procedures described in 19 U.S.C. 1516 and 19 CFR Part 175, a notice was published in the **Federal Register** on March 8, 1994 (59 FR 10764), stating that Customs had received a domestic interested party petition concerning the country of origin marking for imported cast iron soil pipe. The public was invited to comment as to whether the marking by die stamping on the end of imported cast iron soil pipe was sufficiently legible and conspicuous to satisfy the requirements of 19 U.S.C. 1304 or if paint stenciling had to be used to achieve a proper marking under 19 U.S.C. 1304(c). In response to the notice, only one comment was received and it was from the petitioners. In this comment, petitioners point out that as part of the NAFTA Implementation Act, Public Law 103–182, 107 Stat. 2057, 19 U.S.C. 1304(c) was amended by identifying continuous paint stenciling as one of five statutory methods by which iron, steel, or stainless steel pipe could be marked with the country of origin. According to the petitioners, this amendment to the statute supports their position because it is now not necessary to establish that it is technically or commercially infeasible for the article to be marked by die stamping, cast-in-mold lettering, etching, or engraving before paint stenciling can be permitted. They also point out that the amended statute requires a particular kind of paint stenciling, "continuous" paint stenciling. The comment stated that continuous paint stenciling means that the marking information must be repeated over the length of pipe barrel. It is their position that continuous paint stenciling will ensure that the country of origin marking will be conspicuous and that it will not be eliminated when the pipe is cut to length.

Customs Decision on the Petition

After review of the petition, all the accompanying supporting statements and the comment, and upon consideration of the legal and policy factors, Customs has determined that the arguments presented in the petition have merit. We believe that the correct administration of the country of origin marking statute and regulations with cast iron soil pipe requires a reversal of the previous Customs position.

In 19 U.S.C. 1304(c), Congress mandated that pipes, tubes, and fittings made of iron or steel must be marked by one of five statutory methods. However, there is no indication that Congress intended that marking by one of the statutory methods mentioned in 19 U.S.C. 1304(c) would eliminate the requirements under 19 U.S.C. 1304(a) that the marking also be legible and in a conspicuous location as the nature of the article will permit. Consequently, although cast iron soil pipes are marked by one of the methods specified in 19 U.S.C. 1304(c), die stamping, in order to satisfy 19 U.S.C. 1304(a), the marking must also be legible and be in conspicuous location. 19 U.S.C. 1304 requires that Customs not permit the importation of cast iron soil pipes into the United States unless they are legibly marked in a conspicuous location with their country of origin.

As guidance, Customs has previously set forth some factors to consider in determining whether the country of origin marking on an imported article is legible and conspicuous within the meaning of 19 CFR 134.41 and 19 U.S.C. 1304. Section 134.41, Customs Regulations (19 CFR 134.41), requires that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Customs has stated that among these factors are the size of the marking, the location of the marking, whether the marking stands out, and the legibility of the marking.

The size of the marking should be large enough so that the ultimate purchaser can easily see the marking without strain. In other words, a marking which is too small to be read easily is not legible within the meaning of 19 U.S.C. 1304.

Whether the marking stands out is dependent on where it appears in relationship to the other print on the article and whether it is in contrasting letters to the background. If the marking cannot be discerned from the background on which it is set against, it will not be an acceptable marking. The letters in the marking should be clear enough so that the ultimate purchaser is able to read them without strain. No single factor is considered conclusive in determining whether a marking meets the legibility and conspicuousness requirements of 19 CFR 134.41 and 19 U.S.C. 1304. Instead, it is the combination of these factors which will determine whether the marking on an article is acceptable.

In addition, the location of the marking should be in a place on the article where the ultimate purchaser could expect to find the marking or where he/she could easily notice it from a casual inspection of the article. The ultimate purchaser should not have to hunt or carefully search for the marking.

After reviewing the sample pipe and petition with its accompanying letters, we find that the marking on the sample cast iron soil pipe on the end or lip of the pipe by die stamped lettering, does not meet these criteria discussed above for a legible marking in a conspicuous place. Therefore, the sample pipe is not marked with its country of origin in accordance with 19 U.S.C 1304 and implementing regulations at 19 CFR 134.41. We give great weight to the statements from plumbing subcontractors and general contractors that they are not able to ascertain the country of origin of foreign pipe from the present marking on the edge of the pipe. These pipes are generally sold in lengths of 5 to 10 feet so that a marking on the end of the pipe is not easily noticed. The pipes can weigh up to 85 pounds, making it difficult to lift the pipe to find the marking. In addition, the pipes are usually sold and delivered in large stacks. The marking is also frequently not visible because the end of the pipes with the marking is often pressed up against a wall.

The location of the marking on the end of the pipe is also a problem because when the pipes are cut so that they can be installed at a particular job site, the end of the pipe with the country of origin may be cut off. Therefore, the country of origin marking may not be present on the pipe that is prepared for installation. Accordingly, we conclude that the edge or end of the sample cast iron soil pipe is not a conspicuous location for the country origin marking because the marking is not easily noticed from a casual inspection.

Although the country of origin marking on the sample pipe, "Venezuela", can be read, it is by no means a clear marking. We believe that when the marking is covered with tar, it will not be readily noticeable and it will be virtually impossible to read. Therefore, we find that the marking on sample pipe is not legible.

With respect to the method of marking, the petitioners contend that 4 out of the 5 methods of statutory marking are technically infeasible or will not produce a satisfactory marking. It is claimed that only continuous paint stenciling will produce markings on the pipe which are legible and conspicuous. Despite publishing a notice in the **Federal Register**, we have received no comments to dispute the petitioner's claim that out of the 5 statutory methods of marking, only paint stenciling can produce a legible and conspicuous marking. Nevertheless we cannot conclude that the absence of such comments in itself is a sufficient basis for Customs to prescribe this marking to the exclusion of the four other types of marking specifically allowed under the statute.

The petitioners point out that Customs has previously mandated paint stenciling when the statutory methods of marking would produce an illegible marking. For example in T.D. 86–15, (51 FR 4559 (1986)), carbon and low alloy steel tubing was required to be marked by paint stenciling "because the statutory methods of marking would be illegible on the relatively rough surfaces of articles."

However, we believe that the circumstances presented at the time T.D. 86–15 was issued were different from the current situation. At that time, 19 U.S.C. 1304(c) permitted no alternative methods for marking pipes, whereas the statute as amended by Public Law 99–514 in 1986 now allows alternative methods for marking of pipe when it is commercially or technically infeasible to mark by the prescribed statutory methods if the alternative methods are equally as permanent. Therefore, Customs will permit the use of any statutory prescribed method of marking so long as the marking as applied to a given article is sufficiently legible, permanent and in a conspicuous place. However, if the other statutory methods of marking will not result in the pipes being legibly marked in a conspicuous location so that the ultimate purchaser will be informed about their country of origin, the marking of cast iron soil pipe must be done by the fifth statutory method of marking, continuous paint stenciling.

Conclusion and Delayed Effective Date

The marking on the sample cast iron soil pipes by die stamping at the end of the pipe is not in a conspicuous place and is not legible, and therefore is not acceptable. In order to ensure that ultimate purchasers of these articles are informed about the articles' country of origin, the marking must be legible and be in a conspicuous location.

An article will be considered cast iron soil pipe, like the sample pipe, and will be covered by this determination if the pipe is made of cast iron and is generally used for drain, waste, or vent purposes. The pipe may be either "hub & Spigot" or "no hub" with or without a bituminous coating.

19 U.S.C. 1516(b) and the implementing regulation at 19 CFR 175.22(a), provide that merchandise entered for consumption or withdrawn from warehouse for consumption thirty days after the date of publication of such notice to the petitioner is published in the weekly Customs Bulletin shall be appraised, classified, or assessed as to the rate of duty in accordance with the published decision. Therefore, the effective date of this decision will be delayed for 30 days from the date that this determination is published in the Customs Bulletin. After that date, cast iron soil pipe, like the sample submitted to Customs in connection with this petition, entered for consumption or withdrawn from warehouse for consumption and not marked to indicate the country of origin consistent with this decision and other marking requirements of the Tariff Act and Customs Regulations shall be considered not legally marked and will not be permitted to be imported in the United States. Marking duties will be assessed on any cast iron soil pipes, that are not properly marked prior to the liquidation of the entries.

Authority

This notice is published in accordance with section 175.22(a), Customs Regulation (19 CFR 175.22(a)).

Drafting Information

The principal drafter of this document was Robert Dinerstein, Office of Regulations and Rulings, U.S. Customs

Service. Personnel from other Customs offices participated in its development.

George J. Weise,

Commissioner of Customs.

Approved: October 24, 1994.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 94-28159 Filed 11-14-94; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

Resinous and Polymeric Coatings

CFR Correction

In title 21 of the Code of Federal Regulations, parts 170 to 199, revised as of April 1, 1994, in § 175.300, paragraph (d), Table 2, the 8 percent alcohol extractant entry for food type VI-A of conditions D. and E. was inadvertently removed. The entries should read "150° F, 2 hr." and "120° F, 24 hr." respectively.

BILLING CODE 1505-01-D

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Penicillin G Potassium in a Medicated Water Solution for Turkeys

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 an abbreviated new animal drug application (ANADA) filed by Sanofi Animal Health, Inc. The ANADA provides for use of penicillin G potassium powder to make a medicated water solution for turkeys for the treatment of erysipelas caused by *Erysipelothrix rhusiopathiae.*

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center For Veterinary Medicine (HFV-135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1643.

SUPPLEMENTARY INFORMATION: Sanofi Animal Health, Inc., 7101 College Blvd., suite 610, Overland Park, KS 66210, filed ANADA 200-103, which provides for use of a penicillin G potassium powder to make a medicated water solution for turkeys for use in the treatment of erysipelas caused by *E. rhusiopathiae.*

Approval of Sanofi's ANADA 200-103 for penicillin G potassium powder to make a medicated water solution for turkeys is as a generic copy of Solvay's NADA 55-060 for the same product. The ANADA is approved as of October 18, 1994, and the regulations are amended by revising § 520.1696b(b) (21 CFR 520.1696b(b)) to reflect the approval.

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 (address below) between 9 a.m. and 4 p.m., Monday through Friday.

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 (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.

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 520.1696b is amended by revising paragraph (b) to read as follows:

§ 520.1696b Penicillin G potassium in drinking water.

* * * * *

(b) *Sponsors.* See Nos. 017144, 050604, and 053501 in § 510.600(c) of this chapter.

* * * * *

Dated: November 2, 1994.

Richard H. Teske,

Deputy Director, Pre-market Review, Center for Veterinary Medicine.

[FR Doc. 94-28062 Filed 11-14-94; 8:45 am]

BILLING CODE 4160-01-F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal. The former regulation contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. The latter regulation contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in December 1994, and to multiemployer plans with valuation dates in December 1994. The effect of these amendments is to advise the public of the adoption of these assumptions.

EFFECTIVE DATE: December 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the December 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement

Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities," *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during December 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during December 1994.

For annuity benefits, the interest rates will be 7.50% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 6.25% for the period during which benefits are in pay status, 5.50% during the seven-year period directly preceding the benefit's placement in pay status, 4.25% during the period between 7 and 15 years preceding the benefit's placement in pay status, and 4.0% during any remaining period preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private section plans valuing lump sums not in excess of $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 must use interest assumptions at least as generous as 120% of the PBGC interest assumptions).) The above annuity interest assumptions represent an increase (from those in effect for November 1994) of .20 percent for the first 25 years following the valuation date and are otherwise unchanged. The lump sum interest assumptions represent an increase (from those in effect from November 1994) of .25 percent for the period during which benefits are in pay status and the fifteen years directly preceding that period; they are otherwise unchanged.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during December 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during December 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 14 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{(y)}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n^1 - n_2$

years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*	*	*	*	*	*	*	*
14	12-1-94	1-1-95	6.25	5.50	4.25	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{o:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2) * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *	*		*		*	
December 1994	.0750	1-25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441(b)(1).

4. In appendix B, Rate Set 14 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{o:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t, prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n$)), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_2 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * *	*	*	*	*	*	*	*	*
14	12-1-94	1-1-95	6.25	5.50	4.25	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{o:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13(b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * * *	*		*		*	
December 1994	.0750	1–25	.0525	>25	N/A	N/A

*

Issued in Washington, DC, on this 9th day of November 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–28170 Filed 11–14–94; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving with one exception, proposed Program Amendment Number 62 Revised to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns the removal of siltation structures prior to two years after the last augmented seeding upon a demonstration that revegetation is the best technology currently available for sediment control.

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Robert H. Mooney, Acting Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232. Telephone: (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program submission, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of the Proposed Amendment

By letter dated March 4, 1993 (Administrative Record No. OH–1841), the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Program Amendment Number 62 (PA 62). In this amendment, Ohio proposed to revise three rules in the Ohio Administrative Code (OAC) to authorize the removal of siltation structures prior to two years after the last augmented seeding upon a demonstration that revegetation is the best technology currently available (BTCA) for sediment control. As part of and in support of the amendment, Ohio also submitted Administrative Record information discussing Ohio's intended implementation of this proposal.

OSM announced receipt of proposed PA 62 in the April 2, 1993, **Federal Register** (58 FR 17372), and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 3, 1993.

By letter dated September 20, 1993 (Administrative Record No. OH–1931), OSM provided Ohio with its comments on the March 4, 1993, submission of PA 62.

By letter dated October 20, 1993 (Administrative Record No. OH–1943), Ohio provided its initial response to OSM's September 20, 1993, comments on PA 62. Ohio requested additional time to develop information required by OSM's September 20, 1994, letter and requested technical assistance from OSM in developing that information. Ohio and OSM staff met on February 11, 1994 (Administrative Record No. OH–1988), to discuss the available information on pond removal and erosion control.

By letter dated March 1, 1994 (Administrative Record No. OH–1994), Ohio resubmitted Program Amendment Number 62 Revised (PA 62R). As part of and in support of PA 62R, Ohio submitted a draft Policy/Procedure Directive entitled "Removal of Siltation Structures and Termination of NPDES Monitoring" and accompanying form "Request to Remove Siltation Structure and Termination of Two Year Period." Ohio also submitted additional documents in support of PA 62R by letter dated March 10, 1994 (Administrative Record No. OH–1996). In total, PA 62R consists of new proposed revisions to three Ohio rules, revisions to an existing Ohio Policy/Procedure Directive, and five technical study articles intended to correlate vegetative ground cover with runoff and soil loss.

OSM reopened the public comment period for proposed PA 62R in the March 30, 1994, **Federal Register** (59 FR 14812) and provided an opportunity for

a public hearing on the adequacy of the revised amendment. The public comment period closed on April 14, 1994.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment.

1. *OCA 1501:13–4–05 paragraph (E)(1)(g) and 13–4–14 paragraph (E)(1)(f).* Ohio is revising these two paragraphs to provide that the plan in each permit application for protection of the hydrologic balance shall describe the measures to be taken to prevent, to the extent possible using the BTCA, additional contributions of suspended solids to streamflow, or runoff outside the permit area. The Chief may determine that vegetation is BTCA for this prevention upon a demonstration by the permittee that vegetation is established and that drainage from the area meets effluent limitations and does not contribute suspended solids to streamflow. If the applicant proposes to make such a demonstration after vegetation is established and to remove siltation structures sooner than two years after the last augmented seeding of a drainage area, the applicant shall state such intentions in the timetable and plans for removal of sediment control structures required by paragraphs (H)(1)(b)(iv) or (H)(1)(c)(iv) of OAC 1501:13–4–05 or OAC 1501:13–4–14.

2. *OAC 1501:13–4–05 and 13–4–14 Paragraphs (H)(1)(b)(iv).* Ohio is revising these two paragraphs to provide that the detailed design plans for impoundment structures that meet or exceed size or other criteria of the Mine Safety and Health administration (MSHA) shall describe the timetable and plans to remove each structure, if appropriate. The applicant must include a statement of intent if the applicant proposes to demonstrate that vegetation is BTCA and proposes to remove siltation structures sooner than two years after the last augmented seeding of the drainage area.

3. *OAC–1501:13–4–05 and 13–4–14 Paragraphs (H)(1)(c)(iv).* Ohio is revising these two paragraphs to insert the same proposed language as quoted above for paragraph (H)(1)(b)(iv) in order that the language also apply to the detailed design plans for impoundment structures that do not meet the size or other criteria of MSHA.

4. *OAC 1501:13–9–04 Paragraph (B)(1).* Ohio is revising this paragraph to provide that all surface drainage from the disturbed area shall be passed through a sedimentation pond before leaving the permit area until vegetation is established, at which time vegetation of the area may be BTCA, provided that drainage from the area:

(a) Meets effluent limitations; and

(b) Does not contribute suspended solids to streamflow.

5. *OAC 1501:13–9–04 Paragraph (G)(2)(e).* Ohio is revising this paragraph to provide that in no case shall a siltation structure be removed sooner than two years after the last augmented seeding unless, after vegetation is established, the operator demonstrates and the Chief approves the Administrative Code alternative methods of sediment control as BTCA under paragraph (E)(1)(g) of OAC 1501:13–4–05 or paragraph (E)(1)(f) of OAC 1501:13–4–14.

The previously described additions to the Ohio rules have no direct Federal counterparts. These changes are in response to a remand of the Federal rules found at 30 CFR 816/817.46(b)(2). *In re: Permanent Surface Mining Regulation Litigation (III)* 620 F.Supp. 1519 (D.D.C. 1985). These Federal rules were remanded by the District Court because the preamble to the regulations failed to provide a sufficient rationale for requiring siltation structures in every instance. Subsequently, OSM suspended these rules on November 26, 1986 (51 FR 41957).

The effect of this suspension is that State regulatory authorities must determine on a case by case basis what is BTCA rather than requiring, in every situation, that drainage be passed through siltation structures. The use of BTCA is required by sections 515(b)(10)(B) and 516(b)(9)(B) of SMCRA. These statutory sections require that surface coal mining operations be conducted "so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow, or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable State or Federal law." This suspension also affects 30 CFR 816/817.46(b)(5). Subsection (b)(5) required that siltation structures remain in place at least two years after the last augmented seeding. Nonetheless, now that BTCA is required for sediment control rather than siltation structures, these siltation structures may be removed sooner than two years after the last augmented seeding provided the replacement is BTCA.

The additions to the Ohio rules allow the removal of siltation structures sooner than two years after the last augmented seeding provided that the revegetation is determined by Ohio to be BTCA and the drainage meets the effluent limitations and is not contributing suspended solids to the streamflow. These revisions are consistent with the remand of the Federal rules and the effects of the rules' suspension. Therefore, the Director finds that the amendments to the Ohio rules, which were previously described, are in accordance with 515(b)(1)(B) and 516(b)(9)(B) of SMCRA.

Ohio is also revising its Policy/Procedure Directive, Inspection and Enforcement 93–4, entitled "Removal of Siltation Structures and Termination of NPDES Monitoring." The purpose of this policy directive is to provide standard criteria for use by Ohio's Inspection and Enforcement Section to review the permittee's request for the removal of siltation structures on "D" permits and to terminate NPDES monitoring and sediment storage requirements. Under the directive, a permittee will be required to complete the attached form "Request to Remove Siltation Structure and Termination of Two Year Period." In order for Ohio to approve each request for vegetation as BTCA, there must have been no augmented seeding of the disturbed area for at least one year and vegetative ground cover must equal or exceed 90 percent.

This Policy/Procedure Directive and its accompanying form implement the proposed regulations. Therefore, except as noted below, the revisions to the Policy/Procedure Directive and the accompanying form are in accordance with 515(b)(10)(B) and 516(b)(9)(B) of SMCRA. OSM is deferring its decision on the portion of the revised policy directive which states: "NOTE: Temporary ponds must be reclaimed at least 90 days prior to approval of the Phrase III release." This language is related to Ohio Program Amendment Number 61R (PA 61R), which was approved on August 16, 1993 (59 FR 43261), with the exception of OAC 1501:13–9–15 (F)(5), (6) and (7). OSM deferred its decision on OAC 1501:13–9–15 (F) (5), (6) and (7).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. Because no one requested an opportunity to speak at a public hearing, no hearing was held. The National Coal Association supported the amendment.

Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Department of Agriculture, Soil Conservation Service; and the U.S. Army Corps of Engineers responded that they had no comments. The U.S. Department of Labor, MSHA, commented that although MSHA requires as part of an abandonment plan for all impoundments, a timetable and plans for the removal of any impoundments, the proposed amendment did not conflict with MSHA regulations. MSHA also commented that nothing in this proposed amendment should be interpreted or construed as providing relief or exemption from the Mine Safety and Health Act. In response, the Director notes that with respect to impoundments, both the State and Federal rules specifically incorporate MSHA rules by reference. The Director notes that the Ohio rules cannot be construed as superseding, amending or repealing MSHA because such activities are prohibited under section 702 of SMCRA.

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On March 16, 1993, OSM solicited EPA's concurrence with the proposed amendment (Administrative Record No. OH–1843). On May 11, 1993, EPA gave its written concurrence (Administrative Record No. OH–1883).

V. Director's Decision

Based on the above findings, the Director approves with one exception, the proposed program amendment as submitted by Ohio on March 4, 1993, and revised on March 1, 1994, and March 10, 1994.

The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order No. 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR Parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 4, 1994.

Tim L. Dieringer,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for Part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (uuu) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(uuu) The following amendment to the Ohio regulatory program, as submitted to OSM on March 4, 1993, and revised on March 1, 1994, and March 10, 1994, is approved with one exception noted below effective November 15, 1994: Revised Amendment Number 62 which consists of:

(1) Revisions to the Ohio Administrative Code (OAC) at 1501:13–4–05(E)(1)(g), (H)(1)(b)(iv), (H)(1)(c)(iv); 1501:13–4–14(E)(1)(f), (H)(1)(b)(iv), (H)(1)(c)(iv); and 1501:13–9–04(B)(1) (a) and (b), and (G)(2)(e) concerning the removal of siltation structures prior to two years after the last augmented seeding upon a demonstration that revegetation is the best technology currently available for sediment control.

(2) Revisions to Ohio's Policy/Procedure Directive, Inspection and Enforcement 93–4, entitled "Removal of Siltation Structures and Termination of NPDES Monitoring" with its attached form, except for that portion concerning the reclamation of a temporary pond which is deferred until such time as final action is taken on Program Amendment Number 61.

[FR Doc. 94–28120 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 7

RIN 1024–AB10

Everglades National Park Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises the special regulations for Everglades National Park. It enables the park to adopt State fishing regulations and provides more specific authority to the Superintendent to closely regulate fishing and boating in the park. The rule prohibits the taking and possession of any marine life (including lobster or conch species) other than shrimp, bait or recreational finfish and shellfish species in the park and redefines "commercial fishing". The final rule enables the NPS to be more responsive in its mission to protect and conserve public resources and deletes obsolete regulations pertaining to mining and commercial fishing.

EFFECTIVE DATE: December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Superintendent, Everglades National Park, 40001 State Road 9336, Homestead, FL 33034. Telephone (305) 242–7730.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 1992 the National Park Service (NPS) published in the **Federal Register** (FR 57 60496) a proposed rule changing the special regulations for Everglades National Park. The final rule completely revises the special regulations for the park. The rule achieves consistency with State fishing rules and allows the park to adopt State fishing regulations. It more closely regulates the activities of commercial guide fishing and redefines "commercial fishing" to include the taking of sponges and other non-edible marine life.

The final rule allows the NPS to take a more proactive role in its mission to protect and conserve natural and cultural resources and gives the Superintendent more specific authority to regulate fishing and boating. It prohibits the use of personal watercraft, closes accessible marine wilderness areas to the use of motorized vessels and allows for better management of wildlife habitat sites. The rule also deletes existing obsolete regulations from the Code of Federal Regulations pertaining to mining and commercial fishing.

American Crocodile

On September 25, 1975, the American crocodile was placed on the Federal list of endangered species. On February 15, 1980, the NPS closed the following areas within Everglades National Park to public entry: Little Madeira Bay, Taylor River, East Creek, Mud Creek, Davis Creek, Joe Bay, Snag Bay, and all creeks inland from Long Sound to U.S. Highway 1. Though not so named in the regulations, they became known collectively as the "crocodile sanctuary." Prior to the complete closure, the sanctuary had been closed to the public during nesting season.

Studies done before the closure showed the sanctuary to be the most active area, the "core" of nesting activity by the American crocodile. Further studies showed that the sanctuary was the most productive area for hatchlings in the Park. Of the estimated 300–400 crocodiles in south Florida, about 200–300, or as much as 75%, are found in Everglades National Park. Of the estimated 30 breeding females within the south Florida population, about 18–20, or roughly two-thirds are found in Everglades National Park. The U.S. Fish and Wildlife Service, the lead agency in administration of the Endangered Species Act, developed a recovery plan for the American crocodile. It lists 60 breeding females in the south Florida population among its criteria for changing the status of the species from endangered to threatened; the time frame to reach that level, under present conditions, is 20–30 years.

Given (1) the high percentages of overall numbers and breeding females within the park, and (2) the high survival rate of hatchlings in the sanctuary areas, it follows that management actions taken by the NPS that impact crocodiles within the park, particularly the sanctuary, will significantly affect the species as a whole.

A NPS study entitled "A Draft Assessment of Recreational Boating and its Potential Impact on Resources Within the Crocodile Sanctuary of Everglades National Park" (1992), proposed a plan whereby the crocodile sanctuary could be opened to varying degrees to public access. The study concluded the sanctuary could be opened under a specific set of criteria, including the establishment of "no wake" zones for the protection of young crocodiles, regulatory signing, monitoring of population numbers and condition in the sanctuary, increased law enforcement patrols to protect the animals and maintain "no wake" areas, controlled regular trimming of opened creek areas, and development of a schedule for opening and closing parts of the sanctuary, relative to breeding, nesting and hatching activity.

The U.S. Fish and Wildlife Service, in an informal consultation, concluded the sanctuary could be opened without endangering the American crocodile, provided the NPS implemented and enforced the protective measures outlined in the assessment.

On September 15, 1993, a paper entitled "Deterioration of the Florida Bay Ecosystem: An Evaluation of the Scientific Evidence," was published. It included a summary of the manifestations of deterioration, such as seagrass and mangrove die-offs, algal blooms, increased salinity in the bay, reduction of bird and fish populations, and changes in American crocodile nesting patterns. The consensus of the six scientists on the evaluation panel is that the deterioration process is complex and its mechanics are not yet understood. They cautioned against making major policy and management decisions with the inadequate amount of existing information available.

Based on available information and comment, the areas colloquially known as the "crocodile sanctuary" will remain closed for the following reasons:

1. Funding to support enforcement of seasonal closures and no-wake zones, regular patrols, adequate resource management monitoring, installation and maintenance of signs and trimming of vegetation along opened creeks in the sanctuary areas, which are criteria necessary for protection of the American crocodile is not available.

2. Aerial manatee surveys done in 1980/81 showed no animals in the sanctuary area. Recently, they have been shown to be using the closed area for activities sensitive to disturbance, such as calving. The significance of the new activity relative to the status of the endangered manatee has not yet been determined.

3. The closed areas, in their present state, contribute significantly to the recovery of the American crocodile. Because part of the recovery plan is to attain 60 reproducing females, any area that supports a vital hatchery should be protected.

Saltwater Fisheries

Pursuant to Chapter 80–162, Laws of Florida, a Saltwater Fisheries Study and Advisory Council was appointed by the Governor to recommend to the State Legislature a comprehensive saltwater fishery conservation and management policy. In keeping with this charge, the Council holds public hearings and

drafts rules to govern fishing activities within the fisheries of the State of Florida. To date, rules have promulgated setting seasons, size limits, and bag limits for various species of saltwater game fish.

However, there is concern among fishermen, the park, and the State over the apparent conflict of bag limits set by the Council and those prescribed in the existing regulations which limits possession to ten (10) fish of one species, excluding bait fish, and a total of no more than twenty (20) fish of all species. Specifically, in the cases of such popular and stressed species as snook, tarpon, red drum, bonefish, grouper, snapper, and tarpon, the State of Florida has acted, based on professional fisheries management principles, to restrict possession of these species to limits far lower than the park's ten fish per species limit. The National Park Service does not wish to retain unmodified, a regulation that conflicts with such State regulatory actions, and fails to provide appropriate protection to species under great fishing pressure.

Everglades National Park has been closed to personal watercraft through 36 CFR 1.5(a)(1) (Closures and Public Use Limits) for a number of years. The purpose for which the park was established, to protect a unique natural system, made activities such as water skiing and use of personal watercraft incompatible with preserving wilderness qualities such as serenity. Because the closure to personal watercraft will become permanent with this rulemaking, the closure will now become a part of § 7.45.

Mining

The NPS has revised the special regulations of the park in order to, among other things, delete obsolete mining rules found in the special regulations for Everglades National Park.

Provisions of the acts of October 10, 1949 (63 Stat. 733), and July 2, 1958 (72 Stat. 280), which will be referred to as "the acts of 1949 and 1958", allowed mineral owners within Everglades National Park to explore for and develop their mineral properties until October 9, 1967. The acts of 1949 and 1958 also provided that if any production of oil or gas occurred during that period, the right to explore and develop would be extended for all mineral owners for the life of such production. At least four exploratory oil and gas wells were drilled during this period, but no discovery was made and no production occurred.

Therefore, the provision allowing these activities expired on October 9, 1967. The acts of 1949 and 1958 also provided that former mineral owners were entitled to customary royalties from any production of their former mineral properties should the Federal government so authorize anytime before January 1, 1965. The Federal government made no authorizations.

The National Park Service adopted special regulations found in 36 CFR 7.45(a) "to govern the exploration, development, extraction, and removal of oil, gas, and other minerals on lands acquired for Everglades National Park." The suspense dates authorized by the acts of 1949 and 1958 for former mineral owners to explore or develop their properties or to benefit from any production by the Federal government have passed.

Through the Everglades National Park Protection and Expansion Act of 1989, (Pub.L. 101–229) approximately 107,400 acres, known as "East Everglades" was included inside the park. The tract is a mosaic of park-owned and private land. Because of the still formative stage of the addition and language contained within the Act, regulations relating to off-road conveyances fall outside the scope of these special regulation changes, and will be deferred until a later date.

Summary of Comments

The National Park Service has carefully considered all comments received and in some cases, adopted suggestions made. In addition, a critical review of the content and format of the proposed regulations was done; they were edited and reorganized as a result, but significant changes in substance did not occur.

Those comments and reasons for accepting or rejecting them, and the changes are included below.

The Service received one comment regarding the change in the definition, under § 7.45(c)(6), "guide fisherman." The respondent was concerned because of the deletion of "interpretation of natural resources;" his main activity was interpretive trips as opposed to fishing services. The proposed definition will stand, as the guide fisherman permit system is designed to regulate fishing activity at Everglades National Park. Commercial interpretive services, i.e., tours, will be regulated through the concessions management program.

Kawasaki Motors Corporation, U.S.A. commented on the definition of "personal watercraft," objecting to the phrase "thrill craft." The Service agrees, and the definition has been rewritten. Definitions used by the personal watercraft industry and the States of Texas and Florida were incorporated. Industry trade names, which are used colloquially to describe personal watercraft, were added to give focus to the definition.

One comment was received regarding the definition of "ornamental tropical fish" (§ 7.45(d)(10)), pointing out the limitations of the definition. The definition and reference were eliminated. It was meant to separate sport fishing from the action of collection of tropical fish, a much different activity, but failed to include a comprehensive listing of all tropical species in Everglades National Park. The phrase "and live in close relationship with coral communities" did not reflect habitat in Everglades National Park, where tropical fish live in association with seagrass, mangroves and sponges. The revision of fishing restrictions, § 7.45(d) (1) and (2), eliminates the need to define and control the taking of tropical fish in this special regulation.

Three comments were received from guide fishermen on proposed § 7.45(e)(12)(iii) during the comment period; one opposed and two favored the change. The new regulation would have restricted the number of fish aboard guide boats to the bag limit per person multiplied by the number of customers on board, meaning each fish caught by a fish guide would reduce the bag limit for his clients by one fish. One newspaper article was written about the proposed change. Four other verbal comments, two in favor and two against, were received outside the comment period. One respondent wrote that fish guides who did business from inside the park did not have the same opportunity as guides who were based outside the boundary to catch fish for personal consumption. The written and verbal comments in favor were simply expressions of support for the rule. The newspaper article cited vulnerability of sea trout as habitat shrank and the need to protect population numbers as a reason for the restriction of bag limits on guide fishing boats. The final rule has been changed to include bag limits under § 7.45(d) (1) and (2) which apply to guide fishermen. These limits will be reviewed and changed annually as needed. Section 7.45(e)(12)(iii), is therefore, eliminated from the final rule.

In 1989, the public became aware the NPS was considering opening the crocodile sanctuary. Everglades received written comments from 11/89 through 1/90 that supported returning to conditions before the 1980 closure, i.e., closure of the sanctuary only during the crocodile nesting season. Fifteen people

wrote to comment in favor of opening the sanctuary. Four people specifically mentioned closing the area during nesting season. Three of the four commented that "recent studies" had shown no reason to maintain a complete closure.

Ten of the fifteen writers asked the area be opened for fishing and sightseeing. Reasons given for opening the area were as follows: eight people wanted it opened so they could use the area, one person asked it be opened, giving no reason; and one person asked it be opened because it was more convenient than other areas he fished.

In addition to letters, there were two petitions signed by a total of 194 people. The petitions asked "to see the closed creeks and lakes of Northeast Florida Bay opened for fishing and sightseeing, as they once were."

"A Draft Assessment of Recreational Boating and its Potential Impact on Resources Within the Crocodile Sanctuary of Everglades National Park" was released for public comment in 1992 and generated extensive written comments. Twenty-five private individuals and ten representatives from State and Federal Agencies and academic institutions sent comments. A list of those agencies and institutions who commented are listed below:

National Park Service
National Oceanographic and Atmospheric Administration (NOAA)
U.S. Fish and Wildlife Service (FWS)
Florida Freshwater Fish and Game Commission
Florida Department of Natural Resources
Cooperative Fish and Wildlife Research Unit, University of Florida
Department of Biological Sciences, Public University at Miami
Department of Natural Resources, Dade County, Florida

Sixteen private individuals mentioned only the Taylor River area asking it be opened to the public. Eleven of them gave the remoteness of the area as a reason for opening it, ten saying the fishing pressure there would be "minimal." The remaining five asked to be able to fish there.

The remaining nine letters asked to open the sanctuary area. Five of the nine commented the area had been closed too long, one asked the area be opened on a one-year trial basis, one felt the crocodile was no longer endangered, one said Everglades National Park should be opened to fishing instead of closed as it is now, and one asked merely for the seasonal opening plan.

Comment from public agencies fell into three basic categories. The FWS and NOAA supported the assessment as it was written. The Florida Freshwater Fish and Game Commission supported the plan, with the following modifications: (1) Increase the length of the seasonal closure by two weeks, beginning in February instead of March; (2) Correct a comment relating to crocodile habituation to human presence; (3) List prohibited recreational activities in the sanctuary areas; (4) Restrict use of the areas to daylight only; (5) Expand monitoring before and after open periods.

The remaining agencies took the position that the assessment did not include sufficient scientific information to justify opening the sanctuary area. The Florida DNR was concerned about the effect of the opening on manatees; they asked for a delay in implementation until a manatee protection plan was completed. The two universities expressed the feeling that protection of the sanctuary was critical to recovery of the species; they voiced concern that opening the area would have unacceptable impact on the crocodile recovery. The remaining agency comments recommended more detailed study before opening the area was considered. The lack of research in relation to the impact of human intrusion on crocodile reproduction was cited in two of the responses. Seven of the comments asked for a more conservative approach with respect to opening the sanctuary area.

Two written comments were received regarding the proposal to substitute existing § 7.45(g), relating to the specific closure of the area known as the "crocodile sanctuary," with a broader authority in proposed § 7.45(e)(1), which would allow for the opening or closing of areas in the park as needed. One was from an NPS employee and one from a local organized fishing guide association. One NPS employee questioned the need to place any closure statute in § 7.45, as he felt it was adequately covered by 1.5. The fish guide association made a general statement about the need to close certain critical areas, and asked for the opportunity to express their feelings about any proposed closures. The writer also commented that the proposed special regulations were "important steps in a continued march toward conservation and preservation of Park resources and improved fisheries management."

The closed areas for "saltwater fisheries" will remain closed under the authority found at 36 CFR 1.5, for the following reasons:

1. *Flexibility:* The closure will be reviewed on an annual basis, in order to be more responsive to technical information from the scientific community. Although the same scientific criteria must be met whether the closure is authorized under 36 CFR 1.5 or 36 CFR 7.45, it will be easier to manage small individual closure areas without affecting the status of the entire closure. Any areas that are opened will be subject to full compliance scrutiny by FWS as well as the research center at Everglades National Park. For example, with proper research and documentation, one section of the area may be opened to public access, while another area discovered critical to crocodile survival may be closed.

2. *Changing conditions:* The present sanctuary area is a fixed physical area, which may not always contain the critical reproductive areas of the crocodile population. Under § 1.5, it will be easier to adjust the closed areas as the focus of the high success population changed.

3. *Uniformity:* Protection of any endangered species, while dependent on the unique characteristics of the individual species, is managed under uniform resources management policies and principles. The NPS goal is to provide the maximum level of protection for all species within Everglades National park; one of those species is the American crocodile. Any other future area closures for benefit of the crocodile should be perceived as equally important to the recovery of the species, and as having received the same high level of consideration as those presently closed. The term "sanctuary" implies a high level of protection; anything that is closed but not called a sanctuary may be thought to have less priority or importance with respect to protection efforts.

One comment was received asking if § 7.45(e)(7) allowed boats up to, but including 6 horsepower. The rule reads that boats with motors up to and including 6 horsepower are allowed under the specified conditions.

One comment was received from Kawasaki Motors Corporation, U.S. regarding proposed prohibition of personal watercraft in Everglades National Park. The company's position: Exclusion of personal watercraft from the park is discriminatory and "arbitrary, capricious, and without basis in fact." They put forth three main arguments:

(1) U.S. Coast Guard regulations classify personal watercraft as Class A motorboats, along with all other motorized vessels fitting the criteria, the NPS adopts Coast Guard regulations, which must be complementary to and not in derogation of U.S. Guard regulations, therefore NPS regulation (exclusion) of personal watercraft apart

from other Class A motorboats is not legal;

(2) "Although reasons exist for excluding all motorized vessels from areas of emergency vegetation and areas frequented by feeding birds, no such justification has been or could be provided for prohibiting personal watercraft in areas where other Class A motorboats are permitted;"

(3) There have been no studies that specifically deal with the impact of personal watercraft on natural areas, as differentiated from other motorized vessels.

Section 1a–2(h) of 16 United States Code gives the NPS authority to regulate boating activity within areas of the National Park System, "including areas subject to the jurisdiction of the United States." It goes on the say, however, "That any regulations adopted * * * shall be complementary to and not in derogation of the authority of the U.S. Coast Guard to regulate the use of waters subject to the jurisdiction of the United States."

Interpretation of that section is included under the Legislative History (Pub.L. 95–458) House Report No. 94–1569, September 16, 1976, pages 4290 through 4311. The background section of the history says "Secretary (of the interior) is specifically authorized to promulgate and enforce regulations concerning boating * * *" It is further interpreted by the Department of the Interior, Office of the Secretary, pg. 4299, to mean "such regulations would be promulgated for the purposes of * * * protecting the natural, wildlife, cultural and historical resources."

The U.S. Coast Guard, while objecting to the exact wording of the statute, agreed with the principle: "This Department (Transportation) has no objection to the Secretary of the Interior promulgating regulations relating to operational matters on waters within areas of the National Park System." The Department of Transportation went on to say that it was concerned about conflicting regulations in certain areas. To clarify that position, they suggested the following text, based on their interpretation of the U.S. Coast Guard mission: "Promulgate and enforce regulations concerning boating operations and other activities on or relating to waters located within areas of the National Park System * * * Provided that any regulations concerning (1) boat design, safety and numbering, (2) vessel documentation and inspection, and (3) Rules for the Prevention of Collisions shall be promulgated under this subsection (read 16 USC 1–2a(h)) only with the concurrence of the Secretary (of Transportation) * * *" The exclusion of a type of vessel or activity, then, does not fall under an area for which the U.S. Coast Guard reserves judgement, but for which the Department of Interior says is necessary for "* * * protecting the natural, wildlife * * * resources." The argument of legality is not applicable in this case.

The 1934 Act of Congress that created Everglades National Park directs: "The said area or areas shall be permanently preserved as wilderness, and no development of the project (park) or plan for the entertainment of the visitors shall be undertaken which will interfere with the preservation intact of the unique flora and fauna and the essential primitive natural conditions now prevailing in this area." (16 U.S.C. 410c.) The park's significance is reinforced by designation from the United Nations Education, Scientific and Cultural Organization (UNESCO) as an International Biosphere Reserve. Further, it possesses such "outstanding universal value as part of the world's natural heritage" that it carries the status of a World Heritage Site. Under the World Heritage Convention, the United States Government has treaty obligations to take necessary actions to protect the park. In December, 1993, the Convention added Everglades National Park to its list of endangered areas.

The NPS publication "Management Policies" (1988) states: "All proposals for parks uses will be evaluated in terms of their consistency with all applicable legislation * * * as well as their actual and potential effects on park values, purposes and resources" (Chapter 8:1). A NPS study titled "A Review of Personal Watercraft and their Potential Impact on the Natural Resources of Everglades National Park" found potential negative impact on the park by personal watercraft.

In addition, the management plan for the Great White Heron and Key Deer National Wildlife Refuges contains information based on five years' observation of personal watercraft activity in those areas by a Fish and Wildlife Service biologist. He observed differences in the behavior and use of personal watercraft, as opposed to other motorboats: They tended to travel in groups of 2–5 vessels, and occasionally 15 or more; they travel at high speed, make repeated circuits in a concentrated area; and make repeated circles, in shallow water, around small islands. In one case, a personal watercraft ran circuits near an osprey nest for one hour, chasing the bird away from its nest and eggs 11 times.

"Management Policies" further states: "The National Park Service will encourage recreational activities * * * that are also consistent with the protection of the resources, and that are compatible with other visitor uses" (Chapter 8:2). It goes on to say: "* * * because of differences in individual park enabling legislation and resources and differences in the missions of the National Park Service and other federal agencies, an activity that is entirely appropriate when conducted in one location may be inappropriate if conducted in another" (Chapter 8:2–3). That is, the use of a personal watercraft in a recreation area that, as one of its primary missions, provides a water environment to support a wide variety of water oriented recreational activity, may be appropriate under its enabling legislation and management policies. Conversely, Everglades National Park, with its mission to conserve a distinctive natural ecosystem, has a different focus. Appropriate recreation and visitor use must be consistent with the purpose for which the park exists. For example, most keys in the Florida Bay area of the park are closed to public entry, for the protection of animal and plant life. Visitor enjoyment of personal watercraft is dependent on the presence or absence of suitable water resources, which may be found in a great variety of locations. The realization of the Service's goal to provide for recreational use of a natural area balanced against the preservation of the combination of tangible and intangible features that constitute Everglades National Park is best served with the exclusion of personal watercraft.

Modification of the Proposed Regulations

The definition of "commercial fishing," proposed § 7.45(d)(3) and renumbered § 7.45(c)(3), is revised to include freshwater species, because the park contains a significant freshwater aquatic resource used by visitors.

The definition of "hovercraft," § 7.45(d)(6) is eliminated, as 36 CFR 1.4 includes a definition of hovercraft under "aircraft."

The definitions for "mullet," "shrimp" and "spiny lobster" are eliminated from proposed § 7.45(d) (Definitions), and will be covered under 36 CFR 1.5 as set forth in § 7.45(d)(2) (Fishing).

Proposed § 7.45(e) was renumbered § 7.45(d) (Fishing) and rewritten to allow, as in most State fisheries management systems, annual review of fishing restrictions. The change more clearly realizes the intent and effect of the proposed rule, which is to permit the park to closely conform to State law. This includes yearly changes, as much

as possible, but also reflects current NPS natural resources management mandates, which may require some fishing restrictions to be stricter than state law, in order to address specific threats to the Everglades National Park biological system. The change eliminates proposed § 7.45(e)(12) (Fishing), because the finalized regulation found at § 7.45(d) (Fishing) includes bag limits.

Section 2.3(d)(4) prohibits commercial fishing unless authorized by statute. With the adoption of this final rule, all regulations relating to commercial fishing within Everglades National Park are eliminated. Therefore, commercial fishing references have been eliminated because they are unnecessary.

Proposed § 7.45(e)(6) (Fishing) and § 7.45(e)(9) (Fishing) are eliminated, as § 7.45(d)(2) (Fishing) addresses bag limits and species that may be taken. At present, the State of Florida, for health reasons, has closed most of the waters of the park to the taking of oysters. The Superintendent used discretionary authority found at 1.5 for a closure to oyster fishing until the state classifies park waters or parts thereof as "approved" for oysters. Without the modification, it may appear § 7.45 allows taking oysters, while discretionary authority invoked under 1.5 prohibits it. As changed, the final rule may allow the taking of oysters at a future time, subject to current restrictions. It also allows for changing the status of finfish, shrimp and bait species when the need for protection changes.

Proposed § 7.45(e)(13) (Fishing) is renumbered as § 7.45(d)(8) (Fishing) and revised by deleting the sentences "All fish which do not meet size or species * * *" and "The intentional disturbing * * *" These sentences merely duplicate the intent of 2.3(d)(7). Proposed § 7.45(e)(14) (Fishing), renumbered as § 7.45(d)(7) (Fishing) is revised for clarity, and to allow for the possibility that other fish cleaning facilities may be developed within the park.

Proposed § 7.45(e)(15) (Fishing) has been edited and renumbered as § 7.45(d)(8) (Fishing).

Proposed § 7.45(f)(4) (Boating) is amended as § 7.45(e)(5) (Boating) to identify the Act of Congress, Pub. L. 95–625, as the authority for the creation of the wilderness area cited. When written in the proposed rule, it appeared that § 7.45 itself was establishing the named areas as wilderness, as evidenced by the phrase "the following coastal areas are designated wilderness."

Proposed § 7.45(f)(6) (Boating) is edited and renumbered as § 7.45(e)(7) (Boating).

Proposed § 7.45(f)(7) (Boating) is edited and renumbered as § 7.45(e)(2) (Boating).

Proposed § 7.45(f)(8) (Boating) is eliminated as redundant.

Proposed § 7.45(f)(10) (Boating), prohibition of hovercraft, is deleted in the final rule, because 36 CFR 2.18(e) already addresses that issue.

New § 7.45(f) (Violations) is added as a general statement that covers all provisions of § 7.45, consolidating a number of "* * * is prohibited" statements.

Drafting Information

The following persons participate in the writing of the final rule: Mark Lewis, Gulf Island National Seashore (formerly of Everglades National Park), and Larry Belli, Elaine Hall, Reed Detring and Philip A. Selleck, Everglades National Park.

Paperwork Reduction Act

The information collection requirements contained in the rule have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance #1024–0026.

Compliance with Other Laws

This rule was not subject to office of Management and Budget review under Executive Order 12866. The Service has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This conclusion is based on the fact that the deletion of obsolete and duplicate regulations will have no economic effect. The fishing regulation changes would be minimal, with no negative impact on fishing related industries adjacent to Everglades National Park. Lower bag limits will improve the available stock in park waters, and consistency with State rules will avoid confusion among visitor fishing in park waters.

The Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety. In accordance with the procedural requirements of the National Environment Policy Act (NEPA) and the Departmental regulations 516 DM 6, a categorical exclusion has been granted.

This rulemaking does affect public access to habitat of the American crocodile, an endangered species. Pursuant to Section 7 requirements of the Endangered Species Act, the National Park Service has consulted with the U.S. Fish and Wildlife Service regarding the proposed changes in the crocodile sanctuary. The U.S. Fish and Wildlife Service has concurred with these proposals.

List of Subjects in 36 CFR Part 7

National parks; Reporting and record-keeping requirements.

For the reasons set out in the preamble, Title 36, Chapter I, 7.45 of the Code of Federal Regulations is revised to read as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

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

Authority: 16 U.S.C. 1, 3, 9a 462(k).

2. Section 7.45 is revised as follows:

§ 7.45 Everglades National Park.

(a) *Information collection.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et.seq., and assigned clearance number 1024–0026. This information is being collected to solicit information necessary for the Superintendent to issue permits used to grant administrative benefits. The obligation to respond is required in order to obtain a benefit.

(b) *Prohibited conveyances.* Only hand-propelled vessels may be operated upon those areas of emergency vegetation commonly called marshes, wetlands, or "the glades." Operation of a motorized vessel in such areas is prohibited.

(c) *Definitions.* The following definitions shall apply to this section:

(1) *Ballyhoo* means a member of the genus Hemiramphus (family: Exocoetidae).

(2) *Cast net* means a type of circular falling net, weighted on its periphery, which is thrown and retrieved by hand.

(3) *Commercial fishing* means the activity of taking or harvesting, or attempting to take or harvest any edible or non-edible form of fresh or salt water aquatic life for the purpose of sale or barter.

(4) *Dipnet* means a hand-held device for obtaining bait, the netting of which is fastened in a frame.

(5) *Guide fishing* means the activity, of a person, partnership, firm, corporation, or other commercial entity to provide fishing services, for hire, to visitors of the park.

(6) *Minnow* means a fish used for bait from the family Cyprinodointidae, Poeciliidae, or Atherinidae.

(7) *Mojarra* or "goats" means a member of the family Gerreidae.

(8) *Oyster* means a mollusk of the suborder Ostraeaccea.

(9) *Personal watercraft* means a vessel powered by an outboard motor, water-jet or an enclosed propeller or impeller system, where persons ride standing, sitting or kneeling primarily on or behind the vessel, as opposed to standing or sitting inside; these craft are sometimes referred to by, but not limited to, such terms as "wave runner," "jet ski," "wet bike," or "Sea-doo."

(10) *Pilchard* means a member of the herring family (Clupeidae), generally used for bait.

(11) *Pinfish* means a member of the genus Lagodon (family: Spiradae).

(d) *Fishing.* (1) Fishing restrictions, based on management objectives described in the park's Resources Management Plan, are established annually by the Superintendent.

(2) The Superintendent may impose closures and establish conditions or restrictions, in accordance with procedures found at §§ 1.5 and 1.7 of this chapter, on any activity pertaining to fishing, including, but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, and size, creel and possession limits.

(3) The following waters are closed to fishing:

(i) All waters of T. 58 S., R. 37 E., sections 10 through 15, inclusive, measured from Tallahassee meridian and base, in the vicinity of Royal Palm Visitor Center, except Hole in the Donut or Hidden Lake, and Pine Island Lake.

(ii) All waters in T.54 S., R. 36 E., sections 19, 30, and 31, and in T. 55 S., R. 36 E., sections 6, 7, 18, 19, and 30, measured from Tallahassee meridian and base, in the vicinity of Shark Valley Loop Road from Tamiami Trail south.

(4) A person engaged in guide fishing must possess a guide fishing permit issued by the Superintendent and administered under the terms of § 1.6 of this chapter. Guide fishing without a valid permit is prohibited.

(5) Except for taking finfish, shrimp, bait, crabs, and oysters, as provided in this section or as modified under 36 CFR 1.5, the taking, possession, or disturbance of any fresh or saltwater aquatic life is prohibited.

(6) Methods of taking. Except as provided in this section, only a closely attended hook and line may be used for fishing activities within the park.

(i) Crabbing for stone or blue crabs may be conducted using attended gear only and no more than five (5) traps per person. Persons using traps must remain within one hundred (100) feet of those traps. Unattended gear or use of more than five (5) traps per person is prohibited.

(ii) Shrimp, mullet, and bait fish (minnows, pilchards, pinfish, mojarras, ballyhoo or bait mullet (less than eight (8) inches in total length) may be taken with hook and line, dipnet (not exceeding 3 feet at its widest point) or cast net, for use as bait or personal consumption.

(iii) A dipnet or cast net may not be dragged, trawled, or held suspended in the water.

(7) Tagging, marking, fin clipping, mutilation or other disturbance to a caught fish, prior to release is prohibited without written authorization from the Superintendent.

(8) Fish may not be fileted while in the park, except that:

(i) Up to four (4) filets per person may be produced for immediate cooking and consumption at designated campsites or on board vessels equipped with cooking facilities.

(ii) Fish may be fileted while at the designated park fish cleaning facilities, before transportation to their final destination.

(9) Nets and gear that are legal to use in State waters, and fish and other edible or non-edible sea life that are legally acquired in State waters but are illegal to possess in the waters of Everglades National Park may be transported through the park only over Indian Key Pass, Sand Fly Pass, Rabbit Key Pass, Chokoloskee Pass and across Chokoloskee Bay, along the most direct route to or from Everglades City, Chokoloskee Island or Fakahatchee Bay.

(i) Boats traveling through these passages with such nets, gear, fish, or other edible products of the sea must remain in transit unless disabled or weather and sea conditions combine to make safe passage impossible, at which time the boats may be anchored to await assistance or better conditions.

(e) *Boating.* (1) The Superintendent may close an area to all motorized vessels, or vessels with motors greater than a specified horsepower, or impose other restrictions as necessary, in accordance with §§ 1.5 and 1.7 of this chapter.

(2) For purposes of this section, a vessel in which the motor(s) is (are) removed from the gunnels or transom and stored to be inoperable, is considered to be not motorized.

(3) The following areas are closed to all vessels:

(i) T. 54 S., R. 36 E., sections 19, 30, 31; T. 55 S., R. 36 E., sections 6, 7, 18, 19, and 30, bordering the Shark Valley Loop Road from the Tamiami Trail south.

(ii) Eco Pond, Mrazek Pond, Royal Palm Ponds except for Hidden Lake, Parachute Key ponds north of the Main Park Road, and Lake Chekika.

(4) The following inland fresh water areas are closed to the use of motorized vessels: Coot Bay Pond, Nine Mile Pond, Paurotis Pond, Sweetbay Pond, Big Ficus Pond, Sisal Pond, Pine Glade Lake, Long Pine Key Lake, Tower Lake, Hidden Lake, Pine Island, and L–67 canal.

(5) The following coastal waters, designated by statute as wilderness (Pub. L. 95–625), are closed to the use of motorized vessels: Mud, Bear, East Fox, Middle Fox, Little Fox, and Gator Lakes; Homestead Canal; all associated small lakes on Cape Sable inland from Lake Ingraham; Cuthbert, Henry, Little Henry, Seven Palm, Middle, Monroe, Long, and the Lungs Lakes; Alligator Creek from the shoreline of Garfield Bight to West Lake; all inland creeks and lakes north of Long Sound, Joe Bay, and Little Madeira Bay except those ponds and lakes associated with Taylor River.

(6) Except to effect a rescue, or unless otherwise officially authorized, no person shall land on keys of Florida Bay except those marked by signs denoting the area open, or on the mainland shorelines from Terrapin Point eastward to U.S. Highway 1, including the shores of all inland bays and waters and those shorelines contiguous with Long Sound, Little Blackwater Sound, and Blackwater Sound.

(7) West Lake Pond and West Lake shall be closed to all vessels when they are being used by feeding birds. At all other times, these areas shall be open only to hand-propelled vessels or Class A motorboats powered by motors not to exceed 6 horsepower.

(8) Launching, and or operating a personal watercraft is prohibited in the park.

(9) Vessels used as living quarters shall not remain in or be operated in the waters of the Park for more than 14 days without a permit issued by the Superintendent. Said permit will prescribe anchorage location, length of stay, sanitary requirements and such other conditions as considered necessary.

(f) Violation of any of the provisions of § 7.45 is prohibited.

Dated: September 8, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–28071 Filed 11–14–94; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. 93–13B]

Procedures for Copyright Restoration of Certain Motion Pictures and their Contents in Accordance With the North American Free Trade Agreement

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office is issuing final regulations establishing procedures that govern the filing of Statements of Intent for the restoration of copyright protection in the United States for certain motion pictures and their contents in accordance with the North American Free Trade Agreement (NAFTA) and the statute implementing it. The NAFTA Implementation Act authorizes the Copyright Office to establish procedures whereby potential copyright owners of eligible works who file a complete and timely Statement of Intent with the Copyright Office on or before December 31, 1994, will have copyright protection restored effective January 1, 1995. These final regulations make several modifications or clarifications to the interim regulations and are effective immediately.

DATES: These final regulations are effective November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Acting General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8350. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On January 10, 1994, the Copyright Office notified the public of the provisions in NAFTA with regard to the restoration of copyright protection for certain motion pictures and their contents. 59 FR 1408 (1994). On March 16, 1994, the Copyright Office published interim regulations with a request for comments to establish procedures governing the filing of Statements of Intent for the restoration of copyright protection in the United States for these works. 59 FR 12162 (1994). A total of four public comments were received. These final regulations adopt most of the recommendations made in the comments to improve the system of filing Statements of Intent. Some Statements of Intent have already been filed with the Office. The amendments to the interim regulations, including the certification statement, do not affect these statements; they are governed by the regulations effective at the time they were filed. However, the Office will contact the filers of these Statements to ask if they wish to modify their Statements to comply fully with our final regulations.

Works Eligible for Restoration

To be eligible for copyright restoration, a motion picture or any work included in a motion picture either:

1. Must have been first fixed in Mexico or Canada and entered the public domain in the United States because of first publication anywhere on or after January 1, 1978, and before March 1, 1989, without the required copyright notice;

2. or, regardless of where it was fixed, must have entered the public domain in the United States because of first publication in Mexico or Canada on or after January 1, 1978, and before March 1, 1989, without the required copyright notice.

The interim regulations set out the procedures potential copyright owners should follow to have copyright protection for their works restored in the United States. In order for copyright to be restored in an eligible work, the potential copyright owner or an authorized agent must file a complete and timely Statement of Intent with the Copyright Office by December 31, 1994. These Statements must contain the information set out in the final regulations.[1] This information will be used by the Office to create a public record of the works restored to copyright protection.

Summary of Comments

We received a total of four written comments from: Jon Baumgarten, an attorney representing the Motion Picture Association of America (MPAA); Carmen Quintanilla Madero, Director General of the Mexican Copyright Office; Phil Hochberg, an attorney representing the National Hockey League; and James Bouras, an attorney. Most recommended modifying the interim regulations to identify clearly each work that will enjoy copyright restoration. For example, Mr. Baumgarten suggested a requirement

> That Statements of Intent include identification of the title and potential copyright owner of works included in qualifying motion pictures; to avoid uncertainty and misreliance (by any party, "owner" or "user"), the regulations should provide that if any work is not so identified, or is inadequately identified, it is not protected.

Comment letter of Baumgarten at pp. 2–3.

Mr. Hochberg pointed out that since most sports programs do not have a title, they should be identified by the sporting event, team names, and date. Comment letter of Hochberg at p 2. The Office is amending the final regulations to incorporate both of these recommendations.

Mr. Bouras suggested that all Statements of Intent for titles in a foreign language require a literal translation of that title into English. Comment letter of Bouras at p 1. The Office will not require literal English translations of titles for foreign language works. However, the Office strongly recommends the inclusion of any alternate title, especially a title under which a work may have been subsequently released in the United States.

Mr. Bouras also stated that the inclusion of names of the stars of the film, authors of the book or play, and composers of the underlying music would help identify the work and asked that the final regulation either require or encourage the use of this information. The Office has decided not to require this information because it would create a burden on potential owners.

Prior to filing a comment, Carmen Quintanilla Madero from the Mexican Copyright Office wrote to Marybeth Peters asking for the status of motion pictures published before January 1,. 1978. Both Ms. Peters and the Acting Register Barbara Ringer responded that the NAFTA Implementation Act only covered works published without notice between January 1, 1978, and March 1, 1989.[2]

Ms. Quintanilla's letter expressed concern that the NAFTA Implementation legislation addresses only works that lost their U.S. copyright protection by publication without a

[1] Additional information that may be useful in filing a Statement of Intent appeared in the **Federal Register**, 59 FR 12162 (March 16, 1994), and in Copyright Office Announcement ML–476 which is available by contacting the Public Information Office at (202) 707–3000.

[2] Both letters indicated that the United States Congress might address the status of works published without notice before January 1, 1978, when it considered the GATT legislation. Letter of Marybeth Peters to Carmen Quintanilla Madero, April 25, 1994; letter of Barbara Ringer to Carmen Quintanilla Madero, June 23, 1994.

copyright notice on or after January 1, 1978. She believes that the intent of the Mexican negotiator was not satisfied and claims that

> The clear goal of Mexico in negotiating Annex 1705.7 was to restore U.S. Copyright protection for Mexico's "Golden Age" movies, which were released mostly prior to 1978.

Comment letter of Quintanilla at p 1.

Regardless of the fact that most of the Mexican films may not come within this window, the Office finds no authority to extend the window provided by Congress. The Intellectual Property Annex to the North American Free Trade Agreement refers specifically to section 405 (Notice of Copyright: Omission of Notice) of the U.S. copyright law. This section of the copyright law was enacted in 1976 in the general revision of the copyright law and became effective January 1, 1978. The specific reference to section 405 is included in the NAFTA Implementation Act (Pub. L. No. 103–182) and the language of the Act is very clear, providing that only works published between January 1, 1978, and March 1, 1989, are eligible for the restoration of copyright protection. Therefore, it is not possible to amend our draft regulations to cover works published before 1978.

Victor Blanco, Vice President of Copyright Affairs, Televisa South America, visited the Office on September 13, 1994. After having reviewed the interim regulations, he suggested a change in the language of the certification to clarify that the certifying party can certify only that he or she understands the work entered the public domain in the United States. The Office is revising the certification statement in response to Mr. Blanco's suggestion because a filer may not be an expert in U.S. copyright law and thus he or she can only certify what he or she understands to be the status of the work.

Final Regulations

Two types of works are eligible for copyright restoration: (1) motion pictures; and (2) works included in motion pictures (underlying works such as a novel or play on which a motion picture was based, the original screenplay or the original musical score of a motion picture).

The overall objective in issuing these final regulations is to keep the Statement of Intent process simple and to identify clearly the works eligible for restoration. Based on the comments received in response to the Notice of Inquiry, the Office is making several changes intended to help identify works for which copyright has been restored.

Identification of Titles of Underlying Works

If the potential copyright owner of both the motion picture and the underlying work(s), such as a screenplay or musical composition, is the same, all such works can be included on a single Statement of Intent. However, if the title of any underlying work is different from the title of the motion picture, all titles must be given.

As already specified in the interim regulations, if the potential copyright owner of the motion picture is different from the potential copyright owner(s) of the underlying work(s), separate Statements of Intent must be filed.

Identification of Untitled Programs

Sports programs that do not have a title can be identified by giving the sporting event, team names, and a date, for example, National Hockey League, New York Rangers at Toronto Maple Leafs, April 25, 1978.

English Translations of Titles

The English translation of titles for foreign language works is not required, but the Office strongly encourages the filer of a Statement of Intent to include any alternate title, especially a title under which a work may have been subsequently released in the United States.

Certification Statement

The language required in the certification by the potential owner or authorized agent is revised to clarify that the certifying party can certify only that he or she understands the work entered the public domain in the United States. See Item 6 of the Appendix. A party making this certification must use the required language but specify in the certification the country, Mexico or Canada, in which the work was first fixed or first published.

In addition, the Office is requiring that the party submitting the statement print or type his or her name under the signature.

All statements should be mailed to the Copyright Office at: NAFTA, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

Or they may be delivered to the Copyright Office's Public Information Office in Room 401, James Madison Memorial Building, 101 Independence Avenue SE., Washington, DC, Monday–Friday, 8:30 a.m.–5:00 p.m. To be received timely they must *reach* the Office on or before December 31, 1994.

Appendix—as Revised by Final Regulations

Statement of Intent To Restore Copyright Protection in the United States in Accordance With the North American Free Trade Agreement (NAFTA)

1. Title of work: _____

If the Statement of Intent covers the entire motion picture, give the title of the motion picture.

If the Statement of Intent includes the motion picture and an underlying work(s), and any underlying work has a title different from the title of the motion picture, give both the title of the motion picture and the title(s) of underlying work(s). Also specify the kind of underlying work covered, for example, "screenplay" or "music." This situation applies only when the potential copyright owner is the same for the works.

If the Statement of Intent covers only an underlying work, give the title of the motion picture and specify the kind of underlying work covered, for example, "screenplay" or "music." In addition, if the underlying work has a title that is different from the title of the motion picture, give both titles, for example, state "(*title of underlying work*) contained in (*title of motion picture*)."

If the Statement of Intent covers more than one motion picture, complete items 1–4 for each motion picture. This situation applies only where the potential copyright owner is the same for all motion pictures listed on the Statement.

Sports programs that do not have a "title" can be identified by giving the sporting event, team names and a date (month, day and year).

1a. Include series and episode title(s)/number(s), if any

_____

_____

1b. (Optional) Alternative titles (for example, U.S. release title, if different from foreign title; English translation for foreign language titles, etc.)

1c. (Optional) Original producer and/or director _____

1d. (Optional) Format or physical description of work as first published (running time, reels, etc. _____

Film _____

Videotape _____

Videodisc _____

Other (describe): _____

2. Nation of first fixation:

Mexico ( ) Canada ( ) Other nation (specify): _____ _____

2a. (Optional) Year of first fixation: _____

3. Nation of first publication:

Mexico ( ) Canada ( ) Other nation (specify): _____

4. Date of first publication: _____
(Month/day/year)

5. Name and mailing address of potential copyright owner of work:

Name: _____

Address: _____

Street or Post Office Box, City/State, Country

Telephone _____

Telefax _____

6. Certification and Signature: I hereby certify that each of the above titled works was first fixed or first published in

and (insert Mexico or Canada) understand that the work(s) have entered the public domain in the United States of America because of first publication on or after January 1, 1978, and before March 1, 1989, without the notice required by U.S. Copyright Law. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

Signature: _____

Name (Printed or Typed): _____

Date: _____

List of Subjects in 37 CFR Part 201

Copyright, North American Free Trade Agreement Restoration of copyright for certain works.

Final Regulations

For the reasons set out in the preamble, 37 CFR chapter II is amended in the manner set forth below.

PART 201—[AMENDED]

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

Authority: Sec. 702, 90 Stat. 2541; 17 U.S.C. 702; Pub. L. No. 103–182, 107 Stat. 2115.

2. Section 201.31 is amended by revising paragraph (d)(2), redesignating paragraphs (d) (3) and (4) as (d) (6) and (7), and adding new paragraphs (d) (3), (4) and (5) as follows.

* * * * *

(d) Requirements for Effective Statements of Intent. * * *

(2) Statements of Intent must include:

(i) the title(s) of the work(s) for which copyright restoration is sought, including any underlying work(s) that has a title(s) different from the title of the motion picture, provided all works are owned by the same potential copyright owner;

(ii) the nation of first fixation;

(iii) the nation of first publication;

(iv) the date of first publication;

(v) the name and mailing address (and telephone and telefax, if applicable) of the potential copyright owner of the work;

(vi) the following certification (in its entirety); signed and dated by the potential copyright owner or authorized agent:

Certification and Signature: I hereby certify that each of the above titled works was first fixed or first published in

and (insert Mexico or Canada) understand that the work(s) have entered the public domain in the United States of America because of first publication on or after January 1, 1978, and before March 1, 1989, without the notice required by U.S. copyright law. I certify that the information given herein is true and correct to the best of my knowledge, and understand that any knowing or willful falsification of material facts may result in criminal liability under 18 U.S.C. 1001.

Signature: _____

Name (Printed or Typed): _____

Date: _____

(3) If copyright restoration is sought for an underlying work only, the Statement of Intent must specify the kind of underlying work covered and give the title if different from the title of the motion picture.

(4) More than one motion picture may be included in a single Statement of Intent provided the potential copyright owner is the same for all the motion pictures. The information required in Section 201.31 (d)(2)(i) through (d)(2)(iv) must be given for each work.

(5) Sports programs that do not have a title can be identified in a Statement of Intent by giving the sporting event, the team names and the date (month, day and year).

* * * * *

Dated: November 8, 1994.

Marybeth Peters,

Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 94–28165 Filed 11–14–94; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[EPA/OSW–FR–94–5105–3]

Solid Waste Disposal Facility Criteria; Correcting Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting Amendment.

SUMMARY: On October 1, 1993, the Environmental Protection Agency (EPA) issued a final rule delaying the effective date for certain requirements issued under the authority of Subtitle D of the Resource Conservation and Recovery Act (RCRA). See 58 FR 51536. EPA has identified a typographical error in this rule requiring correction. The rule amended the authority citation to 40 CFR Part 258. However, the rule incorrectly cited 42 U.S.C. 6949(c) in the list of authorities for Part 258. The correct citation is 42 U.S.C. 6949a(c). This amendment corrects the misprint.

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: For more information contact Mr. Allen J. Geswein, Office of Solid Waste (5306), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–1099.

SUPPLEMENTARY INFORMATION: This technical correction involves a typographical error and is necessary to make the Code of Federal Regulations correct.

List of Subjects in 40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: November 3, 1994.

Elliott Laws,

Assistant Administrator for Solid Waste and Emergency Response.

40 CFR Part 258 is amended as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

1. The authority citation for part 258 is revised to read as follows:

Authority: 33 U.S.C. 1345 (d) and (e); 42 U.S.C. 6907(a)(3), 6912(a), 6944(a) and 6949a(c).

[FR Doc. 94–28024 Filed 11–14–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 685

[Docket No. 940711–4306; I.D. 050294C]

RIN 0648 AF77

Pelagic Fisheries of the Western Pacific Region; Vessel Monitoring System

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule implementing an experimental vessel monitoring program in the pelagic longline fishery around Hawaii using an electronic vessel monitoring system (VMS). Under this program, vessels operating in this fishery, upon notification by NMFS, are required to carry vessel monitoring equipment owned and installed by NMFS. Such equipment allows a vessel to be identified and its location monitored by satellite. Such information will be used by NMFS and the U.S. Coast Guard

(USCG) in the enforcement of regulations that prohibit fishing in closed areas. This experimental program, which is to run for 3 years or less, is needed so that the Western Pacific Fishery Management Council (Council) and NMFS can evaluate the performance and cost-effectiveness of VMSs and make recommendations regarding the future use of VMSs in this and other fisheries.

EFFECTIVE DATE: December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner at 310–980–4034 or Mr. Eugene F. Proulx at 310–980–4049.

SUPPLEMENTARY INFORMATION: On August 10, 1994, NMFS published a proposed rule in the **Federal Register** (59 FR 40859) that described a plan under which holders of limited-entry permits would be required to allow the installation of NMFS-owned vessel monitoring equipment on their limited-entry vessels when notified by NMFS. After considering public comments on that proposed rule, NMFS issues this final rule to implement that plan.

The reason for using VMS technology is to develop an effective way of monitoring the location of longline fishing vessels without excessively burdening fishermen. Such technology allows vessels to be tracked by satellite thus allowing illegal fishing in closed areas to be detected without using patrol aircraft and vessels. VMS also is expected to enhance at-sea safety by allowing NMFS and the USCG to locate vessels immediately in the event of emergencies. The attachment of supplementary equipment would enable VMS equipment to be used to receive or transmit information, such as news and weather broadcasts, or personal communications.

The August 10 proposed rule: (1) Listed the problems in the fishery and how those problems have been addressed; (2) summarized the results of experiments with several automated vessel monitoring technologies; (3) specified the minimum performance standards for VMS equipment adopted by the Council; and (4) described the actions taken by the Council to ensure that the development and application of a VMS in the central and western Pacific is carried out in a manner that is comprehensive, attendant to the needs of management authorities, cost-effective, and fair to the fishing industry. Comments on the proposed rule were invited until September 9, 1994.

Comments and Responses

Four comments were received: One from the Marine Mammal Commission, two from fishermen who own longline vessels, and one from the Hawaii Longline Association.

Comment: The Marine Mammal Commission, a body established by the Marine Mammal Protection Act to oversee activities related to laws affecting marine mammals, had previously recommended a similar system to protect Hawaiian monk seals and supports the proposed rule as written.

Response: Comment accepted.

Comment: One fisherman commented that he has no problem with carrying vessel monitoring equipment aboard his vessel as long as he does not have to pay for the equipment or its maintenance.

Response: As stated in the proposed rule, virtually all costs of the equipment, its operation, and its maintenance will be borne by NMFS. The equipment does require a small amount of space. It consists of a transceiver measuring about 22 cm by 25 cm, weighing 3 kg, and an antenna measuring 29 cm by 17 cm, weighing 2 kg. Transmitting requires 105 watts.

Comment: The Hawaii Longline Association, which represents longline fishermen in Hawaii, believes that any data collected beyond the closed areas are intrusive and inappropriate, and suggests that such information be filtered electronically after a vessel is beyond the closed area.

Response: NMFS agrees that a vessel well beyond a closed area does not need to be monitored frequently to determine if it is fishing in a closed area; however, test monitoring has not been extensive enough to determine the degree of monitoring needed. The degree of monitoring needed to ensure enforcement of the regulations will be one of the factors examined during the 3-year experimental program.

Comment: One fisherman commented that a VMS is oppressive and compromises his protection from unreasonable search and seizure.

Response: NMFS does not agree that a VMS is oppressive. The proposed tracking of vessels by satellite is the least burdensome method of ensuring that vessels will not fish in a closed area without being detected. The crew does not have to operate the equipment and the owner of the vessel does not have to pay the costs of purchase, installation or operation. Other methods of ensuring that fishing is not conducted in closed areas without detection, such as requiring the reporting of a vessel's location by radio and requiring that an observer be carried, are far more burdensome. From the perspective of costs to the industry, efficiency, and the expenditure of public funds, the system is an alternative worth testing.

NMFS recognizes that some fishermen feel that VMS equipment allows the Federal Government to know more about the movements of individual vessels than is appropriate or necessary. The protection of public resources often presents difficult enforcement problems. In the case of the pelagic longline fishery, an objective method of verifying the location of vessels is necessary. The use of aircraft and vessels of the USCG is expensive and limited in effectiveness for long-term operations. Placing observers on each vessel also is expensive, as well as more intrusive on fishing operations than the use of a VMS. NMFS will be reviewing the level of accuracy and precision required and the degree of monitoring needed to meet the above obligations with enforcement agents and scientists. The disclosure of data indicating individual vessel positions will be treated in accordance with the provisions of the Freedom of Information Act and the Trade Secrets Act. This means that if data is requested, it will not be divulged if the vessel owner can show that the disclosure would cause substantial harm to the owner's competitive position.

As of September 15, 1994, 40 vessel owners, without any requirement to do so, have requested installation of vessel monitoring equipment, and some owners have had supplementary equipment attached for their own use.

Changes From the Proposed Rule

The regulatory text of this final rule is virtually the same as the regulatory text of the proposed rule. The only substantive change is insertion of the word "prior" before the word "approval" in § 685.5(hh) to clarify that approval must be obtained before equipment is added to a VMS unit.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 685

American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Northern Mariana Islands.

Dated: November 8, 1994.

Charles Karnella,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 685 is amended as follows:

PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

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

2. In § 685.2, the definitions of "Special Agent-In-Charge (SAC)" and "vessel monitoring system unit (VMS unit)" are added in alphabetical order, as follows:

§ 685.2 Definitions.

* * * * *

Special Agent-In-Charge (SAC) means the Special Agent-In-Charge, NMFS Office of Enforcement, Southwest Region, or the designee of the Special Agent-In-Charge.

* * * * *

Vessel monitoring system unit (VMS unit) means the hardware and software equipment owned by NMFS, installed on vessels by NMFS, and required by this part to track and transmit the positions of longline fishing vessels.

3. In § 685.5, new paragraphs (aa) through (hh) are added as follows:

§ 685.5 Prohibitions.

* * * * *

(aa) Fail to carry a VMS unit as required under § 685.16.

(bb) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC.

(cc) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit.

(dd) Fish for, catch, or harvest Pacific pelagic management unit species with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS.

(ee) Possess on board a vessel without a VMS unit Pacific pelagic management unit species harvested with longline gear after NMFS has installed the VMS unit on the vessel.

(ff) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit.

(gg) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer.

(hh) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC.

4. Section 685.14 is revised to read as follows:

§ 685.14 Transit notification.

The operator of a longline fishing vessel subject to this part who does not have on board a VMS unit while transiting the protected species zone, must notify the NMFS Southwest Enforcement Office at (808) 541–2727 immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of entry or exit from the protected species zone, and location of the vessel by latitude and longitude to the nearest minute.

5. A new § 685.16 is added to read as follows:

§ 685.16 Vessel monitoring system.

(a) *VMS unit.* Only a VMS unit owned by NMFS and installed by NMFS complies with the requirements of this part.

(b) *Notification.* After a limited-entry permit holder has been notified by the SAC of a specific date for installation of a VMS unit in the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(c) *Fees and charges.* During the experimental VMS program, a Hawaii longline limited-entry permit holder shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directly to requirements under this section. Communication charges related to any additional equipment attached to the VMS unit by the owner or operator shall be the responsibility of the owner or operator and not NMFS.

(d) *Permit holder duties.* The holder of a limited-entry permit and the master of the vessel operating under the permit must:

(1) Provide opportunity for the SAC to install and make operational a VMS unit after notification;

(2) Carry the VMS unit on board whenever the vessel is at sea; and

(3) Not remove or relocate the VMS unit without prior approval from the SAC.

(e) *Authorization by the Special Agent-In-Charge.* The SAC has authority over the installation and operation of the VMS unit. The SAC may authorize the connection or order the disconnection of additional equipment, including a computer, to any VMS unit when deemed appropriate by the SAC.

(f) *Observers.* NMFS observers shall have access to VMS units to verify operation, obtain data, and use the communication capabilities of the units for official purposes.

(g) *Review.* During the experimental VMS program, which will end no later than December 15, 1997, the Council and NMFS will conduct reviews of the performance and cost-effectiveness of the program requiring VMS units in this fishery. The Council may recommend that the program be continued, terminated, or modified with respect to operation, equipment, or other aspects of the program.

[FR Doc. 94–28085 Filed 11–14–94; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 219
Tuesday, November 15, 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 THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Parts 404 and 405

RIN 1505–AA47

Amendments to Regulations for the Government Securities Act of 1986

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury ("Department" or "Treasury") is publishing for comment proposed amendments to the recordkeeping rules in Part 404 and the reporting rules in Part 405 of the regulations issued under the Government Securities Act of 1986 ("GSA"). The proposed recordkeeping amendment would require entities registered with the Securities and Exchange Commission ("SEC") as specialized government securities brokers and dealers ("registered government securities brokers and dealers") under Section 15C(a)(1)(A) of the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78*o*–5(a)(1)(A)) to maintain and preserve records concerning the financial and securities activities of affiliates whose business activities are reasonably likely to have a material impact on the financial or operational condition of the registered government securities brokers and dealers. The proposed reporting amendment would require registered government securities brokers and dealers to file with the SEC quarterly summary reports of the information required to be maintained and preserved by the proposed recordkeeping amendment. The proposed amendments ("risk assessment rules") parallel the SEC's final temporary risk assessment rules applicable to brokers and dealers that conduct general or municipal securities businesses ("registered brokers and dealers"). The Department's risk assessment rules are being proposed pursuant to the authority granted to the Department by the Market Reform Act of 1990 (the "Reform Act") and are intended to provide regulators with access to information concerning the financial risk posed to registered government securities brokers and dealers—and to the securities markets as a whole—as a result of certain financial and securities activities conducted by affiliates within holding company structures.

DATES: Comments must be submitted on or before January 17, 1995.

ADDRESSES: Comments should be sent to: Government Securities Regulations Staff, Bureau of the Public Debt, Department of the Treasury, 999 E Street N.W., Room 515, Washington, D.C. 20239–0001. Comments received will be available for public inspection and copying at the Treasury Department Library, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Kerry Lanham (Government Securities Specialist) or Lee Grandy (Government Securities Specialist) at 202–219–3632. (TDD for hearing impaired: 202–219–3988.)

SUPPLEMENTARY INFORMATION:

I. Background

In response to the stock market disruption of October 1987, the bankruptcy of Drexel Burnham Lambert Group, Inc. (Drexel) in February 1990, and other developments in the securities markets, Congress passed the Reform Act in September 1990.[1] The Reform Act authorized the SEC to halt trading of registered securities[2] during extremely volatile conditions ("circuit breakers"), facilitate coordinated clearing mechanisms, develop regulations for large trader reporting, and promulgate risk assessment rules for broker-dealer holding company structures. The Reform Act also contained a "conforming" amendment to Section 15C of the Exchange Act authorizing Treasury to promulgate risk assessment rules applicable to registered government securities brokers and dealers;[3] Treasury's risk assessment authority paralleled SEC risk assessment authority. The Reform Act authorized Treasury to require registered government securities brokers and dealers to maintain and report information on the financial and securities activities of certain affiliates that had the potential to pose material amounts of risk to the brokers and dealers. The Reform Act did not authorize Treasury to require financial institutions that have filed notice (or are required to file notice) as government securities brokers and dealers to maintain and report risk assessment information, although the registered government securities brokers and dealers that would be required to follow the rules would have to maintain records and submit reports pertaining to the financial and securities activities of certain affiliates that are financial institutions.

The Drexel failure demonstrated that financial difficulties or liquidity problems of parent companies or affiliates of brokers and dealers could have a material and adverse effect on brokers and dealers themselves; risk assessment authority was therefore intended to help regulators monitor such developments. The primary focus of the risk assessment authority was the financial health of large holding companies whose potential failures pose risks to the affiliated brokers and dealers, as well as to the securities markets and the financial system as a whole. The Department believes that these proposed rules will enhance the safety of the government securities market and provide for more effective regulatory oversight.

The legislative history[4] of the Reform Act indicated that risk assessment rules would require information concerning several particular types of potentially risky financial and securities activities conducted by affiliates of brokers and dealers, including bridge loans, interest rate swaps, foreign currency transactions, other derivatives (e.g., forwards and futures), and real estate developments. Off-balance sheet derivatives such as interest rate swaps and foreign currency transactions were identified as particularly important categories for risk assessment rules

[1] Pub. L. 101–432, 104 Stat. 963 (1990).

[2] The SEC has authority to halt trading in securities that are registered under the Securities Act of 1933. U.S. government and other "exempt" securities are not included in the definition of registered securities under the federal securities laws.

[3] 15 U.S.C. 78*o*–5(b)(2).

[4] H.R. Rep. No. 101–524 and 101–477, 101st Cong., 2nd Sess. (1990).

given their high growth rates and the limited public information available regarding their magnitude and use.

Today, many of these off-balance sheet transactions are conducted by holding company affiliates of brokers and dealers. In numerous instances, the activities of these affiliates are not regulated by securities or financial institution regulatory agencies. Affiliates conducting these unregulated activities can attain a degree of leverage and assume credit risks that brokers and dealers, which are subject to the capital and customer protection rules of the Department and the SEC, cannot attain. The business activities of these affiliates could have significant and adverse effects on the financial health of brokers and dealers. For example, large losses at the parent company level might cause the credit rating of the parent to decline, which could cause liquidity problems at the broker or dealer. Thus, the Reform Act specifically provided the SEC, which was already responsible for the examination and enforcement of all brokers and dealers (banks excluded) under the Exchange Act, with direct access to information concerning the business activities of brokers' and dealers' affiliates that are outside of SEC oversight. The Reform Act did not, however, provide the SEC with any new regulatory authority over the affiliates themselves.

In September 1991, the SEC published for comment proposed temporary Rules 17h–1T and 17h–2T, which together with proposed Form 17–H, would establish a risk assessment recordkeeping and reporting system for registered brokers and dealers.[5] In response to the request for comments, the SEC received 63 letters addressing the proposed temporary rules. After reviewing the comments it received and making modifications, the SEC issued in July 1992 final temporary risk assessment rules.[6] Rule 17h–1T[7] is a recordkeeping rule identifying and describing the records that registered brokers and dealers are required to maintain and preserve. Rule 17h–2T[8] sets forth requirements for registered brokers and dealers to submit quarterly reports summarizing the information required to be maintained under Rule 17h–1T. The preamble of the SEC's final temporary rules stated that the SEC staff would issue for public comment a study evaluating the effectiveness of the SEC's risk assessment rules within 90 days after the rules have been fully operative for two years. At that time, the SEC will consider what, if any, modifications to its rules would be appropriate. Treasury will be interested in the SEC's findings to the extent that such findings are germane to Treasury risk assessment rules.

Treasury's ability to issue proposed risk assessment rules was precluded by the expiration of its rulemaking authority under the GSA on October 1, 1991. Treasury's authority was not renewed until December 17, 1993 (107 Stat. 2344, Pub. L. 103–202).

The Reform Act's conforming amendment, under which Treasury was authorized to promulgate risk assessment rules, specifically mandated that, with respect to "associated persons"[9] of registered government securities brokers and dealers that are also associated persons of registered brokers and dealers subject to SEC rules, Treasury rules should conform to the greatest extent practicable to the rules established by the SEC. In view of this mandate and the Department's understanding that many registered government securities brokers and dealers have holding company structures similar to those of many registered brokers and dealers, the Department has determined that the SEC's rules should serve as a foundation for Treasury risk assessment rules, and Treasury risk assessment rules should be companion rules to the SEC rules.

The Commodity Futures Trading Commission ("CFTC") was also authorized to promulgate risk assessment rules pursuant to the Futures Trading Practices Act of 1992.[10] The CFTC published its proposed risk assessment rules in March 1994.[11] As proposed, the rules would require that registered futures commission merchants ("FCMs") maintain information and submit reports regarding the activities of affiliates whose activities are reasonably likely to have a material impact on the financial or operational condition of the FCMs.

II. Analysis

A. Reporting and Recordkeeping Requirements

The Department's proposed risk assessment rules incorporate the SEC's final temporary risk assessment Rules 17h–1T and 17h–2T, with minor modifications that reflect both the specialized activities of registered government securities brokers and dealers and the Department's analysis of the SEC's interpretive letter to the Securities Industry Association ("SIA") in September 1993.[12] Under the Department's proposed amendments, two general categories of records would be required: (1) Information concerning the holding company organization, risk management policies, and material legal proceedings; and (2) financial and securities information pertinent to assessing risk in the holding company system (e.g., consolidating and consolidated financial statements and positions in various financial instruments). The information required to be maintained and preserved pursuant to the proposed recordkeeping amendment would be subject to routine inspection by the SEC. Under the proposed reporting amendment, registered government securities brokers and dealers would be required to file with the SEC quarterly summaries of the information required to be maintained under the proposed recordkeeping amendment. These quarterly summaries would be required to be filed on the SEC's Form 17–H.

The information required to be maintained and reported by the firms pertains only to the firms' "Material Associated Persons" ("MAPs"). The Reform Act did not define MAPs. However, the legislative history accompanying the statute specified a number of factors that should be considered when determining which affiliates (associated persons) might have a "material" impact on the financial or operational condition of brokers and dealers. These factors have been incorporated into § 17h–1T(a)(2), thereby providing guidelines for determining which affiliates of the brokers and dealers are MAPs. The initial designation of MAPs would be made by registered government securities brokers and dealers.

The term "associated persons," as explained in the legislative history, is based on the definition at 3(a)(18) of the

[5] Securities Exchange Act Release No. 29635 (August 30, 1991), 56 FR 44014 (September 6, 1991).

[6] Securities Exchange Act Release No. 30929 (July 16, 1992), 57 FR 32159 (July 21, 1992).

[7] 17 CFR 240.17h–1T.

[8] 17 CFR 240.17h–2T.

[9] The term "affiliate" is not used in the Reform Act, although it is used extensively in the legislative history. The term used in the Reform Act is "associated persons," the definition of which is based on Section 3(a)(18) of the Exchange Act (15 U.S.C. 78c(a)(18)), except that natural persons are not included for purposes of the risk assessment provisions.

[10] Pub. L. 102–546, 106 Stat. 3590 (1992).

[11] 59 FR 9689 (March 1, 1994).

[12] See letter from Michael Macchiaroli, Associate Director, Division of Market Regulation, Securities and Exchange Commission to Douglas G. Preston, Esq., Securities Industry Association (September 20, 1993). [1993 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶76,696.

Exchange Act (15 U.S.C. 78c(a)(18)), except that natural persons are excluded for the purposes of the risk assessment rules (which automatically excludes natural persons from the definition of MAPs). Consistent with the SEC approach,[13] partnerships would not be treated as natural persons and, depending on the circumstances, could be deemed to be MAPs of the registered government securities broker or dealer. Subchapter S corporations could be treated as natural persons for purposes of the proposed amendments if the Subchapter S corporation is owned by one natural person.

Note that, with respect to the Department's proposed risk assessment rules, the definition of "associated persons" differs from the definition of that term as specified in § 400.3 of the GSA regulations. The term as used in § 400.3 specifically applies to certain natural persons who are associated with government securities brokers or dealers. The following general categories of information would be required to be maintained and reported.

1. Organization, Risk Management Procedures, and Material Legal Proceedings

Paragraphs (a)(1)(i) through (a)(1)(iii) of SEC Rule 17h–1T, as made applicable by the Department's proposed recordkeeping amendment, would require registered government securities brokers and dealers to maintain an organizational chart of the holding company structure, written risk management policies and procedures, and information on material legal proceedings. The organizational chart would show the registered government securities broker or dealer and all of its associated persons, including a designation of which associated persons are MAPs. Although it would be preferable that this information be maintained in a chart format, a registered government securities broker or dealer would be able to maintain and report a description of the organizational structure that sets forth the relationships among the registered government securities broker or dealer and its associated persons, including an indication of which associated persons are deemed to be MAPs. This information would be included in the first filing of Form 17–H by the registered government securities broker or dealer and each year-end filing. Quarterly updates would be required only when a material change in organizational structure has occurred.

[13] See *supra* note 12.

Registered government securities brokers and dealers would also be required to keep a record of any existing written policies, procedures or systems concerning their: Methods for monitoring the financial and operational risks to them as a result of activities of their associated persons, financing and capital adequacy, and trading positions and risks. A registered government securities broker or dealer is not required to create such policies or procedures if none exist. Thus, the firm would be required to submit with Form 17–H either copies of the policies (if the firm operates under written policies), a written summary of such policies (if the firm operates under informal or oral policies), or a written statement explaining the absence of such policies. This information would be filed only with the firm's first filing of Form 17–H. Quarterly updates would be required when significant changes occur.

Further, registered government securities brokers and dealers would be required to keep records of all pending legal or arbitration proceedings to which the registered government securities broker or dealer or a MAP is a party, or to which any of its property is subject, as would be required to be disclosed by all firms under generally accepted accounting principles ("GAAP").[14] The information would be maintained and reported on a consolidated basis. The consolidation would be through the highest level holding company that is a MAP—in most cases the ultimate parent company. The information would be reported with the firm's first filing of Form 17–H. Quarterly updates would be filed when material changes occur.

2. Financial and Securities Information

Paragraphs (a)(1)(iv) and (a)(1)(v) of SEC Rule 17h–1T, as modified by the Department's proposed recordkeeping amendment, would require registered government securities brokers and dealers to maintain and preserve quarterly consolidated and consolidating balance sheets and income statements, and quarterly consolidated cash flow statements for the registered government securities broker or dealer and the highest level holding company that is a MAP. The financial statements would have to be prepared in accordance with GAAP and would require the inclusion of notes to the financial statements (although notes would not have to be provided for the consolidating statements). The financial statements could be unaudited (unless the firm already produces audited statements for other purposes). In instances where the registered government securities broker or dealer would maintain and file reports that a foreign affiliate files with certain foreign regulators (see later section on MAPs that are subject to the supervision of a foreign financial regulatory authority), a short narrative explaining the material differences between GAAP and foreign accounting or reporting conventions would be required. A quantitative reconciliation would not be required.

In order to maintain consistency between the Department's and the SEC's rules, registered government securities brokers and dealers would have the option to maintain and report the consolidating income statements required by paragraph (a)(1)(v) of SEC Rule 17h–1T (as modified by the Department's proposed recordkeeping amendment) and Part I, Item 4 of Form 17–H, respectively, on a cumulative year-to-date basis rather than on a quarterly basis.[15] In preparing the consolidating balance sheets and income statements for recordkeeping and reporting purposes, registered government securities brokers and dealers would be required to provide separate entries for each MAP. Registered government securities brokers and dealers would be permitted to combine non-MAP affiliates' information in a single category in the consolidating statements.

Paragraph (a)(1)(vi) of SEC Rule 17h–1T, as modified by the Department's proposed recordkeeping amendment, and Part II, Section I of Form 17–H would require registered government securities brokers and dealers to maintain and report aggregate, gross long and short securities and commodities positions held by each MAP at quarter-end (and month-end if greater than quarter-end). Registered government securities brokers and dealers would also be required to provide a separate listing of each single unhedged [16] securities or commodities position, other than U.S. Treasury securities, held by each MAP that exceeds the "Materiality Threshold" at any month-end. Materiality Threshold is defined in § 17h–1T(a)(4), as modified

[14] Based on contingencies disclosure requirements in Statement of Financial Accounting Standards No. 5 of the Financial Accounting Standards Board.

[15] To reduce the burden on the industry, the staff of the SEC provided registered brokers and dealers with this option in its letter to the SIA. See *supra* note 12.

[16] In its letter to the SIA (see *supra* note 12), the staff of the SEC stated that the determination of whether a position is unhedged should be made by the broker or dealer and that the broker or dealer should consider only existing positions. The Department would adopt the same policy.

by the Department's proposed recordkeeping amendment (which largely differentiates between the Department's and the SEC's capital standards terminology).

Paragraph (a)(1)(vii) of SEC Rule 17h–1T, as made applicable by the Department's proposed recordkeeping amendment, and Part II, Section II of Form 17–H would require registered government securities brokers and dealers to maintain and report data on certain financial instruments with off-balance sheet risk and concentrations of credit risk. The Department believes that capturing such information, including data on derivative instruments that are not currently subject to regulation, would enable regulators to better understand the use, scope, and potential risk of these instruments. Part II, Section II of Form 17–H provides specific line items for the information and would be reported quarterly by the firms. The line items include gross long and short positions in when-issued securities, written stock options, futures, forwards, interest rate swaps, other swaps, foreign exchange, commodities, loan commitments, commercial letters of credit, assets sold with recourse, and a summary of delta or similar analysis if available.

Part II, Section II of the SEC's Form 17–H was developed based on the SEC's review of financial instruments with "off-balance sheet risk" and "concentrations of credit risk," as those terms are used in Statement of Financial Accounting Standards No. 105 ("SFAS 105") of the Financial Accounting Standards Board. The SEC noted in the preamble to its final temporary rules [17] that it received several comment letters regarding the disclosure of SFAS 105-type information on a quarterly basis (SFAS 105 requires only annual disclosure). In its preamble, the SEC stated that it "recognizes that certain additional burdens will be created by the imposition of quarterly SFAS 105 disclosure; however, the market for these types of instruments is growing, and much of this activity is being booked outside of the registered broker-dealer " The Department endorses the SEC's view that such data, though lengthy and somewhat burdensome, is essential to carrying out the risk assessment provisions of the Reform Act. Further, as discussed below in the "Scope of Proposed Risk Assessment Rules" section, exemptions and special provisions will obviate quarterly submissions of Form 17–H for most registered government securities brokers and dealers.

Paragraphs (a)(1) (viii) through (x) of SEC Rule 17h–1T, as made applicable by the Department's proposed recordkeeping amendment, and Part II, Sections III through V of Form 17–H would require registered government securities brokers and dealers to maintain and report data on bridge loans and other material unsecured extensions of credit by each MAP, funding sources for the registered government securities broker or dealer and each MAP, and real estate activities conducted by each MAP. The information would be filed quarterly based on quarter-end results, or based on month-end results if greater than quarter-end results for all activities except real estate.

Part II of Form 17–H requires a separate column or separate form for positions held by each MAP. In cases where a registered government securities broker or dealer has a non-MAP affiliate which, in turn, has subsidiaries that are MAPs, the registered government securities broker or dealer may maintain and report the securities and commodities position information on a consolidated basis through the non-MAP affiliate.

B. Exemptions and Special Provisions

The Department proposes to incorporate, with modifications and supplements, the SEC's exemptive provisions (17 CFR 240.17h–1T(d) and 240.17h–2T(b)). The proposed provisions would exempt registered government securities brokers and dealers from all of Treasury's risk assessment rules if they: (1) Do not carry customer accounts and maintain capital of less than $20 million, (2) maintain capital of less than $250,000 (regardless of whether they carry customer accounts or not), or (3) have an affiliated registered broker or dealer, provided that the registered broker or dealer is subject to, and in compliance with, the SEC's risk assessment rules, and provided that all of the MAPs of the registered government securities broker or dealer are also MAPs of the registered broker or dealer. A registered government securities broker or dealer that has no affiliates or holding company would not be subject to the Department's risk assessment rules. The Department also proposes to allow affiliated registered government securities brokers and dealers to request in writing that the Department permit one of the firms (a "Reporting Registered Government Securities Broker or Dealer") to maintain and report risk assessment information on behalf of the other firms.

The Department also proposes to adopt the SEC's special provisions for affiliates that are already subject to supervision by certain U.S. or foreign financial regulatory authorities. (See paragraphs (b) and (c) of 17 CFR 240.17h–1T, and paragraphs (c) and (d) of 17 CFR 240.17h–2T, as modified by §§ 404.2(b) and 405.5. With respect to such affiliates, registered government securities brokers and dealers would be deemed in compliance with the financial and securities recordkeeping requirements of the rule by maintaining copies of reports that such affiliates already submit to certain domestic and foreign regulators. The registered government securities brokers and dealers would, however, remain responsible for maintaining organizational charts, risk management policies, and records of legal proceedings in which they are involved, and would have to submit such information on Form 17–H (Items 1–3 of Part I of the form).

The Department believes that these types of special provisions and exemptions would preclude duplicative and unnecessary recordkeeping and reporting for various registered government securities brokers and dealers without compromising regulators' need to capture information on the potentially risky activities of entire holding company systems.

C. Scope of Proposed Risk Assessment Rules

In proposing its risk assessment rules, the SEC noted that the rules would provide it with greater advance warning of situations, such as the Drexel failure, which could have a significant impact on the functioning of the markets and investors in general.[18] The SEC also noted that it believed the majority of registered brokers and dealers that conduct a business with the public do not pose the types of risks the Reform Act was designed to address. Following this precept, the SEC exempted from its rules registered brokers and dealers whose activities are not likely to pose a material threat to the investing public or the marketplace (e.g., limited purpose mutual fund brokers), whose operations are relatively small (as measured by capital levels), and whose functions do not include carrying customer accounts (unless they are large firms).

The SEC also adopted special provisions for registered brokers and dealers that have certain regulated affiliates, such as banks, insurance

[17] See *supra* note 6, p. 32166.

[18] See *supra* note 5, pp. 44015–44016.

companies, futures commission merchants, and foreign affiliates, recognizing the existence of certain regulatory reporting by these entities and eliminating the need to create a new set of records for such entities. In lieu of adhering to the bulk of the SEC's risk assessment rules, registered brokers and dealers are, in certain specified cases, able to maintain and submit copies of reports that these affiliates already routinely submit to U.S. and foreign regulators.

Of the approximately 5,600 registered brokers and dealers that conduct a public business, SEC staff informs us that roughly 250 firms are currently following the SEC's risk assessment rules. These are the largest firms and the ones that potentially pose the most risk to the markets. In contrast, of the 37 registered government securities firms in existence at the time of this writing, approximately 12 would be potentially subject to the Department's risk assessment rules. The Department estimates that 25 of the 37 firms would qualify for at least one of the proposed Treasury exemptions. It appears that six registered government securities brokers and dealers would qualify for an exemption because their capital levels are under $250,000. Seventeen firms would qualify for an exemption because they do not carry customer accounts and have capital of less than $20 million. Six firms would potentially qualify for an exemption because their affiliated registered brokers and dealers follow the SEC's risk assessment rules.

Of the 12 firms potentially subject to the Department's rules, three are affiliated within the same holding company structure. Thus, any one of the firms would be able to request that the Department authorize it to be a Reporting Registered Government Securities Broker or Dealer on behalf of the other two firms. Of the remaining nine firms that would be potentially subject to the Department's rules, three have foreign bank holding companies, which could ease their recordkeeping and reporting requirements considerably. These firms would be able to maintain and submit the same reports that their holding companies submit to foreign financial regulatory authorities, with a copy translated into English. The amount of information the remaining six firms would be required to maintain and report would be based on the number of MAPs designated and the types of activities the MAPs conduct. The Department believes this approach meets the objectives of the statute without imposing significant costs or burdens on market participants. In order to provide affected firms time to make personnel and systems adjustments required for compliance, the Department proposes a three-month phase-in period.

In preparing the proposed rules, the Department consulted with the staffs of the SEC and the bank regulatory agencies; they concur with the Department's approach.

The Department also proposes to promulgate technical amendments to § 404.2 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by revising newly redesignated paragraph (c). The revisions to paragraph (c) would more accurately define the terms "registered government securities broker or dealer" and "the Secretary of the Treasury" as they are used to modify 17 CFR 240.17a–7.

III. Special Analysis

Based on the very limited impact of the proposed amendments, it is the Department's view that the proposed regulations are not a "significant regulatory action" for the purposes of Executive Order 12866.

In addition, pursuant to the Regulatory Flexibility Act (5 U.S.C. § 601, *et seq.*), it is hereby certified that the proposed regulations, if adopted, will not have a significant economic impact on a substantial number of small entities. As of March 31, 1994, there were 37 registered government securities brokers and dealers, of which only 13 firms would be considered small entities. Treasury estimates that all 13 of the small firms will qualify for at least one of the recordkeeping and reporting exemptions in the proposed rules. Accordingly, the inapplicability of the proposed regulations to small firms indicates that there is not a significant impact. As a result, a regulatory flexibility analysis is not required.

The Paperwork Reduction Act (44 U.S.C. § 3504(h)) requires that collections of information prescribed in proposed rules be submitted to the Office of Management and Budget for review and approval. In accordance with this requirement, the Department has submitted the collection of information contained in this notice of proposed rulemaking for review. Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, D.C. 20503; and to the Government Securities Regulations Staff, Bureau of the Public Debt, at the address specified at the beginning of this document.

The collections of information in this proposed regulation are contained in proposed §§ 404.2(b) and 405.5. The proposed recordkeeping requirements in § 404.2(b) would require registered government securities brokers and dealers to maintain and preserve records concerning the financial and securities activities of affiliates whose business activities are reasonably likely to have a material impact on the financial or operational condition of the registered government securities brokers or dealers. The proposed reporting requirements in § 405.5 would require registered government securities brokers and dealers to file with the SEC quarterly summary reports of the information required to be maintained and preserved by the proposed recordkeeping requirements. The collection of information is intended to allow the SEC access to certain information concerning the financial risk posed to registered government securities brokers and dealers. The rule applies only to registered government securities brokers and dealers. The Department's estimated reporting and recordkeeping burden hours are based on the SEC's estimated burden hours for their proposed temporary risk assessment rules.

Estimated total annual reporting and recordkeeping burden: 288 hours
Estimated average annual burden per respondent and recordkeeper: 24 hours
Estimated number of respondents and recordkeepers: 12
Estimated annual frequency of response: Four

List of Subjects

17 CFR Part 404

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

17 CFR Part 405

Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, it is proposed to amend 17 CFR Parts 404 and 405 as follows:

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

1. The authority citation for Part 404 is revised to read as follows:

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209; Sec. 4(b), Pub. L. 101–432, 104 Stat. 963; Sec. 102, Sec. 106, Pub. L. 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5(b)(1)(B)(b)(1)(C), (b)(2), (b)(4)).

2. Section 404.2 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by revising newly redesignated paragraph (c); and by adding new paragraph (b) to read as follows:

§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

* * * * *

(b) Every registered government securities broker or dealer shall comply with the requirements of § 240.17h-1T of this title (SEC Rule 17h-1T), with the following modifications:

(1) For the purposes of this section, references to "broker or dealer" and "broker or dealer registered with the Commission pursuant to Section 15 of the Act" mean registered government securities brokers or dealers.

(2) For the purposes of this section, references to §§ 240.17h-1T and 240.17h-2T of this title mean those sections as modified by §§ 404.2(b) and 405.5, respectively.

(3) For the purposes of this section, "associated person" has the meaning set out in Section 3(a)(18) of the Act (15 U.S.C. 78c(a)(18)), except that natural persons are excluded.

(4) Paragraphs 240.17h-1T(a)(1)(iii) through (vi) of this title are modified to read as follows:

"(iii) A description of all material pending legal or arbitration proceedings involving a Material Associated Person or the registered government securities broker or dealer that are required to be disclosed, under generally accepted accounting principles on a consolidated basis, by the highest level holding company that is a Material Associated Person.

"(iv) Consolidated and consolidating balance sheets, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, as of quarter-end for the registered government securities broker or dealer and its highest level holding company that is a Material Associated Person;

"(v) Quarterly consolidated and consolidating income statements and consolidated cash flow statements, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, for the registered government securities broker or dealer and its highest level holding company that is a Material Associated Person;

"(vi) The amount as of quarter-end, and at month-end if greater than quarter-end, of the aggregate long and short securities and commodities positions held by each Material Associated Person, including a separate listing of each single unhedged securities or commodities position, other than U.S. Treasury securities, that exceeds the Materiality Threshold at any month-end;"

(5) Paragraphs 240.17h-1T(a)(3) and (a)(4) of this title are modified to read as follows:

"(3) The information, reports and records required by the provisions of this section shall be maintained and preserved in accordance with the provisions of § 404.3 of this title and shall be kept for a period of not less than three years in an easily accessible place.

"(4) For the purposes of this section and § 405.5 of this title, the term "Materiality Threshold" shall mean the greater of:

"(i) $100 million; or

"(ii) 10 percent of the registered government securities broker's or dealer's liquid capital based on the most recently filed Form G–405 (or, in the case of futures commission merchants and interdealer brokers subject to the capital rules in §§ 402.1(d) and 402.1(e), respectively, tentative net capital based on the most recently filed Form X–17A–5) or 10 percent of the Material Associated Person's tangible net worth, whichever is greater."

(6) Paragraph 240.17h–1T(b) of this title is modified to read as follows:

"(b) *Special provisions with respect to Material Associated Persons subject to the supervision of certain domestic regulators.* A registered government securities broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a)(1)(iii) through (x) of this section with respect to a Material Associated Person if:"

* * * * *

(7) Paragraph 240.17h–1T(c) of this title is modified to read as follows:

"(c) *Special provisions with respect to Material Associated Persons subject to the supervision of a foreign financial regulatory authority.* A registered government securities broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a)(1)(iii) through (x) of this section with respect to a Material Associated Person if such registered government securities broker or dealer maintains in accordance with the provisions of this section copies of the reports filed by such Material Associated Person with a Foreign Financial Regulatory Authority. The registered government securities broker or dealer shall maintain a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(52) of the Act."

(8) Paragraph 240.17h–1T(d) of this title is modified to read as follows:

"(d) Exemptions. (1) The provisions of this section shall not apply to any registered government securities broker or dealer:

"(i) Which is exempt from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, pursuant to paragraph (k)(2) of § 240.15c3–3 of this title; or

"(ii) If the registered government securities broker or dealer does not qualify for an exemption from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, and such registered government securities broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of, or for, customers; unless

"(iii) In the case of paragraphs (d)(1)(i) or (ii) of this section, the registered government securities broker or dealer maintains capital of at least $20,000,000, including debt subordinated in accordance with Appendix D of § 240.15c3–1 of this title, as modified by Appendix D of § 402.2.

"(2) The provisions of this section shall not apply to any registered government securities broker or dealer which maintains capital of less than $250,000, including debt subordinated in accordance with Appendix D of § 240.15c3–1 of this title, as modified by Appendix D of § 402.2, even if the registered government securities broker or dealer holds funds or securities for, or owes money or securities to, customers or carries the accounts of, or for, customers.

"(3) The provisions of this section shall not apply to any registered government securities broker or dealer which has an associated person that is a registered broker or dealer, provided that:

"(i) The registered broker or dealer is subject to, and in compliance with, the provisions of § 240.17h–1T of this title, and

"(ii) All of the Material Associated Persons of the registered government securities broker or dealer are Material Associated Persons of the registered broker or dealer subject to § 240.17h–1T of this title.

"(4) In calculating capital for the purposes of this paragraph, a registered

government securities broker or dealer shall include with its equity capital and subordinated debt the equity capital and subordinated debt of any other registered government securities brokers or dealers or registered brokers or dealers that are associated persons of such registered government securities broker or dealer, except that the equity capital and subordinated debt of registered brokers and dealers that are exempt from the provisions of § 240.15c3–3 of this title, pursuant to paragraph (k)(1) of § 240.15c3–3, shall not be included in the capital computation.

"(5) The Secretary may, upon written application by a Reporting Registered Government Securities Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any registered government securities brokers or dealers that are associated persons of such Reporting Registered Government Securities Broker or Dealer. The term "Reporting Registered Government Securities Broker or Dealer" shall mean any registered government securities broker or dealer that submits such application to the Secretary on behalf of its associated registered government securities brokers or dealers."

(9) Paragraph 240.17h–1T(g) of this title is modified to read as follows:

"(g) *Temporary implementation schedule.* Every registered government securities broker or dealer subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i), (ii), and (iii) of this section commencing March 31, 1995. Commencing June 30, 1995, the provisions of this section shall apply in their entirety."

(c)(1) Every non-resident government securities broker or dealer registered or applying for registration pursuant to Section 15C of the Act shall comply with § 240.17a–7 of this title, provided that:

(i) For the purposes of this section, references to "broker or dealer" and "broker or dealer registered or applying for registration pursuant to Section 15 of the Act" mean registered government securities brokers or dealers; and

(ii) For the purposes of this section, references to "any rule or regulation of the Commission" and "any rule or regulation of the Securities and Exchange Commission" mean any rule or regulation of the Secretary.

(2) For the purposes of this section, the term "non-resident government securities broker or dealer" means:

(i) in the case of an individual, one who resides in or has his principal place of business in any place not subject to the jurisdiction of the United States;

(ii) in the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; and

(iii) in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

* * * * *

PART 405—REPORTS AND AUDIT

3. The authority citation for Part 405 is revised to read as follows:

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209; Sec. 4(b), Pub. L. 101–432, 104 Stat. 963; Sec. 102, Sec. 106, Pub. L. 103–202, 107 Stat. 2344 (15 U.S.C. 78o-5(b)(1)(B), (b)(1)(C), (b)(2), (b)(4)).

4. Section 405.5 is added to read as follows:

§ 405.5 Risk assessment reporting requirements for registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer shall comply with the requirements of § 240.17h-2T of this title (SEC Rule 17h-2T), with the following modifications:

(1) For the purposes of this section, references to "broker or dealer" and "broker or dealer registered with the Commission pursuant to Section 15 of the Act" mean registered government securities brokers or dealers.

(2) For the purposes of this section, references to § § 240.17h-1T and 240.17h-2T of this title mean those sections as modified by § § 404.2(b) and 405.5, respectively.

(3) For the purposes of this section, "associated person" has the meaning set out in Section 3(a)(18) of the Act (15 U.S.C. 78c(a)(18)), except that natural persons are excluded.

(4) Paragraph 240.17h-2T(b) of this title is modified to read as follows:

"(b) *Exemptions.* (1) The provisions of this section shall not apply to any registered government securities broker or dealer:

"(i) Which is exempt from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, pursuant to paragraph (k)(2) of § 240.15c3–3 of this title; or

"(ii) If the registered government securities broker or dealer does not qualify for exemption from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, and such registered government securities broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of, or for, customers; unless

"(iii) In the case of paragraphs (b)(1)(i) or (ii) of this section, the registered government securities broker or dealer maintains capital of at least $20,000,000, including debt subordinated in accordance with Appendix D of § 240.15c3–1 of this title, as modified by Appendix D of § 402.2.

"(2) The provisions of this section shall not apply to any registered government securities broker or dealer which maintains capital of less than $250,000, including debt subordinated in accordance with Appendix D of § 240.15c3–1 of this title, as modified by Appendix D of § 402.2, even if the registered government securities broker or dealer holds funds or securities for, or owes money or securities to, customers or carries the accounts of, or for, customers.

"(3) The provisions of this section shall not apply to any registered government securities broker or dealer which has an associated person that is a registered broker or dealer, provided that:

"(i) The registered broker or dealer is subject to, and in compliance with, the provisions of § 240.17h–1T and § 240.17h–2T of this title, and

"(ii) All of the Material Associated Persons of the registered government securities broker or dealer are Material Associated Persons of the registered broker or dealer subject to § 240.17h–1T and § 240.17h–2T of this title.

"(4) In calculating capital for the purposes of this paragraph, a registered government securities broker or dealer shall include with its equity capital and subordinated debt the equity capital and subordinated debt of any other registered government securities brokers or dealers or registered brokers or dealers that are associated persons of such registered government securities broker or dealer, except that the equity capital and subordinated debt of registered brokers and dealers that are exempt from the provisions of § 240.15c3–3 of this title, pursuant to paragraph (k)(1) of § 240.15c3–3, shall not be included in the capital computation.

"(5) The Secretary may, upon written application by a Reporting Registered Government Securities Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any registered government securities brokers or dealers that are associated persons of such Reporting Registered Government Securities Broker or Dealer. The term

"Reporting Registered Government Securities Broker or Dealer" shall mean any registered government securities broker or dealer that submits such application to the Secretary on behalf of its associated registered government securities brokers or dealers."

(5) Paragraph 240.17h–2T(c) of this title is modified to read as follows:

"(c) *Special provisions with respect to Material Associated Persons subject to the supervision of certain domestic regulators.* A registered government securities broker or dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a) of this section with respect to a Material Associated Person if such registered government securities broker or dealer files Items 1, 2, and 3 (in Part I) of Form 17–H in accordance with paragraph (a) of this section, provided that:

"(1) Such Material Associated Person is subject to examination by or the reporting requirements of a Federal banking agency and the registered government securities broker or dealer or such Material Associated Person furnishes in accordance with paragraph (a) of this section copies of reports filed by the Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or"

* * * * *

(6) Paragraph 240.17h–2T(d) of this title is modified to read as follows:

"(d) *Special provisions with respect to Material Associated Persons subject to the supervision of a foreign financial regulatory authority.* A registered government securities broker or dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a) of this section with respect to a Material Associated Person if such registered government securities broker or dealer furnishes, in accordance with the provisions of paragraph (a) of this section, Items 1, 2, and 3 (in Part I) of Form 17–H and copies of the reports filed by such Material Associated Person with a Foreign Financial Regulatory Authority. The registered government securities broker or dealer shall file a copy of the original Foreign Financial Regulatory report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(52) of the Act."

(7) Paragraph 240.17h–2T(f) of this title is modified to read as follows:

"(f) *Temporary implementation schedule.* Every registered government securities broker or dealer subject to the requirements of this section shall file the information required by Items 1, 2 and 3 (in Part I) of Form 17–H by April 30, 1995. Commencing June 30, 1995, the provisions of this section shall apply in their entirety."

Date: October 31, 1994.

Frank N. Newman,

Deputy Secretary.

[FR Doc. 94–28041 Filed 11–14–94; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 333 and 369

[Docket No. 75N–183H]

RIN 0905–AA06

Topical Antimicrobial Drug Products for Over-the-Counter Human Use; Tentative Final Monograph for Health-Care Antiseptic Drug Products; Extension of Comment and New Data Periods

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; extension of comment and new data periods.

SUMMARY: The Food and Drug Administration (FDA) is extending to June 19, 1995, the period for comments; to December 15, 1995, the period for new data; and to February 13, 1996, the period for comments on the new data for the notice of proposed rulemaking that was published in the **Federal Register** of June 17, 1994. That document proposed to establish conditions under which over-the-counter (OTC) topical health-care antiseptic drug products are generally recognized as safe and effective and not misbranded. FDA is taking this action in response to a request to extend these periods for an additional 6 months to allow interested persons adequate time to assess and respond to the proposal.

DATES: Written comments by June 19, 1995; new data by December 15, 1995; and comments on the new data by February 13, 1996.

ADDRESSES: Written comments or new data 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: In the **Federal Register** of June 17, 1994 (59 FR 31402), FDA issued a notice of proposed rulemaking in the form of an amended tentative final monograph to establish conditions under which OTC topical health-care antiseptic drug products are generally recognized as safe and effective and not misbranded. FDA issued this notice of proposed rulemaking to amend a previous notice of proposed rulemaking on topical antimicrobial drug products (43 FR 1210, January 6, 1978), after considering the public comments on that notice and other information in the administrative record for this rulemaking. Interested persons were given until December 14, 1994, to submit comments on the proposal; until June 19, 1995, to submit new data; and until August 17, 1995, to comment on the new data.

In response to the proposal, the Cosmetic, Toiletry, and Fragrance Association (CTFA), the Soap and Detergent Association (SDA), and the Nonprescription Drug Manufacturers Association (NDMA) requested a 6–month extension of the comment and new data periods. (Although not specifically requested, a 6–month extension of the period for comments on the new data would result if these requests were to be granted.) CTFA, SDA, and NDMA noted their representation of the personal care products industry, manufacturers of products for cleaning and sanitation and the raw materials used in these products, and manufacturers of OTC drug products. The associations asserted that the proposal was broad in scope and raised numerous complex issues, particularly in the area of the effectiveness testing of these OTC drug products. The associations stated that more time is needed to assess fully the significant changes included in the proposal and to respond adequately to these issues. Observing that the agency's proposal was in the preparation stage for a considerable number of years, the associations stated their belief that it is reasonable for the agency to allow the additional time for comment and new data.

FDA has carefully considered the request and acknowledges the broad scope of the proposal as well as the complexity of the issues it raises. The agency believes that additional time for comment and the submission of new data is in the public interest and will be

of assistance in establishing conditions under which OTC topical health-care antiseptic drug products are generally recognized as safe and effective and not misbranded. Thus, the agency finds an extension of the periods for comments, new data, and comments on the new data to be appropriate.

Interested persons may, on or before June 19, 1995, submit to the Dockets Management Branch (address above) written comments on the proposed regulation. New data may be submitted on or before December 15, 1995, and comments on the new data by February 13, 1996. Three copies of all data and comments are to be submitted, except that individuals may submit one copy. All data and comments are to be identified with the docket number found in brackets in the heading of this document. Received data and comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 1, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–28063 Filed 11–14–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–46–94]

RIN 1545–AS97

Losses on Small Business Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amendments to regulations under section 1244 relating to losses on small business stock. In particular, the amendment concerns the records to be kept and information to be filed with the return.

Section 1244(a) permits an individual to treat a limited amount of loss on certain small business corporation stock as ordinary loss. The existing regulation requires that a taxpayer claiming an ordinary loss on small business stock shall maintain certain information and file an information statement with the taxpayer's return for the year in which the loss occurs. The proposed amendment would remove the requirement that a taxpayer claiming a section 1244 ordinary loss file an information statement with the taxpayer's income tax return.

DATES: Written comments and requests for a public hearing must be received by January 17, 1995.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (CO–46–94), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8:00 a.m. and 5:00 p.m. to: CC:DOM:CORP:T:R (CO–46–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kirsten L. Simpson, (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collection of information is in § 1.1244(e)–1(b). This information is required by the IRS to determine whether a taxpayer is entitled to a section 1244 loss. This information will be used by IRS examiners to verify that the stock qualifies as section 1244 stock. The likely recordkeepers are individuals and corporations.

Estimated total annual recordkeeping burden: 2,000 hours. The estimated annual burden per recordkeeper varies from .10 hours to .30 hours, depending on individual circumstances, with an estimated average of .20 hours. Estimated number of recordkeepers: 10,000.

Background

This document proposes amendments to the Income Tax Regulations (26 CFR part 1) under section 1244 of the Internal Revenue Code of 1986. Section 1244 was enacted as part of the Small Business Tax Revision Act of 1958, with the goal of encouraging the flow of new funds into small business. The purpose of the section was to reduce the risk of a loss of new investment by permitting a taxpayer to take an ordinary loss, rather than a capital loss, on qualifying small business stock. H.R. Rep. No. 2198, 85th Cong., 2d Sess. 4 (1958); 104 Cong. Rec. 17,090 (1958) (Senate).

Section 1244(a) permits an individual to treat a limited amount of loss on section 1244 stock as ordinary loss. Section 1244(c) defines "section 1244 stock" as stock in a domestic corporation if, at the time the stock is issued: (1) the corporation was a small business corporation (as defined in section 1244(c)(3)); (2) the stock was issued by the corporation for money or other property (other than stock and securities); and (3) the corporation, during the period of its five most recent taxable years ending before the date the loss on the stock was sustained, derived more than 50 percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interest, annuities, and sales or exchanges of stocks or securities.

Section 1.1244(e)–1(b) of the Income Tax Regulations provides that any taxpayer who claims an ordinary loss deduction under section 1244 shall file with the taxpayer's income tax return for the loss year an information statement setting forth: (1) the address of the corporation that issued the stock; (2) the manner in which the stock was acquired by the taxpayer and the nature and amount of the consideration paid; and (3) if the stock was acquired in a nontaxable transaction in exchange for property other than money—the type of property, its fair market value on the date of transfer to the corporation, and its adjusted basis on such date.

The IRS has taken the position that taxpayers are not entitled to section 1244 ordinary loss treatment if they have failed to file the information statement described in § 1.1244(e)–1(b) with the income tax return for the year in which the deduction for the loss is claimed. The Tax Court has upheld this position. See Magee v. Commissioner, T.C. Memo. 1993–305, 66 T.C.M. (CCH) 105 (1993); Cournan v. Commissioner, T.C. Memo. 1989–520, 58 T.C.M. (CCH) 219 (1989); and Cosgrove v. Commissioner, T.C. Memo. 1987–401, 54 T.C.M. (CCH) 136 (1987).

Explanation of Provision

The IRS and Treasury Department have determined that denying ordinary loss treatment under section 1244 solely because a taxpayer fails to file the § 1.1244(e)–1(b) information statement with the taxpayer's income tax return is not necessary to achieve the purposes of section 1244. Notice 94–89, 1994–38 I.R.B. 54. Therefore, taxpayers will not be required to file the § 1.1244(e)–1(b) information statement to qualify for section 1244 treatment. Section 1.1244(e)–1(b) is proposed to be revised

to eliminate the requirement that a taxpayer file an information statement with the taxpayer's income tax return. However, because a taxpayer who claims an ordinary loss under section 1244 still bears the burden of establishing that the deduction is proper, § 1.1244(e)–1(b) is also proposed to be revised to state that a person who claims an ordinary loss with respect to stock under section 1244 must have records sufficient to establish that the taxpayer is entitled to the loss and satisfies the requirements of section 1244.

Proposed Effective Date

These regulations are proposed to be effective for open taxable years beginning after December 31, 1953, the effective date of Treasury Decision 6495, which prescribed regulations under section 1244.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Kirsten L. Simpson, Office of Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1244(e)–1 also issued under 26 U.S.C. 1244(e).

* * * * *

Par. 2. Section 1.1244(e)–1 is amended as follows:

1. The section heading is revised.

2. In paragraph (a)(1), the reference in the second sentence "paragraph (c)(2) of § 1.1244(c)–2" is removed and § 1.1244(c)–2(b)(2)" is added in its place.

3. Paragraph (b) is revised.

The revisions read as follows:

§ 1.1244(e)–1 Records to be kept.

* * * * *

(b) *By the taxpayer.* A person who claims an ordinary loss with respect to stock under section 1244 must have records sufficient to establish that the taxpayer is entitled to the loss and satisfies the requirements of section 1244. See also section 6001, requiring records to be maintained.

Margaret Milner Richardson,

Commissioner of the Internal Revenue.

[FR Doc. 94–28083 Filed 11–14–94; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Regulatory Program

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

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

SUMMARY: OSM is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the "New Mexico program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment adds rules pertaining to the exemption for coal extraction incidental to the extraction of other minerals. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.s.t., December 15, 1994. If requested, a public hearing on the proposed amendment will be held on December 12, 1994. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., November 30, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas E. Ehmett at the address listed below.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

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

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102;

New Mexico Energy & Minerals Department, Mining and Minerals Division, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION: .

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931,16, and 931.30.

II. Proposed Amendment

By letter dated October 26, 1994, New Mexico submitted a proposed

amendment to its program pursuant to SMCRA (administrative record No. NM–716). New Mexico submitted the proposed amendment in response to a February 7, 1990, letter (administrative record No. NM–563) that OSM sent to New Mexico in accordance with 30 CFR 732.17(c). New Mexico did so with the intent of making its rules consistent with the corresponding Federal regulations. New Mexico proposes to add new rules to implement Section 69–25A–1 through 35 of the New Mexico Surface Mining Act concerning the extraction of coal incidental to the extraction of other minerals where coal does not exceed 16 and 2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale. The provisions of Coal Surface Mining Commission (CSMC) Rule 80–1 that New Mexico proposes to add are at new Chapter O, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals, and include sections 34–1, scope; 34–2, definitions; 34–3, application requirements and procedures; 34-4, contents of application for exemption; 34–5, public availability of information; 34–6, requirements for exemption; 34–7, conditions of exemption and right of inspection and entry; 34–8, stockpiling of minerals; 34–9, revocation and enforcement and; 34–10, reporting requirements.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

1. Written Comments

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

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t., November 30, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

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

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

3. Public Meeting

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

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 7, 1994.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 94–28121 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 938

Pennsylvania Regulatory Program

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

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

SUMMARY: OSM is announcing receipt of a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment (Administrative Record Number PA 833.00) revises the Pennsylvania program's Small Operator Assistance Program (SOAP) to be consistent with the October 24, 1992, amendment to section 507(c) of SMCRA (Energy Policy Act of 1992 and the Federal regulations published in the **Federal Register** of May 31, 1994. The proposed amendment would provide more comprehensive assistance to SOAP participants than currently allowed.

DATES: Written comments must be received by 4:00 p.m., E.S.T. December 15, 1994. If requested, a public hearing on the proposed amendment will be held on December 12, 1994. Requests to speak at the hearing must be received by 4:00 p.m., E.S.T. on November 30, 1994.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address shown below..

Copies of the Pennsylvania program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Robert J. Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Pennsylvania Department of Environmental Resources, Bureau of Mining and Reclamation, Room 209 Executive House, 2nd and Chestnut Streets, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

A public hearing if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Discussion of Amendment

The Energy Policy Act of 1992, Public Law 102–486, October 24, 1992, amended several sections of SMCRA. Section 507(c) was amended to expand the coverage of free services that could be provided to qualified applicants for permit application information under SOAP. Before enactment of the Energy Policy Act, services provided by section 507(c) covered the determination of probable hydrologic consequences required by subsection 507(b)(11) and the statement of the results of test boring or core sampling required by subchapter 507(b)(15). The section 507(c) revisions expanded the services under subsection 507(b)(11) to include the engineering analyses and designs necessary for their determination. The revisions also added additional allowable services. These additional services include: the development of cross-section maps and plans required by subsection (b)(14); the geologic drilling and statement of test boring and core sampling required by subsection (b)(15); the collection of archaeological information required by subsection (b)(13) and any other archaeological and historical information required by the regulatory authority; pre-blast surveys required by section 515(b)(15)(E); and the collection of site-specific resource information and the production of protection and enhancement plans for fish and wildlife habitats and other environmental value required by the regulatory authority.

The Energy Policy Act also added section 507(h) which makes the operator, exceeding the 12-month coal production limit, liable for reimbursement of SOAP expenses.

OSM published final regulations to implement the above statutory provisions in the **Federal Register**, 59 FR 28136–28174, May 31, 1994.

The Pennsylvania Department of Environmental Resources (PADER) published proposed rules in the Pennsylvania Bulletin (24 Pa.B. 2120–2124, April 23, 1994), to revise the existing SOAP provisions to be consistent with the Federal SOAP revisions. On October 24, 1994, PADER submitted these rules as a program amendment (PA 833.00).

A summary of PADER proposed revisions are listed below.

Section 86.81 Program Services

Section 86.81(1) is revised: to replace "laboratory" with "consultant;" to delete the reference to § 86.88 which lists the current services allowed by SOAP; and to expand the application requirements that are covered by the amendment.

Section 86.83 Eligibility for Assistance

Section 86.83(a)(2) is revised to replace the 5-year production liability period with the coal production for the 12-month period beginning the day after permit issuances.

Section 86.83(b) (2) and (3) Eligibility for Assistance

Section 86.83(b) (2) and (3) is revised to calculate the attributable coal production from persons owning 5 percent of the applicant's operation to persons owning 10 percent of the applicant's operation.

Section 86.84 Application for Assistance

Section 86.84(b)(6) is revised to require the necessary documentation to legally support applicant's right of entry.

Section 86.87 Determination of Data Requirements

Section 86.87(a) is revised to provide expanded services concurrent with the determination of the probable hydrologic consequences.

Section 86.88 Data for Probable Hydrologic Consequences

Section 86.89 Data for Test Borings or Core Samplings

These sections are rendered unnecessary by the amended provisions and are deleted.

Section 86.92 Basic Qualifications

Section 86.92 is revised to provide for specialized laboratory services.

Section 86.93 Assistance Funding

Section 86.93(a) is revised to delete language that is rendered inappropriate

by the new provisions providing additional services to SOAP participants.

Section 86.94 Applicant Liability

Section 86.94 is revised to reduce the applicant's liability, based on coal production, to repay for services provided from 5 years to the 12-month period after the permit is issued.

Section 86.96 Measurement

Section 86.96 is revised to delete the name of OSM's coal production form since OSM has changed the name.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

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

Public Hearing

Persons wishing to speak at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., E.S.T. on November 30, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

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

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

Public Meeting

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

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 4, 1994.

Tim L. Dieringer,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–28122 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–05–M

National Park Service

36 CFR Part 13

RIN: 1024–AC25

Alaska; Hunting and Trapping Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; revision.

SUMMARY: This proposed rule will establish a National Park Service (NPS) prohibition of hunting on the same day in which the hunter has flown in an aircraft, and will clarify the existing NPS prohibition of using firearms and other weapons to take free ranging wildlife under a trapping license on lands under the jurisdiction of the NPS in the State of Alaska. While clarifying the NPS firearm prohibition for trapping, this rule will expressly recognize as an exception, the common trapping practice of using a firearm to dispatch wildlife that is already caught in a trap. Aircraft use for access purposes is not affected by this rule.

The NPS has concluded that activities such as those allowed under State authorizations for same-day-airborne

taking of wildlife conflict with NPS management mandates and policies, and invite abuse and violations of the Federal Airborne Hunting Act and exacerbate enforcement problems with that Act. This proposed rule is intended to establish clearly the NPS position regarding any potentially applicable conflicting State authorizations. The intended effect of the proposed rule is to reduce the incidence of aircraft harassment of wildlife and to reduce the potential for aircraft assisted taking of wildlife.

DATES: Written comments will be accepted on or before December 15, 1994.

ADDRESSES: Comments should be addressed to: Robert D. Barbee, Regional Director, National Park Service, 2525 Gambell Street, Anchorage, AK 99503–2892.

FOR FURTHER INFORMATION CONTACT: Paul Hunter, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503–2892, Telephone: (907) 257–2646.

SUPPLEMENTARY INFORMATION:

Background

In 1980, the Alaska National Interest Lands Conservation Act (ANILCA), Pub. L. 96–487, was passed by Congress. This act, among other things, identified and set aside certain areas of Federal land in Alaska as being of a high public interest. These "public interest" lands include units designated as national parks, monuments, and preserves.

ANILCA provided for continued subsistence use of fish and wildlife in most of the new park and monument areas in Alaska. National preserves were established as open to subsistence uses, as well as sport hunting and trapping. Federal regulations govern subsistence taking of fish and wildlife on Federal public lands in Alaska, including NPS lands. State laws and regulations govern sport hunting and non-subsistence trapping allowed in national preserves. Such State provisions are subject to overriding Federal regulations intended to protect the congressionally mandated Federal purposes of the preserves.

Same-day-airborne hunting is not an issue in those parks and monuments open to subsistence taking. This is because National Park Service regulations, promulgated in 1981, generally prohibit the "use of aircraft for access to or from lands and waters within a national park or monument for purposes of taking fish or wildlife for subsistence uses* * *" (36 CFR 13.45). The primary effect of this revised proposed rule will be on same-day-airborne taking of wildlife in national preserves.

National preserves are to be managed under the same mandates, and by the same principles, as all NPS areas. ANILCA directed the Secretary of the Interior to administer the Alaska areas of the National Park System, including national preserves, "pursuant to the provisions of the Act of August 25, 1916 (39 Stat. 535) as amended and supplemented (16 U.S.C. 1 et seq.), and, as appropriate, under section 1313 and the other applicable provisions of this Act* * *" (ANILCA, Sec. 203). The Act of August 25, 1916 is the NPS Organic Act, which calls for the conservation of scenery, natural objects, and wild life of units in such a manner as to leave those values unimpaired for the enjoyment of future generations. Section 1313 of ANILCA specifically addresses the management of national preserves and establishes the aforementioned allowance for sport hunting and trapping. With the exception of those specific allowances, section 1313 and its legislative history clarify that national preserves are to be managed with the same degree of stewardship as parks and monuments. Congress made it clear that the preserve lands "qualify in every regard as National Parks", while recognizing, "in some instances that the taking of wildlife under appropriate regulation is consistent with the maintenance of the natural values of lands which we otherwise would unhesitatingly designate as National Parks." (Congressional Record, House, November 12, 1980; H10549).

The intent of Congress to allow the taking of wildlife for sport purposes and trapping under "applicable State and Federal law and regulation" (ANILCA Sec. 1313) is reflected in this revised proposed rule, and in existing NPS regulations codified in Title 36 of the Code of Federal Regulations. National Park Service regulations at 36 CFR 2.2(b)(4) adopt nonconflicting State hunting and trapping laws for all NPS areas in which hunting and trapping are authorized. The adoption of applicable State law for hunting and trapping is reiterated by 36 CFR 13.21(d) for the NPS preserves in Alaska.

This proposed rule was first published in the **Federal Register** on June 9, 1989 (54 FR 24852). A final rule was originally intended in 1990, but the NPS held the final rule in abeyance as a result of State actions restricting same-day-airborne taking of wolves in NPS managed areas. The NPS has now determined it is necessary to revise the original proposed rule and reactivate the rulemaking started in 1989 because of subsequent changes in the State rule for same-day-airborne taking of wildlife. These State changes have resulted in a great deal of public confusion regarding the applicability of State hunting and trapping laws to NPS areas. This revised proposed rule is necessary to identify the conflict between State and NPS laws and regulations and clearly establish a controlling NPS rule. In this regard, the NPS proposed rule is consistent with a rule now being proposed for adoption by the U.S. Fish and Wildlife Service for similar reasons.

The revised proposed rule, while substantially the same as the original proposed rule, has extended application to other wildlife similarly susceptible to same-day-airborne taking. This change was promoted by approximately 82% of the public providing written comments during the comment period for the original proposed rule. The revised proposed rule also provides administrative clarification of the existing NPS prohibition on the use of firearms and other weapons under a trapping license. This clarification is deemed necessary due to recent State action to allow the taking of certain wildlife, including wolves, by same-day-airborne land and shoot trapping, which, under State law, can be done in the same manner as same-day-airborne hunting.

History of Same-Day-Airborne Taking in the NPS Preserves

Prior to 1975 same-day-airborne taking of wildlife was allowed in Alaska by State regulation. Starting in 1975 the State began prohibiting same-day-airborne hunting of many species of wildlife while continuing to allow same-day-airborne land and shoot trapping. Because wolves may be taken under State law with either a hunting or trapping license, and State law provides for taking by firearm with a trapping license, wolves could still be taken by the land and shoot method on the same-day-airborne despite the prohibition for same-day-airborne hunting.

On June 17, 1981, Federal regulations (36 CFR Part 13) were adopted for NPS areas in Alaska, including a regulation (36 CFR 13.1(u)) which limited trapping in NPS areas to taking by snares, traps, mesh, or other implements designed to entrap animals. The use of firearms for trapping was precluded. As a result, use of a firearm under the State authorization for land and shoot trapping was superseded in NPS areas.

From 1981 until 1986 NPS managers operated on the assumption that the State prohibition of same-day-airborne hunting and the NPS prohibition of use of a firearm for trapping eliminated the possibility of land and shoot taking of

wolves and most other wildlife in NPS areas. However, at the January 1986 Board of Game meetings the NPS learned that State wildlife managers were unaware of the NPS trapping restriction and that State tagging records indicated that as many as 20 wolves may have been taken in NPS preserves by the land and shoot trapping method during that season. Shortly thereafter the NPS Regional Director met with the Commissioner of the State Department of Fish and Game to explain the NPS trapping regulation. This was followed with a letter dated February 14, 1986, to the Commissioner formally conveying the NPS prohibition of firearm use for trapping.

In 1987 the State Board of Game revised same-day-airborne provisions for wolves by eliminating the previous allowance for trapping and establishing such an allowance for hunting. This action had implications for national preserves where same-day-airborne takings were previously prohibited by the NPS preclusion of use of firearms for trapping. This was the first time that wolves could legally be taken on the same-day-airborne in NPS areas in Alaska.

In response to the State change in same-day-airborne taking rules for wolves, the NPS adopted an emergency one-year regulation from November, 1988, to November, 1989, prohibiting same-day-airborne hunting of wolves in NPS areas. At the same time the NPS began drafting a proposed rule for permanent adoption. The proposed rule was published in the **Federal Register** on June 9, 1989 (54 FR 24852). Written comments were accepted and public hearings held during the Summer of 1989. After analyzing the public comments, the NPS prepared a final rule for adoption during 1990.

However, as a result of consultations between the State of Alaska and the NPS, the State agreed to exclude the NPS preserves from the State regulation allowing same-day-airborne hunting of wolves. State regulations were changed to specifically exclude same-day-airborne hunting allowances in national preserves in August, 1990. On October 30, 1990, the NPS published a Notice in the **Federal Register** (55 FR 45663) announcing the exception for the preserves. Since that date, the NPS rule making on this issue has been held in abeyance.

In 1992 the State Board of Game again prohibited same-day-airborne hunting of wolves statewide and did not reauthorize same-day-airborne land and shoot trapping. Consequently, for about one year, same-day-airborne taking of wolves in Alaska was not allowed under either a State hunting or trapping license. Then in 1993 the State Board of Game reauthorized same-day-airborne land and shoot trapping of wolves. This action essentially returned same-day-airborne taking of wildlife to the pre-1987 status when it was allowed for trapping but not hunting.

While the 1993 State action did not directly impact the NPS, it did result in a strong public reaction that, because of the incorrect perception that the State action did affect NPS areas, included many requests that the NPS move ahead with the rule making that was first proposed in 1989. In this regard, there continues to be significant public interest in separating NPS areas from even the possibility of impact from current and prospective State allowances for same-day-airborne taking of wildlife under either State hunting or trapping regulations.

Hunting and Trapping in NPS Areas

In discussing subsistence uses of wildlife in NPS areas under ANILCA Congress stated:

"It is contrary to the National Park Service concept to manipulate habitat or populations to achieve maximum utilization of natural resources. Rather, the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained. It is expected that the National Park Service will take appropriate steps when necessary to insure that consumptive uses of fish and wildlife populations within National Park Service units not be allowed to adversely disrupt the natural balance which has been maintained for thousands of years. Accordingly, the National Park Service will not engage in habitat manipulation or control of other species for the purpose of maintaining subsistence uses within National Park System units."

Congressional Record H10541 (November 12, 1980).

NPS policy guidelines reflect the Congressional mandate by directing that, where hunting and trapping are allowed in NPS areas, the NPS will seek to perpetuate healthy and natural populations of native wildlife and protect the integrity of natural ecosystems by minimizing human impacts on natural wildlife population dynamics. Native animal *populations* are protected against harvest, removal, destruction, harassment, or harm through human action, even though *individual* animals within the *population* may be removed for various reasons, including hunting and trapping where authorized. *NPS Management Policies*, pp. 4:5–7 (Dec 88).

With reference to predator control, the NPS "Natural Resources Management Guideline" (NPS–77), states: "No native predator may be destroyed on account of its normal utilization of any native animal unless it is part of an approved threatened and endangered species recovery program" (NPS–77, Chap. 2, p.37). NPS–77 further directs that native predators may not be manipulated, controlled, or eradicated for the purpose of increasing harvestable species (Chap.2, p.29).

The practical effect of allowances for same-day-airborne hunting or trapping of wolves is increased efficiency in the taking of wolves. The State of Alaska does not allow for same-day-airborne hunting of favored hunting species such as moose, caribou, or even bear. Reduction of wolves in favor of caribou and moose populations and opportunities for harvest is clearly a general goal of the State of Alaska. These facts taken together lend credence to the conclusion that allowances for same-day-airborne wolf taking are motivated, at least in part, by predator control. To the extent predator control is the basis, or the result, of State authorized same-day-airborne hunting and trapping, any such authorizations are in direct conflict with NPS wildlife management policies and with congressional allowances for hunting and trapping in NPS areas.

Furthermore, the NPS does not consider the use of aircraft in such proximate relation to the actual taking of wildlife as is the case with same-day-airborne hunting, to be a sporting practice. Although Congress clearly provided for continued sport hunting in national preserves, same-day-airborne hunting does not appear to be intended to be legitimately related to such sport.

The Problem of Enforcing Aircraft Harassment Restrictions

Hunting with the aid of an aircraft was characterized as "unsportsmanlike" in the legislative history for the Airborne Hunting Act (AHA) of 1971 and was given as a primary reason for passage of the AHA. The significant impact of aircraft assisted hunting on certain prey species, including wolves, was also given as a reason for passage of the AHA (Senate Report No. 92–421, Pub. L. 92–159). The NPS is responsible for enforcing the AHA in NPS areas.

The AHA prohibits airborne shooting of wildlife and use of an aircraft to harass wildlife. Harassment, as defined in the implementing regulations (50 CFR 19.4), means to disturb, worry, molest, rally, concentrate, harry, chase, drive, herd, or torment. This is a broader restriction than the related State

restriction, which covers only intentional driving, herding, or molesting of game (5 AAC 92.080(5)).

Federal law enforcement experience indicates a correlation between same-day-airborne taking of wildlife and the likelihood of aircraft harassment of wildlife under the broader Federal definition. Unless observed directly, it is difficult to prove that aircraft harassment has occurred in conjunction with land and shoot taking of wildlife, even though as a practical matter it is difficult, if not impossible, to take wildlife in this manner without violating the Federal harassment prohibition. Therefore, in areas where same-day-airborne taking of wildlife is allowed, federal harassment violations tend to increase while enforcement remains difficult.

An increase in the number of violations occurred in conjunction with the State authorization of same-day-airborne hunting of wolves in 1987. In one incident in March of 1988, four wolves were illegally killed in and near Denali National Park and Preserve. Evidence at two kill sites indicated that the animals were run nearly to the point of exhaustion by aircraft before being killed. In March, 1989 the U.S. Fish and Wildlife Service investigated a case on the Kanuti National Wildlife Refuge where wolves had been chased by several aircraft operating under State land and shoot regulations. Aircraft radios were used by the pilots to coordinate aerial driving of the wolves to a location where the aircraft could be landed and the hunters could shoot the wolves. In March 1990, two airplanes were observed in the Koyukuk National Wildlife Refuge driving a wolf to a suitable location to land and shoot. One person was convicted for violating the AHA. In another large scale investigation that ended in 1990, federal investigators found that numerous wolves reported as legal kills by one pilot and ten of his partners were, in fact, actually killed in violation of the AHA. A common thread in these cases is the pattern of illegal aircraft harassment of wildlife occurring in conjunction with otherwise legal land and shoot hunting. It is clear that when same-day-airborne taking of wildlife is allowed, illegal aircraft harassment of wildlife increases.

Summary of Comments Received in 1989

The original proposed rule (54 FR 24852–24854, June 9, 1989) afforded the public a comment period of 60 days (extended to 70 days). During the comment period, public meetings were held in Alaska in Anchorage, King Salmon, Wasilla, Chignik, McGrath, Fairbanks, Glennallen, Eagle, Kenai, Bettles, Iliamna, Yakutat, Kotzebue, Juneau, and Nome, as well as in Washington, D.C. The comments strongly supported the prohibition of same-day-airborne land and shoot hunting.

Analysis of 1989 Comments

The NPS received 1405 comments, 1312 written and 93 oral, during the formal comment period for the original proposed rule. Ninety-four percent (1323 comments) favored the proposed rule and six percent (82 comments) opposed the rule. Seventy-six percent (1069 comments) suggested that the rule should be extended to other wildlife in addition to wolves. Those opposing the rule generally felt the State, not the Federal Government, should regulate all aspects of the taking of wildlife in Alaska.

Since the formal comment period for the original proposed rule ended, the Department of Interior and the National Park Service have received, and continue to receive thousands of letters advocating stricter controls on same-day-airborne hunting and trapping.

Regulatory Analysis

Subsection 13.21(a): Paragraph (a) is removed to standardize the rule for all hunting classifications.

Subsection 13.21(d): This subsection addresses hunting and trapping activities in park areas, including preserves.

Paragraph (1) of subsection (d) is added and revises existing language to clarify that only State law and regulation *that does not conflict with Federal law and regulation* is applicable to hunting and trapping in NPS preserves.

Paragraph (2) of subsection (d) is added to clearly establish that violation of non-conflicting State hunting and trapping laws is federally prohibited and, therefore, enforceable by Federal officers.

Paragraph (3) of subsection (d) is added to retain existing language concerning the prohibition on engaging in trapping as the employee of another person.

Paragraph (4) of subsection (d) is added to prohibit same-day-airborne taking of wildlife. The use of aircraft to aid in the taking of wildlife to the degree allowed by same-day-airborne authorizations is contrary to Congressional mandates governing NPS management of wildlife. There is no other practical means of enforcing the Federal and State prohibitions on airborne shooting and aircraft harassment of wildlife. The prohibition is expanded from that specified in the original proposed rule to include bear, caribou, Sitka black-tailed deer, elk, coyote, arctic and red fox, mountain goat, moose, Dall sheep, lynx, bison, musk ox, wolf, and wolverine.

Paragraph (5) of subsection (d) is added, and plainly clarifies in one regulation the current firearm prohibition for trappers and expressly adds an exception for use of a firearm to dispatch wildlife already caught in a trap. This clarification eliminates the need to reference various regulatory provisions when enforcing the prohibition on the use of a firearm under a trapping license.

Subsection 13.21(e): Subsection (e) is revised in order to clarify its applicability to closures of non-subsistence taking of wildlife only. This change is necessitated by the elimination of Sec. 13.21(a). Closure of subsistence taking remains subject to the provisions of Sec. 13.50.

Drafting Information

The primary authors of this regulation are Paul Hunter and John Hiscock of the NPS Alaska Regional Office, and Tony Sisto, formerly of the NPS, Washington Office.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

Compliance with Other Laws

This rulemaking was not subject to Office of Management and Budget review under Executive Order 12866. The NPS certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The economic effects of this rulemaking are local in nature and negligible in scope.

This rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21438). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared. The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to (a) change public hunting habits to the extent of adversely affecting wildlife or other natural ecosystems; (b) introduce incompatible uses which might

compromise the nature and characteristics of the area, or cause physical damage to it; (c) conflict with adjacent ownerships or land uses; (d) cause a nuisance to adjacent owners or occupants; or (e) affect the State hunting population generally.

The proposed rule has been evaluated in accordance with Section 810 of ANILCA and the NPS has determined there will be no significant restriction on subsistence uses. It is worthy of note that the Federal Subsistence Board has prohibited same-day-airborne taking of ungulates (except deer), bear, wolves, wolverines, and furbearers for subsistence uses on all Federal public lands in Alaska (50 CFR Part 100).

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I is proposed to be amended as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for Part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 et seq.; Section 13.65(b) also issued under 16 U.S.C. 1361, 1531.

2. Section 13.21 is amended by removing and reserving paragraph (a), and revising paragraphs (d) and (e), to read as follows:

§ 13.21 Taking of fish and wildlife.

(a) [Reserved]

* * * * *

(d) *Hunting and trapping.* (1) Hunting and trapping are allowed in national preserves in accordance with applicable Federal and non-conflicting State law and regulations. Such laws and regulations are hereby adopted and made a part of these regulations.

(2) Violating a provision of either Federal or non-conflicting State hunting law or regulation is prohibited.

(3) Engaging in trapping activities as the employee of another person is prohibited.

(4) It shall be unlawful for a person having been airborne to use a firearm or any other weapon to take or assist in taking any species of bear, caribou, Sitka black-tailed deer, elk, coyote, arctic and red fox, mountain goat, moose, Dall sheep, lynx, bison, musk ox, wolf, and wolverine under State or Federal hunting laws and regulations until after 3 a.m. on the day following the day in which the flying occurred. This prohibition does not apply to flights on regularly scheduled commercial airlines between regularly maintained public airports.

(5) It shall be unlawful for a person to use a firearm or any other weapon to take or assist in taking wildlife under a trapping license, except that a trapper may use a firearm to dispatch wildlife caught in a trap.

(e) *Closures and restrictions.* The Superintendent may prohibit or restrict the non-subsistence taking of fish or wildlife in accordance with the provisions of § 13.30. Except in emergency conditions, such restrictions shall take effect only after the Superintendent has consulted with the appropriate State agency having responsibility over fishing, hunting, or trapping and representatives of affected users.

Dated: September 27, 1994.

George T. Frampton, Jr.

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–28072 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–70–P

Bureau of Reclamation

43 CFR Part 403

RIN 1006–AA30

Revenues Management

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice to extend comment period.

SUMMARY: The Bureau of Reclamation is extending the comment period published in 59 FR 46801, Sept. 12, 1994, to provide the public with additional time to prepare comments concerning the proposed rulemaking, Revenues Management.

DATES: The deadline for receiving written comments is extended to January 13, 1995.

ADDRESSES: Written comments must be submitted to Donald R. Glaser, Director, Program Analysis Office, Bureau of Reclamation, Attention: *D–5000*, P.O. Box 25007, Denver, Colorado, 80225–0007.

FOR FURTHER INFORMATION CONTACT: Ms. Jaralyn Beek, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, D–5610, P.O. Box 25007, Denver, Colorado, 80225–0007, telephone (303) 236–1061 extension 227.

Dated: November 8, 1994.

Donald R. Glaser,

Director, Program Analysis.

[FR Doc. 94–28171 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–94–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC29

National Flood Insurance Program; Insurance Coverage and Rates

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the National Flood Insurance Program (NFIP) regulations to increase the waiting period before which flood insurance coverage becomes effective under the Standard Flood Insurance Policy and to increase the limits of coverage available under the NFIP. This proposed rule is necessary to comply with the waiting period requirement and maximum flood insurance coverage amounts established by the National Flood Insurance Reform Act of 1994 (Title V of Pub. L. 103–325). The intended effect of this proposed rule is to establish a 30-day waiting period, with certain exceptions, before which flood insurance coverage becomes effective under the Standard Flood Insurance Policy and to provide higher limits of flood insurance coverage to current and new policyholders. In this proposed rule, FEMA is also requesting comments regarding a study it is conducting on the waiting period as required by section 579 of the National Flood Insurance Reform Act of 1994.

DATES: Comments are requested and must be received by December 30, 1994.

ADDRESSES: Comments should be sent to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3422.

SUPPLEMENTARY INFORMATION: In the National Flood Insurance Reform Act of 1994 (the Reform Act), Congress reacted to the flooding which has occurred in recent years (particularly the Midwest flooding in the summer of 1993 and the amount of advance warning which people downstream of the flooding had in excess of the 5-day waiting period then and currently in effect), by enacting legislation requiring a 30-day waiting period, with two exceptions.

One exception to the 30-day waiting period authorized by Congress applies

to the initial purchase of flood insurance in connection with the making, increasing, extension, or renewal of a loan. In such an instance, the coverage with respect to the property which is the subject of the loan shall be effective as of the time of the loan closing, provided the flood insurance policy is applied for and the presentment of payment of premium is made at or prior to the loan closing.

The other exception to the 30-day waiting period authorized by Congress applies to the initial purchase of flood insurance during the one-year period following the issuance of a revised flood map for a community. In such an instance, the coverage is to be effective at 12:01 a.m. (local time) on the first calendar day after the application date and the presentment of payment of premium. The Reform Act provides that the one-year period starts on the date of publication of the notice of the revision and requires that the notice be published not later than 30 days after the effective date of the map revision. Since agents using flood maps automatically get copies of revised maps with the effective date of the revision shown on the map but may not see the new notice that is required, FEMA is interpreting the period for this exception to be the 13-month period beginning on the effective date of the map revision.

The current exception to the waiting period provision when a flood insurance policy is to be issued as a "companion policy" to another policy such as a homeowners policy or a standard fire insurance policy is not authorized by the Reform Act. Therefore, this rule proposes to remove the provisions currently in § 61.11(f)(1) regarding the calculation of the waiting period when the flood insurance policy is to be issued with an effective date to be identical to a "companion policy."

In the Reform Act, Congress also increased the maximum limits of coverage available under the NFIP. The new maximum limits of building coverage are $250,000 for residential structures and $500,000 for all other structures and the new maximum limits of coverage are $100,000 for contents in residential structures and $500,000 for contents in nonresidential structures. With respect to a residential condominium building in a regular program community, the maximum limit of building coverage is $250,000 times the number of units in the building (not to exceed the building's replacement cost). The last time Congress increased the coverage limits was in the Housing and Community Development Act of 1977 (Pub. L. 95–128).

In the Reform Act, Congress also required FEMA to conduct a study to determine the appropriateness of existing requirements regarding the effective date and time of coverage under flood insurance contracts obtained through the national flood insurance program. Congress stipulated that, in conducting the study, the Director shall determine whether any delay between the time of purchase of flood insurance coverage and the time of initial effectiveness of the coverage should differ for various classes of properties (based upon the type of property, location of the property, or any other factors related to the property) or for various circumstances under which such insurance was purchased. FEMA invites comments from the public on any aspects of the waiting period which they consider to be germane. FEMA will consider any comments received as it conducts the study.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Executive Order 12898, Environmental Justice

The socioeconomic conditions relating to this proposed rule were reviewed and a finding was made that no disproportionately high and adverse effect on minority or low income populations result from this proposed rule.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and has not been reviewed by the Office of Management and Budget. Nevertheless, this proposed rule adheres to the regulatory principles set forth in E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 61

Flood insurance

Accordingly, 44 CFR part 61 is proposed to be amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

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

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 61.6 is revised to read as follows:

§ 61.6 Maximum amounts of coverage available.

(a) Pursuant to section 1306 of the Act, the following are the limits of coverage available under the emergency program and under the regular program.

Regular Program

	Regular program		
	Emergency program[1]	Second layer	Total amount available
	First layer		
Single Family Residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	35,000	215,000	250,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	50,000	200,000	250,000
Other Residential			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	100,000	150,000	250,000

	Regular program		
	Emergency program[1] First layer	Second layer	Total amount available
Nonresidential			
Small business	100,000	400,000	500,000
Churches and other properties	100,000	400,000	500,000
Contents[2]			
Residential	10,000	90,000	100,000
Small business	100,000	400,000	500,000
Churches, other properties	100,000	400,000	500,000

[1] 1 Only first layer available under emergency program.
[2] Per unit.

(b) In the insuring of a residential condominium building in a regular program community, the maximum limit of building coverage is $250,000 times the number of units in the building (not to exceed the building's replacement cost).

2. Section 61.11 is amended as follows:

a. By revising paragraphs (a), (b), and (c) to read as follows:

§ 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.

(a) During the one-year period following the issuance of a revised Flood Hazard Boundary Map or Flood Insurance Rate Map for a community, the effective date and time of any new flood insurance coverage shall be 12:01 a.m. (local time) on the first calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on May 1 will become effective at 12:01 a.m. on May 2.

(b) Where the initial purchase of flood insurance is in connection with the making, increasing, extension, or renewal of a loan, the coverage with respect to the property which is the subject of the loan shall be effective as of the time of the loan closing, provided the written request for the coverage is received by the NFIP when the flood insurance policy is applied for and the presentment of payment of premium is made at or prior to the loan closing.

(c) Except as provided by paragraphs (a) and (b) of this section, the effective date and time of any new policy or added coverage or increase in the amount of coverage shall be 12:01 a.m. (local time) on the 30th calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on May 1 will become effective at 12:01 a.m. on May 31.

* * * * *

§ 61.11 [Amended]

b. In paragraph (e), by removing, in the second sentence, the phrase "(P.O. Box 459, Lanham, Maryland 20706)".

c. By removing paragraphs (f) (1) and (2) and by redesignating paragraph (f)(3) as paragraph (g).

d. In newly redesignated paragraph (g), remove the word "this".

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 7, 1994.

Elaine A. McReynolds,

Administrator, Federal Insurance Administration.

[FR Doc. 94-28154 Filed 11-14-94; 8:45 am]
BILLING CODE 6718-05-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 30 and 32

[CGD 90-071]

RIN 2115-AD69

Tank Level or Pressure Monitoring Devices

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Coast Guard will hold a public meeting to discuss implementation of the provision in the Oil Pollution Act of 1990 (OPA 90) which requires the establishment of minimum performance standards for tank level or pressure monitoring devices for tank vessels that carry oil. OPA 90 also requires the promulgation of regulations establishing, consistent with generally recognized principles of international law, requirements concerning the use of these devices. Public comment is sought with regard to both the establishment of minimum performance standards and the establishment of operating requirements for tank level and pressure monitoring devices for oil cargo tanks on tank vessels. The Coast Guard will hold the meeting to give the public an opportunity to comment and provide input to the development of this regulation.

DATES: The public meeting will be held at 9 a.m. on December 9, 1994. Written comments must be received by February 9, 1995.

ADDRESSES: The public meeting will be held in room 2415, Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001.

Persons who are unable to attend the public meeting may mail written comments to the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 90-071), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or deliver them to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Persons submitting written comments should include their names and addresses, identify this notice (CGD 90-071) 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 a stamped, self-addressed postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Randall N. Crenwelge, Project Manager, Oil Pollution Act (OPA 90) Staff (G-MS-A), (202) 267-6740. This number is equipped to record messages on a 24-hour basis. Anyone wishing to make a presentation is requested to call this number and give the following information: Docket number (CGD 90-

071); name; company or organizational affiliation (if any); and the estimated amount of time needed for the presentation.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this Notice are Mr. Randall N. Crenwelge, Project Manager, and Ms. Pam Pelcovits, Project Counsel, OPA 90 Staff, (G–MS–A).

Background and Discussion

Section 4110(a) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) (found at 46 U.S.C. 3703 note), directs the Secretary of Transportation to establish minimum standards for devices to warn of overfills, to determine levels of oil in cargo tanks, and to monitor the pressure of cargo oil tanks. In addition, section 4110(b) authorizes the Secretary of Transportation to promulgate regulations establishing, consistent with generally recognized principles of international law, requirements concerning the use of overfill devices and tank level or pressure monitoring devices. This authority has been delegated to the Coast Guard (49 CFR 1.46).

In order to solicit advance comments on minimum performance standards for tank level and pressure monitoring devices, which provide a means for leak detection, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** on May 7, 1991 (56 FR 21116). (Overfill devices were the subject of a notice of proposed rulemaking (NPRM), published in the **Federal Register** on January 12, 1993 (58 FR 4040), and an Interim Final Rule (IFR) published in the **Federal Register** on October 21, 1994 (59 FR 53286).)

Technical Feasibility Study

The Coast Guard commissioned a technical feasibility study, "Tank Level Detection Devices for the Carriage of Oil," which was made available to the public on February 5, 1993 (58 FR 7292).

The study found that a wide variety of liquid level sensing and pressure monitoring systems exists for both marine and shoreside applications. Several of these systems include the following components: Hydrostatic gauges, radar gauging measures, resistance tape, floats, ultrasonic systems, fiber optics, capacitance-actuated devices, and the electromagnetic level indication (EMLI) system. The study concluded that these systems' performance is significantly affected by the severity of their operating environment.

The study discussed the wide variety of available liquid level detectors and pressure monitoring systems, and evaluated the performance of these sensors using both ideal and simulated shipboard conditions (e.g., environmental noise, ship motion, etc.). The effects of these conditions varied depending on the system used. In some circumstances, environmental noise was found to substantially degrade performance. The greatest variations were found to be caused by cargo sloshing while the ship was in transit.

In view of these problems, the study found that "attainable accuracy," the limit of cargo level change beyond which the crew could be confident that the signal indicates the existence of a leak, is within 1.0–2.0 percent of the actual level. On a 400,000 deadweight ton tanker (VLCC or very large crude carrier), this accuracy translates to the possible loss of from 36,075 to 72,150 gallons of oil before the device would sound an alarm. The Coast Guard is concerned that this represents insufficient warning to allow for prompt action by the crew.

While the Coast Guard requested, in the ANPRM, comments concerning the "attainable accuracy" of these tank level and pressure monitoring devices under sloshing conditions and comments concerning the "attainable accuracy" and performance of these devices when applied separately on inland vessels and vessels in ocean service, the public did not, at that time, have the benefit of seeing the study. Now that the study has been completed and made available to the public, the Coast Guard is interested in additional public comment on these issues. Further, the Coast Guard is interested in comments on whether there might exist alternative methods for achieving the goal of early and reliable leak detection at a reasonable cost.

Possible options

In addition to establishing standards for and mandating the use of tank level and pressure monitoring devices, the Coast Guard might propose regulations providing for alternative compliance by utilizing float switches in empty void spaces beneath cargo tanks or by utilizing vapor detection systems in non-cargo spaces adjacent to the cargo tanks. Both float switches and vapor detection systems are proven, low cost technologies. The Coast Guard is interested in comments from the public regarding these possible alternative compliance techniques as well as others.

Additionally, the Coast Guard is interested in comments regarding the following issues:

1. To what extent should existing single-hull tankers be required to retrofit TLPM devices. Specific information on the costs and benefits of retrofitting leak detection devises on existing single hull tank vessels is sought.

2. Whether the Coast Guard should consider excluding from the application of this rulemaking vessels designed to carry only small amounts of oil in bulk as cargo. If so, comments are solicited on what amount should be considered small.

3. Whether application of the regulation should be limited to vessels carrying petroleum oil in bulk as cargo. While the United States generally, but not always, regulates all oils together, the international community regulates nonpetroleum oils separately.

4. How the installation and use of leak detection devices on tank barges should be addressed. Many tank barges are unmanned and lack independent electrical systems. Thus, they may present unique challenges regarding leak detection.

5. How the costs and benefits of this rulemaking should be calculated. The Coast Guard is interested in receiving specific comments on the potential costs and benefits of this regulation, particularly the impact of this regulation on small entities.

Because of the potential impacts of this regulation, and the results of the Coast Guard's regulatory process review, which indicated that public meetings provide an excellent opportunity for valuable input at early stages of the development of regulations, the Coast Guard has decided to hold a public meeting at the time and place indicated in this notice.

Dated: November 7, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–28067 Filed 11–14–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 13 and 14

RIN 1018–AB49

Importation, Exportation, and Transportation of Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period.

SUMMARY: On September 14, 1994 (59 FR 47212), the Fish and Wildlife Service (Service) published a proposed rule to amend regulations revising the uniform rules and procedures for the importation, exportation, and transportation of wildlife. The Service hereby provides notice that the comment period on the proposal is extended. All interested parties are invited to submit comments on this proposal.

DATES: The initial comment period ended November 14, 1994. Comments will be accepted through December 15, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, Virginia 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, Room 500, Arlington, Virginia, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Frank Shoemaker, Special Agent in Charge, Branch of Investigations, Division of Law Enforcement, Fish and Wildlife Service, U.S. Department of Interior, Washington, D.C. 20240, Telephone Number (703) 358–1949.

SUPPLEMENTARY INFORMATION: The comment period is being extended to allow interested parties time for consideration and review of the proposed rule. Supplementary information and the full text of the proposed rule appears in the **Federal Register** of September 14, 1994, (59 FR 47212).

Dated: November 9, 1994.

George T. Frampton Jr.,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 94–28164 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 59, No. 219
Tuesday, November 15, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Government of Tunisia ("Borrower") as part of USAID's development assistance program. The proceeds of these loans will be used to finance environmental infrastructure and services for the benefit of low-income families in Tunisia. At this time, the Government of Tunisia has authorized USAID to request proposals from eligible lenders for a loan under this program of $10 Million U.S. Dollars (US$10,000,000). The name and address of the Borrower's representatives to be contacted by interested U.S. lenders or investment bankers, and the amount of the loan and project number are indicated below:

Government of Tunisia

Project No.: 664–HG–V—$10,000,000.

Housing Guaranty Loan No.: 664–HG–011 A01.

Attention: Mr. Said Mrabet, Directeur General des Finances Exterieures; Banque Centrale de Tunisie, Tunis, Tunisia.

Telex No.: BANCENT 15375, 13308.

Telefax No.: 216–1–340–615 (preferred communication).

Telephone No.: 216–1–351–813, 254–000.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representatives by *Tuesday, November 29, 1994, 12:00 noon Eastern Standard Time.* Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Lane Smith or Ms. Monia Ben Khalifa, Regional Housing and Urban Development Office, RHUDO/NENA–USAID/Tunisia, c/o American Embassy, Tunis, Tunisia (Street address: 144 Avenue de la liberte, Tunis, Tunisia) Telex No.: 14182 USAID TN

Telefax No.: 216–1–783–350 (preferred communication).

Telephone No.: 216–1–784–300.

Mr. David Grossman/Mr. Peter Pirnie.

Address: U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 401, SA–2, Washington, DC 20523–0214.

Telex No.: 892703 AID WSA.

Telefax No.: (202) 663–2552 or (202) 663–2507 (preferred communication).

Telephone No.: (202) 663–2530 or (202) 663–2547.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $10 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. (During grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of fixed and variable rates, and variable rates with interest "caps", are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 7½% U.S. Treasury Bond due November 15, 2024. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Associated LIBOR, preferably with terms relating to Borrower's right to covert to fixed. The rate should be adjusted weekly.

(c) *Variable Interest Rate with "Caps":* Offers should include a maximum (cap) rate ranging from 10% to 12% per annum, and are to be based on the six-month British Bankers Association LIBOR, preferably with terms relating to the Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment:*

(a) Offers should include options for prepayment and mention prepayment premiums, if any.

(b) Federal statutes governing the activities of USAID require that the proceeds of USAID-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, USAID reserves the right, among its other rights and remedies, to accelerate the loan.

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees, Paying and Transfer Agent fees, and out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* Not to exceed 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to approval by USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority to Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for USAID guaranty, the loans must be repayable in full not later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the

USAID housing guaranty program can be obtained from:

Mr. Peter M. Kimm, Director, Office of Environment and Urban Programs, U.S. Agency for International Development, Room 401, SA–2, Washington, D.C. 20523–0214, Fax Nos: (202) 663–2552 or 663–2507, Telephone: (202) 663–2530.

Dated: November 10, 1994.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, Agency for International Development.

[FR Doc. 94–28265 Filed 11–14–94; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wildcat River Advisory Commission

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wildcat River Advisory Commission will meet at the Jackson Town Hall in Jackson, New Hampshire, on November 30, 1994. The purpose of the meeting is to review the draft river management plan for administration of the designated Wild and Scenic Wildcat River. The Wild and Scenic Rivers Act requires the establishment of an advisory commission to advise the Secretary of Agriculture on administration of the river. Interested members of the public may obtain copies of the draft plan from the Saco Ranger District office. The public is encouraged to attend the meeting and may provide written comment on the plan to the commissioners c/o the district office.

DATES: The meeting will be held November 30, 1994, at 7:30 p.m.

ADDRESSES: The meeting will be held at the Jackson Town Hall, Route 16B, Jackson, New Hampshire.

Send written comments to Richard J. Alimi, Assistant District Ranger, Saco Ranger District, White Mountain National Forest, 33 Kancamagus Highway, Conway, NH 03818.

FOR FURTHER INFORMATION CONTACT: Richard J. Alimi, Assistant District Ranger, Saco Ranger District, (603) 447–5482.

Dated: November 1, 1994.

Chuck Myers,

Acting Forest Supervisor.

[FR Doc. 94–27940 Filed 11–14–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held December 7, 1994, 9 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Election of new Chairman.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, EA/OAS—Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 6, 1994, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: November 8, 1994.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–28104 Filed 11–14–94; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[C–517–501]

Carbon Steel Wire Rod From Saudi Arabia; Final Results of Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review and revocation of countervailing duty order.

SUMMARY: The Department of Commerce (the Department) has completed an administrative review of the countervailing duty order on carbon steel wire rod from Saudi Arabia. We determine the total bounty or grant to be 0.18 percent *ad valorem* for the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. In addition, because the requirements for revocation of the order have been met by the Government of the Kingdom of Saudi Arabia and the sole producer of the subject merchandise pursuant to 19 CFR 355.25(a)(2) and 355.25(b)(2), the Department is revoking the countervailing duty order.

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Kaesshaefer or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1993, the Department published in the **Federal Register** the preliminary results of its administrative review and intent to revoke

countervailing duty order on carbon steel wire rod from Saudi Arabia (58 FR 58537). The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Saudi carbon steel wire rod. Carbon steel wire rod is a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Such merchandise is classifiable under item numbers 7213.20.00, 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00 and 7213.50.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review period is January 1, 1991 through December 31, 1991. This review involves one company, the Saudi Iron and Steel Company (HADEED), and three programs: (1) Public Investment Fund (PIF) loan to HADEED, (2) Saudi Basic Industries Corporation's (SABIC) transfer of Steel Rolling Company (SULB) shares to HADEED, and (3) preferential provision of equipment to HADEED. HADEED is the sole producer/exporter of carbon steel wire rod in Saudi Arabia.

The Department's determination to revoke the countervailing duty order is based on the following. First, in accordance with the requirements of section 355.25(b)(2), the Government of the Kingdom of Saudi Arabia has requested that the Department revoke the countervailing duty order on carbon steel wire rod from Saudi Arabia. Second, in accordance with the requirements of sections 355.25(b)(2) and 355.22(a)(2), certifications executed by officials of HADEED and the Government of the Kingdom of Saudi Arabia attest to the fact that the producer/exporter has not received any net subsidy during the January 1 through December 31, 1991 period of review. Third, in accordance with the requirements of section 355.25(a)(2)(i) of the Department's regulations, the Department has found the absence of net subsidies based on administrative reviews conducted for each of the past five consecutive years. Fourth, in accordance with the requirements of section 355.25(b)(2), HADEED has certified that it will neither apply for nor receive any net subsidy in the future. Accordingly, the Department has found that the producer/exporter covered by the order is not likely to apply for or receive any net subsidy in the future from any program found countervailable or from any other countervailable programs.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the respondent, HADEED, and the petitioners.

Comment 1: HADEED argues that recent developments in Commerce practice warrant a reexamination of PIF linkage to the Saudi Industrial Development Fund (SIDF). HADEED cites to a memorandum examining the possibility of integral linkage of programs in the sixth administrative review on *Live Swine from Canada* as the basis for its claim that the Department has changed its practice with respect to integral linkage. (*See*, Memorandum from CVD Team to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration (October 13, 1993), which is on file in the Central Records Unit (Room B099 of the Main Commerce Building) (Integral Linkage Memorandum).) As cited by HADEED,

> The Department acknowledges that: "if the multiple programs are created at separate points in time, the *Department has not required that * * * an express statement that the programs are complementary parts of an overarching governmental policy be made when the first program is enacted.*" The Department stated further that it seeks information showing "an express intention to create multiple programs, *whether at the same time or separately,*" which are designed to be "*complementary parts* of an overarching governmental policy directive." (Integral Linkage Memorandum at 4 as cited, with emphasis added, by HADEED. Respondent's case brief at 3.)

HADEED concludes from this that the Integral Linkage Memorandum now recognizes that: (1) linked programs need only be complementary, not identical; (2) linked programs can be created at separate points in time; and (3) explicit documentation of linkage is not required at the time of the enactment of the first program. According to HADEED, this recent development has eliminated two of the Department's three previous barriers to finding that PIF and SIDF are integrally linked and requires a reexamination of the record evidence on linkage as it pertains to the inception of SIDF.

HADEED argues that the PIF loan program and the SIDF loan program are "integrally linked" as defined in section 355.43(b)(6) of the Department's proposed regulations; *see Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments*, 54 FR 23366 (May 31 1989). Since PIF and the SIDF are integrally linked, they should be considered together in determining whether loans provided by these two entities are limited to a specific enterprise or industry, or group of enterprises or industries. SIDF and PIF qualify for linkage under each factor identified in the Department's proposed regulations. These factors are (1) the administration of the programs, (2) evidence of a government policy to treat industries equally, (3) the purposes of the programs as stated in their enabling legislation, (4) the manner of funding the programs, and (5) "other factors."

HADEED argues that the information on the record shows a Saudi government policy to treat industries equally. PIF and SIDF provide identical benefits—low-cost, long-term construction loans—on identical terms to a wide variety of industries. PIF and SIDF are two of five Specialized Credit Institutions that the Saudi government created to develop and diversify the Saudi economy. The PIF and SIDF share a common purpose as the only sources of low-cost financing for the industrial and manufacturing sector. PIF loans are available to companies with some government equity, and are suited for the types of large projects that the Saudi government would be most likely to undertake. SIDF loans, on the other hand, are available to companies with some private Saudi ownership and are best suited for small and medium-sized projects. Between them, the two programs address the borrowing needs of the entire range of Saudi industries.

PIF and SIDF share a common purpose, based on statements in each entity's enabling legislation. PIF was created "to finance investment in the productive projects of a commercial nature." Similarly, SIDF was created "to support industrial development in the private sector of the Kingdom's economy." Both programs are aimed at financing development in the Saudi industrial and manufacturing sector.

PIF and SIDF are administered in a comparable manner through SAMA (the Saudi Central Bank) and the Ministry of Finance and National Economy. Both PIF and SIDF are administered by boards of directors with a common chairman, the Minister of Finance and National Economy, with the remaining members drawn from SAMA and other Saudi government agencies.

PIF and SIDF were originally funded through the Ministry of Finance and National Economy. Currently, both

programs are self-sufficient. SAMA produces a consolidated balance sheet showing assets and liabilities of PIF and SIDF jointly. All information regarding budget allocations, disbursements and repayments of PIF and SIDF are published as consolidated statements.

According to HADEED, other factors integrally linking PIF and SIDF include the fact that there are no *de jure* limitations on the types of industries eligible to receive loans under either fund. The lending practices and histories of both funds are similar. The maximum loan amount is SR 500 million for PIF and SR 400 million for SIDF. The maximum loan period for both PIF and SIDF is 15 years. The PIF requires Saudi government equity participation in a project in order to obtain funds. Similarly, SIDF requires at least 25 percent equity contribution from private Saudi sources in order to obtain funds.

Thus, in light of the factors described above, HADEED argues that the Department has a compelling case for finding integral linkage between PIF and SIDF. The programs are part of the same overall government lending policy, they are intended to be complementary and to achieve the same purpose, they are administered and funded through the same governmental agency, and they provide similar benefits to the same sector of the Saudi economy. Based on a finding of integral linkage, the Department should consider PIF and SIDF programs together and find that they are not specifically provided and therefore not countervailable.

The petitioner argues that the Department has rejected respondent's argument regarding integral linkage in the previous three reviews (*see Final Results of Countervailing Duty Administrative Review; Carbon Steel Wire Rod from Saudi Arabia*, 56 FR 26652, June 10, 1991; and, *Final Results of Countervailing Duty Administrative Reviews; Carbon Steel Wire Rod from Saudi Arabia*, 56 FR 48158, September 24, 1991). The unique aspects of the PIF program cannot be hidden by lumping it together with other Saudi government financing programs such as SIDF, which were established for other reasons. Nothing the Saudi government does in providing other loans through separate programs detracts from PIF's specificity.

Department's Position: HADEED's arguments regarding integral linkage have been addressed and rejected in three previous reviews (*see Final Results of Countervailing Duty Administrative Review; Carbon Steel Wire Rod from Saudi Arabia*, 56 FR 26652, June 10, 1991; and, *Final Results of Countervailing Duty Administrative Reviews; Carbon Steel Wire Rod from Saudi Arabia*, 56 FR 48158, September 24, 1991). Further, a full reading of the Integral Linkage Memorandum and the Department's previous decisions on integral linkage in this case clearly indicates that: (1) the Department's practice with respect to integral linkage has not changed; and (2) a re-examination of the Department's decision with respect to PIF's linkage to SIDF is not warranted.

Contrary to HADEED's assertion, the fact that linked programs need only be complementary is not a recent change in Departmental practice. The Department has never based its PIF linkage decision on the fact that PIF and SIDF are not identical. As stated in the 1988, 1989 and 1990 administrative reviews, "Documented information on the inception of the programs that explicitly ties PIF and SIDF as *complementary* parts of an overarching governmental policy directive has not been presented by the respondent [despite the Department's repeated requests."] (Bracketed portion from the 1990 administrative review only.) *Final Results of Countervailing Duty Administrative Reviews; Carbon Steel Wire Rod from Saudi Arabia*, 56 FR 48160, September 24, 1991 and *Final Results of Countervailing Duty Administrative Reviews; Carbon Steel Wire Rod from Saudi Arabia*, 57 FR 8304, March 9, 1992. Furthermore, HADEED completely misrepresents the Department when it states that the Department previously "recognized" that PIF and SIDF are complementary.[1]

It is also clear that the Integral Linkage Memorandum did not change the Department's practice with respect to a supposed timing requirement for the creation of linked programs. The Department never based its PIF linkage decision on the fact that PIF and SIDF were not created simultaneously. Rather, "the fact that these programs were founded separately, three years apart, suggests *(without other documented information)* that the programs were not conceived as parts of a single program." *Final Results of Countervailing Duty Administrative Reviews; Carbon Steel Wire Rod from Saudi Arabia*, 56 FR 48160, September 24, 1991 (emphasis added). That the Integral Linkage Memorandum follows the same standard can be clearly discerned from the following discussion preceding the Department's determination that the Tripartite Program is not integrally linked to the other three programs:

> Therefore, as we explained in *Carbon Steel Wire Rod* (57 FR at 8304), *in order to prevail on a claim of integral linkage*, the claimant should be able to point to a *clear undisputed statement* in the enabling legislation or some other authoritative source indicating an express intention to create multiple programs, whether at the same time or separately, which are designed to be "complementary parts of an overarching governmental policy directive." * * * For instance, it is easy to state that the purpose of two separate programs is the same. * * * However, absent an objective indication by the government of why it created two (or more) programs instead of one, *it is very difficult if not impossible* to conclude that the government actually intended to have the programs complement one another. Similarly, if the government's policy is truly to treat the industries covered by the various programs equally, *it is reasonable to expect* the government to have made this intention clear. Integral Linkage Memorandum at 4 (emphasis added).

Finally, with respect to HADEED's claim that the Department has changed its practice and no longer requires explicit documentation demonstrating linkage at the inception of the first program, an examination of the cited passage clearly shows that the passage is describing a long-standing Departmental practice rather than a recent change in practice.[2] The Department has not based its previous PIF linkage determinations solely on the lack of documentation linking PIF and SIDF at the inception of PIF. Rather, HADEED has consistently failed to present documented information at the inception of *either* PIF or SIDF that explicitly ties the two programs as complementary parts of an overarching governmental policy directive. It is the lack of the type of documentation indicated in the above passage from the Integral Linkage Memorandum (*i.e.*, "a clear undisputed statement in the enabling legislation or some other authoritative source indicating an express intention to create multiple programs. * * * "), that has led the Department to consistently find that PIF and SIDF are not integrally linked.

[1] The sentence from which HADEED draws its conclusion that the Department has already determined that PIF and SIDF are complementary reads as follows, "It *may* be that, in principle and practice, the respective roles of PIF and SIDF have evolved to complement and overlap each other." *Final Results of Countervailing Duty Administrative Reviews; Carbon Steel Wire Rod from Saudi Arabia*, 56 FR 48160, September 24, 1991 (emphasis added). This sentence is at the beginning of the paragraph that concludes that respondents have failed to provide the necessary factual information that PIF and SIDF were "complementary parts of an overarching policy directive." *Id.*

[2] If the multiple programs are created at separate points in time, the Department *has not* required that such an express statement be made when the first program is enacted.

Finally, it is the Department's practice as set forth in section 355.43(b)(6) of the Department's proposed regulations to consider, among other factors, the following in determining whether two programs are integrally linked: "the administration of the programs, evidence of a government policy to treat industries equally, the purposes of the programs as stated in their enabling legislation, and the manner of funding the programs." The Department has interpreted the second factor in a strict manner, so as to conform our interpretation of "integral linkage" to the purpose of the specificity test as a whole. The specificity test was designed to avoid carrying the countervailing duty law to absurd results by countervailing public highways and bridges, *i.e.*, programs, which clearly benefit the economy at large, as opposed to identifiable and specific segments of the economy. *See, e.g., Carlisle Tire and Rubber Co.*, v. *United States*, 564 F. Supp. 834, 838 (Court of International Trade, 1983). "Integral linkage" should not be interpreted to create a loophole which would allow *de facto* specific subsidy programs benefitting only particular segments of the economy to escape the imposition of countervailing duties.

Permitting respondent governments to loosely connect two or more programs which were otherwise designed to serve different purposes would create the type of loophole the Department seeks to avoid. *See Final Results of Countervailing Duty Administrative Review; Live Swine from Canada*, 59 FR 12246 (March 16, 1994). Moreover, the creation of such a loophole would be contrary to the intent of Congress. S. Rep. No. 71, 100th Congress, First Session 123 (June 12, 1987). Congress stated that the Department should avoid taking an "overly narrow" or "overly restrictive" view of its authority to determine specificity. Thus, the Department has required documented information from the inception of one or the other of the programs that explicitly ties PIF and SIDF as complementary parts of an overarching governmental policy directive. *See Carbon Steel Wire Rod from Saudi Arabia; Final Results of Countervailing Duty Administrative Review*, 57 FR 8304 (March 9, 1992). Information of this nature has not been provided by respondent; therefore there is no information on the record that would tie SIDF and PIF at the inception of one or the other. We have thus considered each program separately.

Comment 2: The respondent contends that it is unreasonable for the Department to demand any more factual proof of integral linkage than that which HADEED has provided. All known existing evidence has been presented. For reasons relating primarily to the nature of record-keeping during the early stages of Saudi Arabia's industrialization process, better evidence appears not to exist. The Department is not justified in treating evidence of linkage at inception as a criterion for finding integral linkage. Such a criterion is not even explicitly listed in the Department's proposed regulation. Furthermore, the Department's insistence on proof of such additional factors violates prescribed rules of procedure by using factors purporting to be guidance as a final rule determining substantive rights. The Court of International Trade has held that the Department must follow the minimal "notice and comment" procedures embodied in the Administrative Procedures Act (APA) before promulgating final rules. *Ipsco, Inc.* v. *United States*, 687 F. Supp. 614, (Court of International Trade, 1988).

Department's Position: With regard to the question of "integral linkage," the Department has consistently focused its attention on the relationship between the programs in question and "an overall government policy or national development plan." *See Final Results of Countervailing Duty Administrative Reviews; Carbon Steel Wire Rod from Saudi Arabia*, 56 FR 48158, September 24, 1991. This interpretation was clearly stated in the *Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers from the Netherlands* (52 FR 3301, February 3, 1987) wherein the Department would not find integral linkage because "the government was unable to document the inclusion of [the programs] as part of an overall national energy program * * *" *Id.* at 3309.

In requiring that this relationship be explicit at the inception of one or the other of the programs, the Department violates no statutory or regulatory provision. Even if one turns to the Department's proposed regulations, the decision herein is fully supported. Section 355.43(b)(6) of the proposed regulations tells us that when deciding an integral linkage question the Secretary will examine "evidence of a government policy to treat industries equally." This broad instruction is included on a list that explicitly advises parties that the Department will consider the factors on the list together with "other factors." Thus, it is within the Department's discretion to elaborate on each factor listed in the proposed regulation. This is precisely what the Department has done with the second factor listed in the proposed regulation.

Comment 3: HADEED argues that, contrary to the Department's preliminary results, PIF loans are not limited to a specific group of enterprises, and therefore, they are not countervailable. HADEED contends that the Department's preliminary determination that the Saudi government, through PIF, provides loans to "a specific enterprise or industry or group of enterprises or industries" within the meaning of 19 U.S.C. 1677(5)(B), is incorrect. The basis for the Department's determination is the erroneous assumption that only six companies have effectively benefited from the program. In reality, 24 companies in a wide variety of industries have received PIF financing. The 18 companies that are at least 50 percent-owned by either SABIC or Petromin (government-owned corporations) should be treated as separate entities. The Department has, in effect, found that there is an intercorporate transfer of benefits based solely on corporate relationships with SABIC or Petromin. Such an application of the specificity test based on a commonality of shareholders is without precedent and contravenes the Department's established policy not to assume automatic transfer of benefits based on related party status. Respondents cite the following cases in defense of their argument: *Industrial Phosphoric Acid from Israel*, 52 FR 25447 (July 7, 1987); *Operators for Jalousie and Awning Windows from El Salvador*, 51 FR 41516 (November 17, 1986); *Low-Fuming Brazing Copper Rod and Wire from New Zealand*, 50 FR 31638 (August 5, 1985); and *Carbon Steel Structural Shapes from Luxembourg*, 47 FR 39364 (September 7, 1982).

The petitioner contends that PIF provides benefits almost exclusively to the projects undertaken by a few companies with controlling government ownership and therefore constitute a specific group of enterprises in Saudi Arabia.

Department's Position: We disagree with respondent. We have considered and rejected respondent's argument in the original investigation, and in the subsequent three reviews (*see Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Wire Rod from Saudi Arabia*, 51 FR 4206, February 3, 1986; *Final Results of Countervailing Duty Administrative Review; Carbon Steel Wire Rod from Saudi Arabia*, 56 FR 26652, June 10, 1991; and, *Final Results of Countervailing Duty Administrative Reviews; Carbon Steel Wire Rod from Saudi Arabia*, 56 FR

48158, September 24, 1991, respectively). We determined that the loan in question was part of a *de facto* specific program, and respondent has presented no new evidence that would disturb this conclusion (other than that pertaining to "integral linkage").

We based this determination on the fact that there were three holding companies, SABIC, Petromin, and Saudia Airlines, which had 50 percent or more ownership in virtually all of the PIF loan recipients. The Court of International Trade examined this analysis as it pertained to the original investigation of the subject merchandise, and held that the Department "reasonably applied the specificity test," and that the determination was in accordance with law. *See Saudi Iron and Steel Co.* v. *United States, 675* F. Supp. 1362 (Court of International Trade 1987).

Comment 4: Petitioners contend that the Department's use of a composite benchmark incorporating a short-term interest rate is incorrect. In calculating the benchmark, the Department relied on the erroneous assumption that HADEED could have obtained the SIDF's maximum loan limit of fifty percent of the project's total cost. In fact, the maximum amount HADEED could have obtained from SIDF was SR 400 million, significantly less than fifty percent of the project's total cost.

Department's Position: We disagree. We have considered and rejected this argument in a previous review. The Department has previously found that the SIDF, in fact, often loaned combined amounts greater than the "cap" to a single company. We concluded that it was reasonable to include more than SR 400 million in the benchmark. *See Final Results of Countervailing Duty Administrative Review; Carbon Steel Wire Rod from Saudi Arabia,* 56 FR 26652 (June 10, 1991). Our methodology remains unchanged from the original investigation. Since the PIF loan covered 60 percent of HADEED's total project costs, for our benchmark we assumed that HADEED could have financed 50 percent of its total project costs with a SIDF loan (the maximum eligibility for a company with at least 50 percent Saudi ownership) and the remaining 10 percent of project costs with a Saudi commercial bank loan. The commercial bank portion of the benchmark was based on the average Saudi Interbank Offering Rate (SIBOR) for 1990, plus the normal one percent spread that is common for commercial borrowing from private Saudi banks.

Final Results of Review

After reviewing all of the comments received, we determine the total bounty or grant to be 0.18 percent *ad valorem* for the period January 1, 1991 through December 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1991 and exported on or before December 31, 1991; in addition, the Department will instruct the Customs Service to refund with interest any deposits of estimated duties on such entries.

We have determined that the Government of the Kingdom of Saudi Arabia has met the requirements for revocation of the countervailing duty order pursuant to 19 CFR 355.25(a)(2) and 19 CFR 355.25(b)(2). Based upon certifications by HADEED and the Government of the Kingdom of Saudi Arabia, as well as the Department's administrative determinations, we have determined that HADEED, the only producer of the subject merchandise, has not applied for or received any net subsidy for five consecutive years. In addition, HADEED has certified that it will not apply for or receive any net subsidy under a program deemed by the Department to be countervailable. We therefore determine that there is no likelihood that this company will apply for or receive any net subsidy in the future. Accordingly, we are revoking the countervailing duty order. The Department will instruct the Customs Service to terminate suspension of liquidation on entries of the subject merchandise and to liquidate, without regard to countervailing duties, such merchandise exported on or after January 1, 1992, the first day after the period reviewed herein. We will also instruct the Customs Service to refund any deposits of estimated duties on such entries.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to APO of their responsibilities concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), and 19 CFR 355.22 and 19 CFR 355.25.

Dated: October 27, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–28184 Filed 11–14–94, 8:45 am]

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[A–570–829]

Notice of Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Penelope Naas, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0189 or (202) 482–3534, respectively.

FINAL DETERMINATION: The Department of Commerce ("the Department") determines that saccharin from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination in this investigation (59 FR 32412, June 23,1994), the following events have occurred.

On July 1, 1994, in accordance with section 735(a)(2)(A) of the Act, the respondents in this investigation requested that the Department postpone its final determination in this investigation until 135 days after the date of publication of the preliminary determination. Accordingly, the Department postponed its final determination until November 7, 1994 (59 FR 37969, July 26, 1994).

From August 4 through August 13, 1994, Department officials conducted verification of the responses of the responding exporters—Shanghai KJ Import and Export Corporation ("Shanghai IE") and Suzhou Cereals Import and Export Corporation ("Suzhou IE") ; and the producers—Suzhou Auxiliary Agent Factory, Shanghai No. 6 Pharmaceutical Factory, and the Wangxin Branch of Shanghai No. 6 Pharmaceutical Factory.

Petitioner and respondents submitted case and rebuttal briefs on September 23

and September 29, 1994, respectively. A public hearing was held on October 4, 1994.

Scope of Investigation

The product covered by this investigation is saccharin. Saccharin is a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, animal feeds, and metalworking fluids. Three forms of saccharin are typically available as referenced in the American Chemical Society's Chemical Abstract Service (CAS). These forms are sodium saccharin (CAS Registry #128–44–9), calcium saccharin (CAS #6485–34–3), and acid (or insoluble) saccharin (CAS #81–07–2). Saccharin is currently classifiable under subheading 2925.11.00 of the Harmonized Tariff Schedules of the United States (HTSUS). The scope of this investigation includes all types of saccharin imported under this HTSUS subheading including research and specialized grades.

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is June 1, 1993, through November 30, 1993.

Separate Rates

Both of the two participating exporters, Shanghai IE and Suzhou IE, have requested a separate rate. We confirmed at verification that both companies are "owned by all the people." In the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, (May 2, 1994) (*Silicon Carbide*), we found that the PRC central government had devolved control of state-owned enterprises, i.e., enterprises "owned by all the people." As a result, we determined that companies owned "by all the people" were eligible for individual rates, if they met the criteria developed in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* 56 FR 20588 (May 6, 1991) (Sparklers) and amplified in *Silicon Carbide*. Under this analysis, the Department assigns a separate rate only when an exporter can demonstrate the absence of both *de jure*[1] and *de facto*[2] governmental control over export activities.

De Jure Analysis

The PRC laws placed on the record of this case establish that the responsibility for managing companies owned by "all the people" has been transferred from the government to the enterprise itself. These laws include: "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People," adopted on April 13, 1988 (1988 Law); "Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises," approved on August 23, 1992 (1992 Regulations); and the "Temporary Provisions for Administration of Export Commodities," approved on December 21, 1992 (Export Provisions).[3] The 1988 Law states that enterprises have the right to set their own prices (see Article 26). This principle was restated in the 1992 Regulations (see Article IX).

Consistent with Silicon Carbide, we determined that the existence of these laws demonstrates that Shanghai IE and Suzhou IE, companies owned by "all the people," are not subject to de jure control. In light of reports[4] indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly, an analysis of de facto control is critical in determining whether respondents are, in fact, subject to governmental control.

De Facto Control Analysis

We analyze below the issue of de facto control based on the criteria set forth in Silicon Carbide.

Suzhou IE

In the course of verification, we confirmed that Suzhou IE's export prices are not set, or subject to approval, by any government authority. This point was supported by the company's sales documentation, company correspondence, and confirmed through questioning of a Suzhou Commission of Foreign Trade and Economic Cooperation (COFTEC) representative. Through an examination of sales documents pertaining to U.S. saccharin sales, we also noted that Suzhou IE has the authority to negotiate contracts, including price, with its customers without government interference.

We confirmed, through an examination of bank documents, that Suzhou IE has the authority to borrow freely, independent of government authority. We also confirmed that Suzhou IE has negotiated other contracts independent of government authority. For instance, the company has (1) recently entered into a real estate venture with one Chinese and one foreign partner to purchase a building south of Suzhou, (2) leased the first floor of its current building to a garment manufacturer, and (3) purchased an automobile for company use.

We have determined that Suzhou IE has autonomy from the central government in making decisions regarding the selection of management. At verification, we found that the current general manager joined the company in 1992, following the retirement of his predecessor. We learned at verification that Suzhou IE recruited the current general manager from the Suzhou/China Council for Promotion of International Trade as it wanted a more "internationally" minded leader. We also learned that the rest of management is typically selected by the General Manager based on the Suzhou IE staff's opinion of the competency of the candidate. We also found that an employees' committee exists at the company made up of approximately one-third of all staff. However, according to the company, this committee operates informally, addressing issues such as wages and employee absences. Moreover, the Suzhou COFTEC representative confirmed that the company does send the names of its managers to Suzhou COFTEC, but we learned at verification

[1] Evidence supporting, though not requiring, a finding of de jure absence of central control includes: (1) Absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies.

[2] The factors considered include: (1) Whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

[3] While the PRC government has devolved control over state-owned enterprises, the government has continued to regulate certain products through export controls. The Export Provisions list designates those products subject to direct government control. Saccharin does not appear on the Export Provisions list and is not, therefore, subject to the constraints of these provisions.

[4] See "PRC Government Findings on Enterprise Autonomy," in Foreign Broadcast Information Service-China-93–133 (July 14, 1993) and 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt.2 (102 Cong., 2d Sess)

that this is only so COFTEC will know who to contact at the company to disseminate and gather information.

Finally, we found that during the POI, although required to exchange a certain percentage of its foreign exchange at the official exchange rate, Suzhou IE retained proceeds from its export sales and made independent decisions regarding disposition of profits and financing of losses. The company's financial and accounting records supported this conclusion.

Based on an analysis of all these factors, we have determined that Suzhou IE is not subject to de facto control by governmental authorities.

Shanghai IE

In our verification of whether Shanghai IE is subject to de facto control, we found additional information regarding the company's ownership. We confirmed that it was a start-up company formed in 1992 and, according to its business license, is "owned by all the people." The company was established with the sponsorship and capital of the general manager and four other investors who work for other PRC companies. These individuals constitute Shanghai IE's current board of directors. They contributed capital to the company and also obtained a loan from another PRC company. According to information reviewed at verification, these investors decide how to handle and distribute the profits of the company.

In the course of verification, we also confirmed that Shanghai IE's export prices are not set, or subject to approval, by any government authority. This point was supported by the company's sales documentation, company correspondence, and confirmed through questioning of a Shanghai Commission of Foreign Trade and Economic Cooperation (COFTEC) representative. Through an examination of sales documents pertaining to U.S. saccharin sales, we also noted that Shanghai IE is able to negotiate contracts, including price, with its customers without government interference.

We confirmed, through an examination of bank documents, that Shanghai IE has the authority to borrow freely, independent of government authority. We also confirmed that Shanghai IE has negotiated other contracts independent of government authority. For instance, the company has: (1) Leased an office in the PuDong area of Shanghai at a specified rent, (2) negotiated a rental agreement with a warehousing company, and (3) purchased an automobile for company use.

We have also determined that Shanghai IE has autonomy from the central government in making decisions regarding the selection of management. At verification, we found that management is selected by the company with no outside involvement. We also learned at verification that the general manager is chosen by the board of directors (*i.e.*, the original investors) of the company. The general manager, in turn, chooses all of the company employees, with the advice of current employees. We reviewed an employee contract at verification which supported this explanation. Moreover, the Shanghai COFTEC representative stated that the company does not need to receive any approval from COFTEC regarding its management selections.

Finally, we found that during the POI, although required to exchange a certain percentage of its foreign exchange at the official exchange rate, Shanghai IE retained proceeds from its export sales and made independent decisions regarding disposition of profits and financing of losses. The company's financial and accounting records supported this conclusion.

Based on an analysis of all these factors, we have determined that Shanghai IE is not subject to *de facto* control by governmental authorities.

Conclusion

In the case of both Suzhou IE and Shanghai IE, the record demonstrates an absence of *de jure* and *de facto* government control. Accordingly, we determine that each of these exporters should receive a separate rate.

Market-Oriented Industry Claim

Respondents have argued that they should be treated as a market-oriented industry ("MOI"). However, we received MOI response information from only two saccharin producers in the PRC. We have no information on the remaining producers, of which there are at least four (according to information on the record provided by the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC")). Consequently, we have no basis to determine whether the production and sales practices of these producers are representative of PRC saccharin producers as a whole. Therefore, consistent with the policy outlined in the investigation of *Certain Helical Spring Lock Washers from the PRC*, (See, January 19, 1993, Memorandum from David L. Binder to Richard W. Moreland), we have determined that the PRC saccharin producers are not an MOI.

Nonmarket Economy

The PRC has been treated as a nonmarket economy (NME) in past antidumping investigations. (*See, e.g., Final Determination of Sales at Less than Fair Value: Certain Paper Clips from the People's Republic of China*, 59 FR 51168 (October 7, 1994)). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with section 771(18)(c) of the Act, the Department has treated the PRC as an NME for purposes of this investigation.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producers' factors of production, to the extent possible, in one or more market economy countries that are (1) at a level of economic development comparable to that of the nonmarket economy country, and (2) significant producers of comparable merchandise. Of the countries that have been determined to be economically comparable to the PRC, evidence on the record of this case (i.e., export statistics data) indicates that India and Indonesia are significant producers of comparable merchandise, food-grade chemicals. We recognize that the food-grade chemical category is broad. However, because there are a significant variety of methods by which saccharin is produced, we have no means by which we can narrow this category further. Therefore, we have determined that it is appropriate to select from among the countries that are significant producers of a broad range of food-grade chemicals which encompass a variety of processes and input combinations. This method is reasonable particularly in light of the unavailability of reliable data on any appropriate export prices from the list of potential surrogates. (For a further discussion of the comparability of food-grade chemicals, please see November 7, 1994, Memorandum from Team to Susan Kuhbach).

In order to select a single surrogate from among those countries that meet the statutory criteria, we have reviewed the data that has been submitted and that we have been able to develop on factor values from these countries. We compared the Indian and Indonesian values against data developed from export statistics from five countries (Canada, Germany, Japan, South Korea, and the United States) that export the materials to these two countries. We rejected Indian and Indonesian values that were not reasonably comparable to the median. We then sought to ascertain

which of the two countries provided a more complete data base for valuing the factors of production. Upon the basis of the above analysis, we selected Indonesia as our primary surrogate. Accordingly (except for certain inputs described below) we have relied upon Indonesian prices to value the PRC producers' factors of production.

Fair Value Comparisons

To determine whether sales of saccharin from the PRC to the United States by Suzhou IE and Shanghai IE were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold directly by the Chinese exporters to unrelated parties in the United States prior to importation into the United States, and because the exporters' sales price methodology was not indicated by any other circumstances.

For those exporters that responded to the Department's questionnaire, we calculated purchase price based on packed, CIF delivered prices to unrelated purchasers in the United States. We made deductions for containerization expenses and foreign inland freight based on Indonesian values. We made deductions for foreign handling and brokerage fees, and marine and inland insurance based on Indian values because we lacked Indonesian values. We also deducted ocean freight using international freight rates from Shanghai to New York obtained by the Department.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV using factors of production reported by the factories. The factors used to produce saccharin include materials, labor, and energy. To calculate FMV, the reported quantities were multiplied by the appropriate surrogate values for the different inputs. For each of the factories, we made adjustments to material costs for recovery of by-products in the production process.

Our primary data source in Indonesia is the import data as reported in the *Indonesian Foreign Trade Statistical Bulletin*. We compared the Indonesian import price to the median of these five export prices, and where the Indonesian import price was reasonably comparable to the median, we used the Indonesian import value for the PRC production factor. Where the import data was determined to be aberrational, we turned to Indonesian export data and performed the same analysis. Where the Indonesian export prices were also found to be aberrational, we first used non-aberrational Indian import statistics, and where those were not available, we then examined domestic prices in India (as reported in Chemical Business and Indian Chemical Weekly) by applying the comparison noted above. Finally, if the prices in both comparable countries were found to be aberrational, we used the median export prices.

We adjusted the factor values, when necessary, to the POI, using wholesale price indices (WPIs) published by the International Monetary Fund (IMF). We also converted factor values, when necessary, to U.S. dollars using rates published by the IMF. For the chemicals methanol and toluene, we have converted information on the record from liters to kilograms, using the conversion rates used by responding companies and confirmed at verification.

We used Indonesian transportation rates to value inland freight between the source of the production factor and the saccharin factories. In those cases where the respondent failed to provide any information on transportation distances and modes, we applied, as BIA, the most expensive distance/mode combination that was available from the surrogate information we had selected.

To value electricity, we used publicly-available, published information ("PAPI") from the *Electric Utilities Data Book for the Asia and Pacific Region* (January 1993), published by the Asian Development Bank. This source provides an electricity rate for industrial use from our preferred surrogate country. We adjusted this value to the POI using the WPIs published by the IMF. To value distilled water, we have used the purest water price for Indonesia as published in *Water Utilities Data Book for the Asian and Pacific Region* (November 1993) by the Asian Development Bank. To value coal, we used the *Indonesian Foreign Trade Statistical Bulletin* for January 1993 through November 1993.

To value labor amounts, we used Indonesian wage rates reported in the International Labor Office's *1993 Yearbook of Labor Statistics*. We adjusted these values using the CPIs published by the IMF. We lacked Indonesian values for factory overhead. Therefore, to value factory overhead, we calculated percentages based on elements of industry group income statements from *The Reserve Bank of India Bulletin* (RBI), December 1993. For general expense percentages, we used the RBI data and allocated total general expenses over the total RBI-based materials, labor, and overhead cost calculated for each factory. The RBI data yielded a general expense percentage greater than the ten percent statutory minimum. For profit, we used the statutory minimum of eight percent of materials, labor, factory overhead, and general expenses, because the RBI percentage was less than eight percent.

Acid saccharin is produced using sodium saccharin as an input. At verification we found that Wangxin failed to report that it had purchased sodium saccharin to use as an input in its production of acid saccharin, as well as using its own manufactured sodium saccharin. Nor did it report how much acid saccharin was produced using the purchased sodium saccharin. Because we do not know the amount of acid saccharin produced from purchased sodium saccharin, we cannot adjust each factor input to calculate separate factors of production for acid saccharin. To compensate for respondent's understatement of the factors of production for both sodium and acid saccharin, we have treated purchased sodium saccharin as an input to both the sodium and acid saccharin produced by Wangxin.

Best Information Available

Because information has not been presented to the Department to prove otherwise, only Shanghai IE and Suzhou IE are entitled to separate dumping margins. Other exporters identified by the PRC Ministry of Foreign Trade and Economic Cooperation (MOFTEC) have failed to respond to our questionnaire. Lacking responses from these and other PRC exporters during the POI, we are basing the PRC country-wide rate on BIA in accordance with section 776(c) of the Act.

In determining what to use as BIA, the Department follows a two-tiered methodology whereby the Department normally assigns lower margins to those respondents that cooperated in an investigation and more adverse margins for those respondents which did not cooperate in an investigation. As outlined in the *Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Argentina (Argentina Steel)*, 58 FR 7066, 7069–70 (February 4, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the

Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.

Here, the non-responding companies failed to cooperate. Therefore, we are assigning to them the highest margin in the petition, as recalculated by the Department for the initiation.

Verification

As provided in section 776(b) of the Act, we verified information provided by respondents using standard verification procedures, including the examination of relevant sales and financial records, and original source documentation.

Interested Party Comments

Comment 1: Surrogate Values

Respondents argue that, pursuant to *Chemical Products Corp. v. U.S.*, 645 F. Supp. 289 (CIT 1986), the Department should not use surrogate value information from India because the Indian surrogate values are hyperinflated and would lead to a skewed raw material cost. Respondents contend that when the Indian surrogate values are compared to raw material costs in the United States or the rest of the world, the Indian values are two to thirty times higher. These surrogate values are not reflective of the experience in China because, presumably, the costs in a developing country should be lower than the costs in a developed country. Moreover, respondents argue that the Chinese production process is more efficient than petitioner's; therefore, the Chinese production cost should be lower. Based on this analysis, a total cost of more than four times the U.S. cost, as the Department found in its preliminary determination could not be accurate.

Furthermore, based on the Department's study of *Trade Barriers in India*, respondents contend that the Indian Government has implemented a distortive import policy which requires import licenses and duties as high as 110 percent for chemical imports. Therefore, values reported in Indian Import Statistics are not appropriate because they reflect hyperinflated chemical import costs.

Petitioner argues that, pursuant to the Department's rules and regulations, and long-standing practice in dealing with NME antidumping investigations, the Department must use PAPI from India as the preferred surrogate values for the factors of production.

Petitioner contends that respondents' comparison between surrogate values in India and raw material costs in the United States is inappropriate because: (1) Raw material costs in India are more comparable to raw material costs in the PRC because India is at a level of economic development comparable to the PRC; (2) respondents do not purchase raw materials from the United States; and (3) the use of one U.S. price would entail using other U.S. prices (*e.g.*, labor rates) in order to maintain consistency.

With respect to the Department's report on Indian foreign trade barriers, petitioner argues that the report does not support respondents' argument that the surrogate values used in the preliminary determination are hyperinflated because: (1) The raw materials discussed in the report are agricultural and consumer items; chemicals are not mentioned on the list; (2) regarding import licenses, there is no evidence that the category "chemicals and pharmaceuticals" includes saccharin inputs; (3) the requirement for a license does not indicate the existence of a tariff; and (4) the report date does not match the POI.

DOC Position

We have determined that certain Indian import statistics should not be used (see, "Surrogate Country" section of the notice). However, we disagree with respondents' analysis. We find no basis on the record for presuming that costs are less in the PRC than in the United States because the PRC is a developing country or that PRC producers are more efficient than their U.S. competitors.

We also disagree with petitioner's position regarding use of Indian PAPI. As discussed above, we have identified both India and Indonesia as meeting the statutory criteria for selection as a surrogate. We determined that the Indonesian data were the most complete. Therefore, we selected Indonesia over India for valuing factors.

Comment 2: BIA vs. BAI

Respondents draw a distinction between the term "best available information" in section 773(c)(1)(B) of the Act for valuing of factors of production and best information available ("BIA") within the meaning of section 776 of the Act. They contend that the Department has an obligation to thoroughly investigate and obtain the best available information with respect to values for raw material inputs in the surrogate country. Respondents argue that they should not be punished if they do not provide sufficient PAPI information. Rather, the burden rests on the Department to seek out the best available information.

Petitioner argues that the Department did not use BIA when selecting surrogate values for India in the preliminary determination. Rather, the Department cross-checked the values used in the preliminary determination with values listed in *Chemical Weekly*, *Chemical Business*, and Indian Import Statistics and found them to be the best available information for use in the preliminary determination.

DOC Position

We agree with petitioner. The Department has made significant, independent efforts throughout the investigation to obtain PAPI. For both the preliminary and final determinations, our selection of surrogate values was based on the best available information on the record as mandated by the statute. We did not use BIA as respondents argue.

Comment 3: Phthalic Anhydride

Respondents state that when an input is sourced from a market economy, the Department should use the actual price paid to value that input. The Department verified that Shanghai No. 6 purchased phthalic anhydride from South Korea. Therefore, the Department should use this verified price to value this input for all three Chinese producers.

Petitioner maintains, however, that there is no information on the record proving that all of Shanghai No. 6's phthalic anhydride was sourced from Korea. Because the total amount purchased from Korea is not known, it cannot be assumed that the phthalic anhydride purchased by Shanghai No. 6 was used by its subsidiary, Wangxin, for its production of saccharin. The Korean price, therefore, cannot be attributed to Wangxin-produced material. Petitioner finds this omission significant because most of the saccharin sold by Shanghai IE was produced by Wangxin. Furthermore, petitioner asserts that there is no evidence to suggest that Suzhou purchases its phthalic anhydride from Korea or any other market economy source.

DOC Position

As the Department stated in the *Final Determination of Sales at Less than Fair Value: Oscillating Fans and Ceiling Fans from the PRC*, (56 FR 55271, 55275; October 25, 1991) ("*Fans*"), "{R}equiring the use of surrogate values in a situation where actual market-based prices incurred by a particular firm are available would be contrary to the statutory purpose." (See, also *Lasko*

Metal Products v. United States, 810 F.Supp. 314 (CIT 1992), affirming *Fans* in this regard). Therefore, because we verified that Shanghai No. 6 Factory actually imported phthalic anhydride from South Korea, at this price, we have used the price it actually paid to value this input.

However, there is no evidence on the record to suggest that either Wangxin or Suzhou Factory purchased phthalic anhydride from a market economy supplier. Therefore, we have no basis for applying this price in valuing phthalic anhydride for these two companies.

Comment 4: Solution Strengths

Respondents maintain that the PAPI sources used in the preliminary determination could contain prices for chemicals in 100 percent concentration, rather than prices for the industrial grade chemicals that are used in the production of saccharin. According to respondents, adjustments should be made for these "quality differences" in accordance with the Conference Report for the 1988 Omnibus Trade Act and the 1987 Senate Finance Report. Respondents, therefore, request that the Department seek out the strength or concentration levels of the chemical prices and use surrogate values and factor amounts which reflect the same concentrations.

Petitioner points out that there is no evidence that the surrogate values are for 100 percent concentration. In fact, several of the surrogate values used were described as being "in solution." Furthermore, petitioner claims that 100 percent pure concentrates are not the normal industrial standard. Therefore, the Department should not assume that the chemicals reported in the PAPI are for 100 percent concentrations. Rather, the Department should assume that the prices reflect the standard industrial chemical grades used by the Chinese, eliminating the need for any adjustments.

DOC Position

We agree with petitioner that there is no basis for assuming that the PAPI is for chemicals in 100 percent concentration. Although, we do not know what the exact concentration levels are, we find it reasonable to assume that the PAPI reflects standard concentrations commonly sold. Moreover, we verified that the PRC companies do not use special, non-standard-grade chemicals. Therefore, the import/export statistics that we have used to value these chemicals have not been adjusted for concentration levels.

Comment 5: Selling Expenses

Respondents argue that since the RBI data used at the preliminary determination listed selling expenses (*i.e.*, advertising, selling commissions, and bad debt expenses) separately, the Department improperly included these expenses in its constructed value calculation. Respondents cite *Fans* in support of the argument that when selling expenses can be separately identified, they should be excluded from the SG&A ratio.

DOC Position

In *Fans*, the Department determined that it would be unreasonable to add U.S. selling expenses to the FMV without making a corresponding downward adjustment to account for the selling expenses embodied in the surrogate SG&A. Likewise, it would be unreasonable to deduct the surrogate selling expenses from the FMV without making the appropriate circumstance of sale ("COS") adjustment (*i.e.*, adding U.S. selling expenses to the FMV). In this case, respondents have not identified the direct and indirect selling expenses incurred on their U.S. sales. Therefore, even if we were to agree that a COS adjustment was appropriate, we do not have the information with which to make such an adjustment.

Comment 6: Freight Rates

Respondents argue that prices paid for inputs in the PRC already include freight costs. Therefore, freight should not be added. Petitioner states that it is irrelevant whether the Chinese input prices include freight. The important consideration is whether it is included in the surrogate prices. If it is not included, the Department should continue with its past practice and include freight in the cost of each input.

DOC Position

We agree with petitioner that it is irrelevant whether the prices paid by the PRC producers include freight, as we are not using PRC prices. Instead, we are concerned with prices in the surrogate country. In this investigation, our surrogate values do not include inland freight. Therefore, we have included the cost of freight in the cost of each input.

Comment 7: Water, Distilled Water and Ice

Respondents state that in past cases, the Department has treated water as a component of factory overhead; therefore, the Department should not calculate separate costs for water, distilled water, or ice. They argue that distilled water is merely used to wash the sodium saccharin once it is produced. Therefore, distilled water should be treated similarly to materials such as the soap and oil used to clean a machine. Suzhou Factory argues that ice is also an indirect material used to cool the chemical reaction to a desired temperature. According to the respondents, normally the consumption of indirect materials such as ice or distilled water in a manufacturing operation is treated as a component of factory overhead. They also argue that factory overhead has both a variable and fixed component and just because a cost varies with production volume does not preclude it from being a factory overhead item.

Moreover, Suzhou argues that if the Department does not include water in factory overhead, then the water used by Suzhou should not be valued. The Department verified that Suzhou obtains its water from a nearby river and uses electricity to pump the water for use in the production process. Suzhou points out that in *Final Determination of Sales at Less than Fair Value: Sebacic Acid from the PRC* (59 FR 28053; May 31, 1994); *Final Determination of Sales at Less than Fair Value: Sulfanilic Acid from the PRC* (57 FR 29705; July 6, 1992); and *Final Determination of Sales at Less than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the PRC*, (58 FR 7537; February 8, 1993) no cost was attributed to water where the water was pumped from wells in the plant. According to Suzhou, since the water is not paid for, except for the cost of the electricity to pump it out of the river, establishing specific cost items for water and electricity would constitute double counting.

Petitioner argues that distilled water is not a utility. Since this "special" water, which is purchased in significant amounts by Shanghai No. 6 Factory, is used to wash the saccharin before it is packaged and sold, it must be regarded as a raw material input. According to petitioner, this water is used "to improve the quality of the mixture" and, therefore, is used directly in production. Consequently, petitioner argues that distilled water should not be included in factory overhead.

Furthermore, petitioner states that ice is used to cool the reactors—an activity which is directly related to the production of saccharin. Moreover, the ice is intentionally purchased by respondents, and is a necessary material because of the manner in which respondents produce saccharin. Petitioner argues that the Department's policy is clear—if the material is used in production, then it should be

included in the direct materials calculation.

DOC Position

We agree with respondents that water and ice should be included in factory overhead. Because it is a normal practice to include such cost in factory overhead, we find it reasonable to presume that water and ice are included in the Indian overhead value we used. Therefore, if we were to assign separate values to water and ice, we would be double-counting the cost.

However, with respect to the distilled water used by Shanghai No. 6 Factory, we are not persuaded that the input would normally be included in factory overhead. Unlike other forms of water used in production facilities, distilled water is specially processed, packaged, and shipped to customers. Further, it is required for a particular segment of the production process for which the standard water will not suffice. This is more typical of items that are accounted for as direct material inputs, rather than as overhead items. Therefore, we have valued it separately.

Comment 8: Treatment of Indirect Materials and Trace Chemicals

Respondents argue that various trace chemicals, used when a particular batch does not meet acceptable standards, and other chemicals, used to cool the reactors during the production process, should be treated as components of factory overhead as they would be in market economy cases. For instance, Shanghai No. 6 Factory claims that the trace chemicals used in the production of saccharin are not raw material inputs. According to this company, these items were not used on a monthly basis, nor were these items substituted for other chemicals. The company explained that they were used in small amounts only when something in the batch fell below accepted levels. Furthermore, Wangxin argues that the chemicals discovered at verification should not be considered unreported raw material inputs; rather, they should be treated as auxiliary materials as indicated on its books. The company argues that the items are used to cool the production process and should be treated as components of factory overhead.

Respondents claim that these are examples of indirect materials, which should be a part of the factory overhead cost. They claim that, as the Department verified at Suzhou Factory, the Chinese treat auxiliary materials, depreciation expenses and repair and maintenance expenses as factory overhead items. Moreover, respondents cite to an accounting textbook which states that indirect manufacturing costs, commonly called factory overhead, include minor items, which are expensed as supplies or indirect materials. In nonmarket economy cases, the surrogate country supplies the factory overhead ratio, which would include all such indirect materials. To value these items separately and include them in the cost would result in double-counting.

Petitioner responds that the Department should not treat so-called "indirect or auxiliary materials" as factory overhead. Petitioner also argues that the frequency of the use of the unreported chemicals and the issue of whether or not they were substitutes are irrelevant. The fact remains that the Shanghai No. 6 used these raw materials in the production of saccharin. According to petitioner, it is not the Department's concern if a PRC company produces a poor quality product. Petitioner also suggests that it is irrelevant how the respondents treat these expenses. Petitioner argues that the Department's policy is clear—if the material is used in production, then it should be included in the direct materials calculation.

DOC Position

We disagree with petitioner's characterization of the Department's practice, *i.e.*, if a material is used in the production process, it should be included in the direct materials calculation. As stated above, with respect to water and ice, it is standard practice to classify certain inputs as variable overhead. The types of inputs in question here, trace chemicals and chemicals used to cool the reactors, are infrequently used in the production process and typically are small in value relative to the total cost of manufacturing the product and, hence, would be included in overhead. Therefore, we have assumed these inputs would be included in the Indian overhead value we have used in our calculations, and have not valued them separately.

Comment 9: Labor Cost

Suzhou Factory argues that it inadvertently included in its production workers eight administrative people (statisticians). According to Suzhou, the selling, general and administrative ratio obtained from the surrogate country will include all administrative workers. Therefore, the Department should not include the eight statisticians in the calculation of labor cost.

DOC Position

We disagree with respondent. We confirmed at verification that these eight statisticians played a significant role in production by directly monitoring the inputs into the production of saccharin. Therefore, we do not agree that they would be classified as administrative workers and included as part of the Indian SG&A value. Consequently, the labor hours associated with these workers have been included as part of the labor factor for producing saccharin.

Comment 10: Warehousing

Petitioner notes that at verification the Department discovered that saccharin can remain at Shanghai IE's warehouse for up to two weeks before it is shipped to the United States. Since Shanghai IE provided no transaction-specific data showing specifically how many days the product remained in the warehouse prior to shipment, the Department must assume that shipments are warehoused for two weeks. Using this information, the Department should calculate the cost of warehousing and subtract this amount from each U.S. sale reported during the POI.

Shanghai IE argues that it stated at verification that saccharin typically remains in its warehouse for 1–2 days (in rare instances, the product may remain at the warehouse for up to two weeks). According to Shanghai IE, since the saccharin stays in its warehouse usually only for one to two days, any warehouse charges should be minimal.

DOC Position

We disagree with both petitioner and respondent. The Department considers warehousing costs to be selling expenses. As noted in the response to Comment 5 above, we cannot make circumstance of sale adjustments for selling expenses when, as in the present case, all such expenses cannot be separately identified in both the FMV and U.S. price.

Comment 11: Marine Insurance and Ocean Freight

Petitioner notes that respondents claimed at verification that marine insurance and ocean freight charges were incurred in U.S. dollars and that the unit amounts reported in the sales responses were calculated based on amounts recorded in relevant exhibit documents. However, since respondents did not provide explanations regarding the derivation of their respective charges at verification, the Department should not use these charges for the final determination. Petitioner also states that, notwithstanding the fact that these charges were incurred in U.S. dollars, the charges were incurred with PRC companies. Consequently, petitioner suggests that the Department

should use the same methodology it used for the preliminary determination—international freight rates from Sealand Service Inc.

Shanghai IE argues that it paid U.S. dollars to a Chinese agent of Sealand Service Inc. Consequently, the Department should use the actual freight costs in its calculations. Alternatively, Shanghai IE suggests that the Department should use the international freight rates from Sealand.

DOC Position

When the factor is being purchased from a domestic supplier in an NME, we are directed by statute to use a surrogate value. It is our standard practice to use international rates for ocean freight when available. Accordingly, we have used the international rates from Sealand for ocean freight and Indian values for marine insurance (see, *e.g., Preliminary Determination of Sales at Less Than Fair Value: Coumarin from the PRC;* 59 FR 39727, August 4, 1994). We agree with petitioner that the currency in which the two charges were incurred is irrelevant.

Comment 12: Wangxin's Payments to Shanghai No. 6

Petitioner cites the verification reports as demonstrating that Shanghai No. 6 Factory "directly controls" Wangxin's product quality and, therefore, "their entire production process." Petitioner also points out that pursuant to this agreement, Shanghai No. 6 provides certain services to Wangxin, and in return, Wangxin pays Shanghai No. 6 for these services. The petitioner submits that since this information was not previously reported to the Department, the Department should adjust Wangxin's reported total cost of production to take into account the amount of these payments made to Shanghai No. 6.

Respondents argue that in nonmarket economy investigations the Department uses factors of production and surrogate values to determine foreign market value. The Department does not use the actual costs from the production process. According to respondents, if the Department is going to increase Wangxin's costs by market prices for payments to Shanghai No. 6, the Department should also use market prices for all the other raw material inputs in this case.

DOC Position

Royalty payments and quality control testing costs are explicitly included in the RBI-based factory overhead value. Therefore, there would be no need to calculate a separate amount for these payments.

Comment 13: Market-Oriented Industry Claim

Respondents argue that although they believe that the Chinese saccharin industry is a MOI, they did not argue that the Department should treat the Chinese saccharin industry as a MOI in their case brief because they believe that the Department has no real intention of applying such a standard to this case or to any other case in the future. Respondents claim that the Department only pursued a cursory discussion with several suppliers at verification, but did not, as respondents suggested, send any of the verifiers to Beijing for meetings with the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) or the Ministry of Chemical Industries to determine whether the chemical inputs are subject to the state plan, as it has done in the past.

Respondents also claim that the Department completely gutted its MOI test in *Silicon Carbide from the PRC* when it determined that since the Chinese government regulates the price and allocation of coal, an energy resource, the silicon carbide industry cannot be an MOI. Respondents point out that the U.S. government regulates the price of numerous energy resources, including coal, electricity, natural gas and oil. Respondents state that the key question facing the Department is whether the PRC government involvement in the economy so distorts the market situation that the input prices for saccharin are not reflective of the true costs of production.

Petitioner argues that (1) suppliers interviewed by Department officials at verification do not represent all chemical suppliers, (2) the chemicals supplied by those interviewed are not the main raw material inputs used in the production of saccharin, (3) the suppliers did not provide any written documentation to support their statements, and (4) none of Wangxin's suppliers were present at verification. Petitioner also notes that respondents have not met the MOI criteria delineated by the Department in *Preliminary Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China* (56 FR 25664; June 5, 1991) and *Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China* (56 FR 46153; September 10, 1991).

DOC Position

Respondents have argued that they should be treated as a market-oriented industry ("MOI"). The burden to demonstrate that an MOI exists rests with respondents and, as petitioner points out, respondents made no meaningful effort to meet the burden. We received MOI response information from only two of at least six saccharin producers in the PRC. Consequently, we have no basis to determine whether the production and sales practices of these producers are representative of PRC saccharin producers as a whole. With respect to the fact that the Department did not send members of the verification team to Beijing, we note that this point is irrelevant given that respondents did not provide information with respect to the entire saccharin industry.

Continuation of Suspension of Liquidation

In accordance with sections 733(d)(1) and 735(c)(4)(A and B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of saccharin from the PRC that are entered, or withdrawn from warehouse, for consumption on or after June 23, 1994, which is the date of publication of our notice of preliminary determination in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

WEIGHTED-AVERAGE MARGIN

Manufacturer/producer/exporter	Percentage
Shanghai IE	160.68
Suzhou IE	276.62
All Others	391.42

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry within 45 days. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing U.S.

Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of suspension of liquidation.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: November 7, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–28162 Filed 11–14–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–823]

Final Determination of Sales at Not Less Than Fair Value: Saccharin From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas McGinty or Peter Wilkniss, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–5055 and 482–0588, respectively.

FINAL DETERMINATION: We determine that saccharin from Korea is not being, nor is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the "Act").

Case History

Since the publication of the preliminary determination in the **Federal Register** on June 23, 1994 (59 FR 32416), the following events have occurred. On July 6, 1994, pursuant to section 353.20(b)(1) of the Department's regulations, petitioner requested that the final determination in this case be postponed. On July 19, 1994, the Department published in the **Federal Register** a notice postponing the deadline for the final determination in this case until November 7, 1994. On July 12, 1994, at the request of the Department, Jeil Moolsan Company Inc. ("JMC") submitted a revised response to the Department's cost of production questionnaire. On July 18, 19, and 20, 1994, the Department verified JMC's sales information at JMC's offices in Seoul, South Korea. On July 25, 26, and 27, 1994, the Department verified JMC's cost of production data at JMC's office in Seoul, South Korea. On September 16, 1994, and September 23, 1994, petitioner and respondent submitted case and rebuttal briefs to the Department. On September 30, 1994, the Department held a public hearing in this investigation.

Scope of the Investigation

The product covered by this investigation is saccharin. Saccharin is a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table-top sweeteners, animal feeds, and metalworking fluids. Three forms of saccharin are typically available as referenced in the American Chemical Society's Chemical Abstract Service ("CAS"). These forms are sodium saccharin (CAS #128–44–9), calcium saccharin (CAS #6485–34–3), and acid (or insoluble) saccharin (CAS #81–07–2). Saccharin is classified under subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States ("HTS"). The scope of this investigation includes all types of saccharin imported under this HTS subheading including research and specialized grades. The HTS subheading is provided for convenience and customs purposes. Our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is June 1, 1993, through November 30, 1993.

Product Comparisons

In making our fair value comparisons, in accordance with the Department's standard methodology, we first compared merchandise identical in all respects. If no identical merchandise was sold, we compared the most similar merchandise, as determined by the model-matching criteria contained in Appendix V of the questionnaire ("Appendix V") (on file in Room B–099 of the main building of the Department of Commerce ("Public File")).

Regarding level of trade, JMC reported and we verified that JMC sells only to distributors in the United States and to both distributors and trading companies in the U.K. (U.K. sales were used for foreign market value because the home market was determined not to be viable, *see*, "Foreign Market Value" section below.) However, JMC reported that there is no difference between prices or conditions of sale made at the distributor and trading company levels of trade. We examined this issue at verification and found no evidence that JMC's prices or conditions of sale differed on the basis of level of trade. Therefore, in keeping with past practice (*see, e.g., Final Results of Administrative Review: Antifriction Bearings and Parts Thereof from the Federal Republic of Germany, et al.* (56 FR 31692, 31709–11; July 11, 1991), and in accordance with 19 CFR 353.58, we have compared JMC's U.S. sales to distributors to U.K. sales to either distributors or trading companies, without distinction, in determining whether or not JMC made sales at less than fair value.

Fair Value Comparisons

To determine whether JMC's sales for export to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. With the exception of one sale to the United States, all comparisons of U.S. and third country sales involved identical merchandise. For the U.S. sale which was compared to a sale of similar merchandise, we made an adjustment for physical differences in merchandise pursuant to 19 CFR 353.57.

United States Price

Because JMC's U.S. sales of saccharin were made to unrelated purchasers prior to importation into the United States, and the exporter's sales price methodology was not indicated by other circumstances, we based USP on the purchase price ("PP") sales methodology in accordance with section 772(b) of the Act.

We calculated JMC's PP based on packed and delivered prices to unrelated customers in the United States. We made deductions to the U.S. price, where appropriate, for foreign brokerage and handling, containerization, marine insurance, and freight expenses and charges. In accordance with section 772(d)(1)(B) of the Act, we made an addition to the U.S. price for the amount of import duties imposed on inputs which were subsequently rebated upon exportation of the finished merchandise to the United States.

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As a result, we determined that the home market was not viable. Therefore, we have based FMV on JMC's sales to the largest third country market by volume, the U.K., in accordance with 19 CFR 353.49(b).

We calculated FMV based on delivered prices, inclusive of packing, to customers in the U.K. From the delivered price, we deducted third country packing and added U.S. packing costs. In light of the decision of the court of Appeals for the Federal Circuit in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement v. United States*, 13 F3d 398 (Fed. Cir. 1994), we deducted post-sale movement charges from FMV under the circumstance-of-sale provision of 19 CFR 353.56(a). Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we also made circumstance-of-sale adjustments for differences in quality inspection charges and expenses related to securing credit including: advise charges, postage, interest paid to the bank in relation to the terms of payment, and outside bank charges. In addition, we added the amount of import duties imposed on inputs which as subsequently rebated upon exportation of the finished merchandise to the U.K.

Cost of Production

Petitioner alleged that JMC made third country sales during the POI at prices below the cost of production ("COP"). Based on petitioner's allegations, we concluded that we had reasonable grounds to "believe or suspect" that sales were made below COP. Thus, we initiated a COP investigation pursuant to section 773(b) of the Act.

We performed a product-specific cost test, in which we examined whether each home market sale was priced below that product's COP. The Department defines COP as the sum of direct material, direct labor, variable and fixed factory overhead, general expenses, and packing expense, in accordance with 19 CFR 353.51(c). (*See, e.g., Preliminary Results of Antidumping Duty Administrative Review: Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea* (59 FR 35099; July 8, 1994).) We compared the COP for each product to the third country unit price, net of movement expenses.

With the following exceptions, we relied on submitted and verified COP information. At verification, we found that JMC included commission and dividend income as an offset to G&A expenses in its cost of production response. Since dividend income relates to the investment activities of JMC and not to JMC's production activity, we have adjusted JMC's reported G&A expenses to exclude dividend income as an offset to JMC's G&A expense. Likewise, commission income is related to the activities of JMC's retail division, not JMC's cost of producing saccharin. Therefore, we have also excluded commission income as an offset to JMC's G&A expense.

In accordance with section 773(b) of the Act, we also examined whether JMC's third country sales were made below COP in substantial quantities over an extended period of time, and whether such sales were made at prices that would permit the recovery of all costs within a reasonable period of time in the normal course of trade.

To satisfy the requirement of section 773(b)(1) that below-cost sales be disregarded only if made in substantial quantities, the following methodology was used: For each product where less than ten percent, by quantity, of the third country sales made during the POI were made at prices below the COP, we included all sales of that model in the computation of FMV. For each product where ten percent or more, but less than 90 percent, of the home market sales made during the POI were priced below COP, we excluded from the calculation of FMV those third country sales which were priced below COP, provided that the below-cost sales of that product were made over an extended period of time. Where we found that more than 90 percent of JMC's sales were at prices below the COP, and such sales were made over an extended period of time, we disregarded all sales of that product and calculated FMV based on constructed value.

In accordance with section 773(b)(1) of the Act, in order to determine whether below-cost sales had been made over an extended period of time, we compared the number of months in which below-cost sales occurred for each product to the number of months in the POI in which that product was sold. If a product was sold in three or more months of the POI, we did not exclude below-cost sales unless there were below-cost sales in at least three months during the POI. When we found that sales of a product only occurred in one or two months, the number of months in which the sales occurred constituted the extended period of time; *i.e.*, where sales of a product were made in only two months, the extended period of time was two months, where sales of a product were made in only one month, the extended period of time was one month. (*See Preliminary Results and Partial Termination of Antidumping Duty Administrative Reviews: Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan* (58 FR 69336, 69338, December 10, 1993). We examined JMC's model-specific COP data, as corrected based on our findings at verification, and found no sales below COP.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Margin Calculation

Based on the calculation methodology outlined above, we calculated a margin of zero percent for U.S. sales of saccharin from Korea.

Verification

As provided in section 776(b) of the Act, we verified information provided by the respondent using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Interested Party Comments

Comment 1

Petitioner argues that evidence has been uncovered in this investigation which suggests that JMC employs a dual cost accounting system. Under such a system, JMC could arrange for dual pricing from suppliers and assign all low cost inputs to either home market or third country production in order to minimize below cost sales. Further, petitioner argues that the impact of such a system could be more distortive in a situation where the home market is determined to be not viable. This would allow all high cost inputs to be allocated to domestic production thereby decreasing the likelihood that the Department's cost analysis would find sales below cost in the third country market.

According to petitioner, in *Certain Circular Welded Carbon Steel Pipes and Tubes from the Republic of Korea*, 49 FR 9926 (March 16, 1984), the Department reasoned that where different costs are associated with producing for export as

compared with domestic production and the merchandise is identical, it is appropriate to use the average cost of producing that merchandise in calculating cost of production or constructed value. Therefore, when presented with evidence that a respondent maintains two distinct cost systems, the Department has no alternative but to disregard the respondent's COP information and apply the best information available. Petitioner asserts that such a situation exists in this investigation.

Respondent argues that JMC does not maintain a dual cost system. Respondent outlines the verification procedures employed by the Department to verify the accuracy and completeness of JMC's cost accounting system and argues that the Department conducted a complete verification of JMC's cost of production response and found no evidence to indicate that such a system exists.

Respondent points out that the word "export" referred to by petitioner as evidence of the existence of a dual cost system pertains to JMC's cost of sales accounts. These sales accounts are used by JMC to track the cost of sales to each market at any given time. However, JMC's production costs across markets for identical merchandise are identical.

DOC Position

We disagree with petitioner. We conducted a thorough verification of JMC's cost accounts and cost of production questionnaire response and found no evidence that JMC employs a dual cost system as alleged by petitioner. The only evidence petitioner points to is that JMC maintains separate accounts for the cost of export and domestic sales. However, based on our review of JMC's accounting system, we are satisfied that the per unit cost of export and domestic sales are not segregated and that no additional costs have been allocated to either home market or third country sales.

Comment 2

Petitioner contends that the Department should disallow any offsets to JMC's general and administrative expenses ("G&A") that cannot be tied to the production of the subject merchandise, but should include in G&A any losses on foreign currency transactions and translations.

Petitioner points to two instances in JMC's cost of production submission where G&A offsets are claimed and should be disallowed. First, petitioner cites the cost verification report where the Department stated that JMC had included dividend and commission income as an offset to G&A, yet neither related to the production of saccharin. Second, petitioner argues that "miscellaneous income" should not be allowed as an offset, since there is no evidence that this income is related to the production of the subject merchandise.

Petitioner argues that foreign exchange losses on foreign currency transactions and translations should be included in the G&A calculation, since all company debt is fungible. Foreign exchange gains, however, should be excluded from G&A, unless it can be proven that such gains are directly related to the production of subject merchandise.

Respondent agrees with petitioner that the commission and dividend income is not directly related to the production of the subject merchandise. Respondent agrees that commission income should not be allowed as an offset to G&A, but since the dividend income is generated from assets which are classified in the "current assets" section of JMC's balance sheet and represents a use of working capital, dividend income is properly reported as an offset to G&A.

Respondent argues that miscellaneous income is also properly claimed as an offset to G&A because, contrary to petitioner's contention, this income is associated with JMC's manufacturing operations. Respondent points to the verified cost response at page 20, supplemented by Attachment D–11. According to respondent, miscellaneous income consists of (1) an import agent fee, (2) commission income for advertising, and (3) sales of iron scrap.

Respondent asserts that, contrary to petitioner's brief, gains and losses resulting from exchange rate fluctuations between the date of shipment and the date of payment, and gains and losses from translation of foreign currency loans, are separate and unrelated issues. Respondent asserts that gains and losses resulting from exchange rate fluctuations between the date of shipment and date of payment are not part of COP and thus have been appropriately excluded from the COP calculation. Respondent argues, however, that translation gains and losses related to debt should both be included in the calculation of interest expense.

DOC Position

We agree with petitioner with respect to JMC's treatment of commission and dividend income. Since commission and dividend income are not related to JMC's production of the subject merchandise (see "Cost of Production" section of this notice), they cannot be included in the G&A calculation. Therefore, we have adjusted JMC's reported G&A expense accordingly.

We agree with respondent that miscellaneous income should be permitted as an offset to G&A because this income is related to JMC's production operations. Therefore, we have included this income as an offset to G&A, as reported.

We agree with respondent, in part, with respect to foreign exchange gains and losses in that transaction and translation gains and losses should be examined separately. Foreign exchange gains and losses related to purchases of inputs to produce the subject merchandise should be included in COM. However, since we cannot conclusively determine whether JMC's net exchange loss on transactions was related specifically to such purchases, we consider it inappropriate to include the net loss in COM. Instead, we would normally include the net exchange loss in the G&A calculation, but since its inclusion would have virtually no effect on COP, we have not recorded such an adjustment.

We agree with respondent that foreign exchange gains and losses on year-end translation of financial assets and liabilities should be included in JMC's calculation of interest expense. But since JMC has net interest income in excess of these losses, there is no effect on COP. Therefore, no adjustment was made to JMC's interest expense for these losses.

Comment 3

Respondent contends that, contrary to the Department's sales verification report, JMC's reporting of quality inspection expense on a per kilogram basis is correct because JMC's gross unit price, as reported, is also on a per kilogram basis. Therefore, it makes no difference whether the adjustment for this expense is made on a per kilogram basis or as a percentage of the FOB price.

DOC Position

We agree with respondent. In the verification report, we noted that JMC had incurred this expense on the basis of value, not quantity. However, because JMC's gross unit price is reported on the same basis there is no need to adjust JMC's reported quality inspection expense.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: November 7, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94-28161 Filed 11-14-94; 8:45 am]

BILLING CODE 3510-DS-P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: North American Free-Trade Agreement (NAFTA) Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Binational Panel.

SUMMARY: By a decision dated October 31, 1994, the Binational Panel reviewing the final affirmative dumping determination made by the International Trade Administration (ITA) respecting Certain Corrosion-Resistant Carbon Steel Products from Canada (Secretariat File No. USA-93-1904-03) affirmed in part and remanded in part the determination to the ITA for further action. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). The Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). A consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The Rules were further amended and published in the **Federal Register** on February 8, 1994 (59 FR 5892). The panel review in this matter was conducted in accordance with the Rules, as amended.

PANEL DECISION: On October 31, 1994, the Binational Panel affirmed in part and remanded in part the final affirmative dumping determination made by the International Trade Administration on June 21, 1993.

The Binational Panel instructed ITA to provide its determination on remand within 60 days of the panel decision (by December 30, 1994).

Dated: November 7, 1994.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 94-28105 Filed 11-14-94; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: North American Free-Trade Agreement (NAFTA) Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Binational Panel.

SUMMARY: By a decision dated October 31, 1994, the Binational Panel reviewing the final affirmative dumping determination made by the International Trade Administration (ITA) respecting Certain Cut-To-Length Carbon Steel Plate from Canada (Secretariat File No. USA-93-1904-04) affirmed in part and remanded in part the determination to the ITA for further action. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determination in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). The Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). A consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The Rules were further amended and published in the **Federal Register** on February 8, 1994 (59 FR 5892). The panel review in this matter was conducted in accordance with the Rules, as amended.

PANEL DECISION: On October 31, 1994, the Binational Panel affirmed in part and remanded in part the final affirmative dumping determination made by the International Trade Administration on June 21, 1993.

The Binational Panel instructed ITA to provide its determination on remand within 60 days of the panel decision (by December 30, 1994).

Dated: November 7, 1994.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 94-28106 Filed 11-14-94; 8:45 am]

BILLING CODE 3510-GT-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

November 7, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, 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 Categories 347/348 and 443 are being increased by application of swing, reducing the limit for Categories 342/642 to account for the increases.

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 59 FR 4042, published on January 28, 1994.

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 MOU dated December 23, 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

November 7, 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 January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Costa Rica and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 15, 1994, you are directed to amend the January 24, 1994 directive to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated December 9, 1993 between the Governments of the United States and Costa Rica:

Category	Adjusted twelve-month limit [1]
342/642	183,198 dozen.
347/348	1,393,997 dozen.
443	218,301 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–28101 Filed 11–14–94; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 9, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 16, 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) 927–6705. 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 and carryover. Pursuant to the current bilateral agreement between the Governments of the United States and India, Categories 335/635, 336/636, 340/640, 342/642 and 347/348 are being increased 5 percent for handmade, handloomed apparel products.

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 59 FR 6006, published on February 9, 1994.

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

November 9, 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 February 3, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 16, 1994, you are directed to amend the directive dated February 3, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	10,418,469 square meters.
219	50,763,481 square meters.
313	24,687,602 square meters.
314	6,582,647 square meters.
317	26,179,025 square meters.
326	6,500,000 square meters.
335/635	495,508 dozen.

Category	Adjusted twelve-month limit [1]
336/636	727,132 dozen.
340/640	1,751,735 dozen.
341	3,662,749 dozen of which not more than 2,092,999 dozen shall be in Category 341-Y [2].
342/642	955,622 dozen.
345	148,223 dozen.
347/348	442,021 dozen.
647/648	251,557 dozen.
Group II	
200, 201, 220-229, 237, 239, 300, 301, 330-333, 349, 350, 352, 359-362, 600-607, 611-629, 630-633, 638, 639, 643-646, 649, 650, 652, 659, 665-O [3], 666, 669, 670, and 831-859, as a group.	86,000,000 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 665-O: all HTS numbers except 5702.10.9030, 5702.42.2020, 5702.92.0010 and 5703.20.1000 (rugs exempt from the bilateral agreement).

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. 94-28167 Filed 11-14-94; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

November 7, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 15, 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) 927-6716. 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 65582, published on December 15, 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

November 7, 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 9, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 15, 1994, you are directed to amend the December 9, 1993 directive to increase the limits for the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the the Republic of Singapore:

Category	Adjusted twelve-month limit [1]
239	489,174 kilograms.
338/339	1,132,621 dozen of which not more than 637,847 dozen shall be in Category 338 and not more than 709,205 dozen shall be in Category 339.
340	824,758 dozen.
347/348	1,012,402 dozen of which not more than 570,046 dozen shall be in Category 347 and not more than 443,370 dozen shall be in Category 348.
631	491,993 dozen pairs.
635	280,984 dozen.
639	3,579,141 dozen.
648	1,640,324 dozen.

[1] The limit has 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. 94-28102 Filed 11-14-94; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Taiwan

November 9, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 16, 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 this limit, 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 limit for Categories 445/446 is being increased for carryforward.

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

November 9, 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 November 16, 1994, you are directed to amend the directive dated December 8, 1993 to increase the limit for Categories 445/446 to 142,038 dozen [1], 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.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-28166 Filed 11-14-94; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

November 9, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 9, 1994.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, 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) 927-6717. 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, carryforward and special shift.

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 59 FR 21962, published on April 28, 1994.

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

November 9, 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 April 21, 1994, 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 Thailand and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 9, 1994, you are directed to amend the directive dated April 21, 1994 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit [1]
239	4,982,000 kilograms.
Levels in Group I	
200	1,009,386 kilograms.
219	3,577,049 square meters.
313	13,438,601 square meters.
314	40,399,263 square meters.
315	25,249,539 square meters.
317/326	11,300,000 square meters.
363	17,568,396 numbers.
369-D [2]	192,457 kilograms.
369-S [3]	201,479 kilograms.
604	629,766 kilograms of which not more than 382,316 kilograms shall be in Category 604-A [4].
611	13,970,882 square meters.
613/614/615	40,766,700 square meters of which not more than 23,187,564 square meters shall be in Category 614 and not more than 22,390,503 square meters shall be in Categories 613/615.
619	6,056,316 square meters.
620	6,056,316 square meters.
625/626/627/628/629	11,865,000 square meters of which not more than 9,420,937 square meters shall be in Category 625.
669-P [5]	5,325,334 kilograms.
Sublevels in Group II	
331/631	1,469,147 dozen pairs.
336/636	269,169 dozen.
338/339	2,015,758 dozen.
340	257,811 dozen.
341/641	571,986 dozen.
345	239,871 dozen.
347/348/847	726,624 dozen.
638/639	1,731,166 dozen.
640	401,059 dozen.
647/648	925,496 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369-S: only HTS number 6307.10.2005.

[4] Category 604-A: only HTS number 5509.32.0000.

[5] Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

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).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1993.

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-28168 Filed 11-14-94; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits and Amendment of Export Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

November 8, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and a sublimit and amending visa requirements.

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Anne Novak, 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) 927-6718. 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 limit for Categories 625/626/627/628/629 in the Fabric Group is being increased by application of swing. The sublimit for Category 625 is being increased for swing and carryover. The current limit for Category 611 is being increased by application of swing, reducing the Fabric Group limit to account for the increase.

In addition, the visa requirements are being amended to include coverage of textile products in Categories 611, 629, and part and merged Categories 641-Y, 341-Y/641-Y and 625/626/627/628/629, produced or manufactured in Turkey and exported from Turkey on and after November 15, 1994. Goods in Categories 611, 629 and 641-Y which are exported during the period November 15, 1994 through December 14, 1994 shall not be denied entry for lack of a visa. Goods in Categories 611, 629 and 641-Y which are exported on and after December 15, 1994 shall be denied entry if not accompanied by an appropriate export visa.

Merchandise in merged Categories 341-Y/641-Y and 625/626/627/628/629 may be accompanied by either the appropriate merged export visa or the correct category or part-category visa corresponding to the actual shipment. Goods in Categories 341-Y, 625, 626, 627, 628 which are exported prior to November 15, 1994 shall continue to require a visa.

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 52 FR 6859, published on March 5, 1987; 59 FR 5394, published on February 4, 1994; and 59 FR 52763, published on October 19, 1994.

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

November 8, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on January 31, 1994 and October 14, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern imports of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the periods January 1, 1994 and extends through December 31, 1994 and July 1, 1994 through December 31, 1994 (Category 611).

Effective on November 15, 1994, you are directed to adjust the limits and the sublimit for the following categories, as provided under the terms of the Memorandum of Understanding dated October 5, 1994 and the current bilateral agreement between the Governments of the United States and the Republic of Turkey:

Category	Adjusted limit[1]
Fabric Group 219, 313, 314, 315, 317, 326, 617 and 625/626/627/628/629, as a group.	124,435,073 square meters.
Sublevel in the Fabric Group 625/626/627/628/629.	14,552,000 square meters of which not more than 6,108,563 square meters shall be in Category 625.
Limit not in a group 611	21,400,000 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993 and June 30, 1994 (Category 611).

You are directed to amend the directive dated March 2, 1987 to include coverage of Categories 611, 629, and part and merged Categories 641-Y, 341-Y/641-Y and 625/626/627/628/629, produced or manufactured in Turkey and exported from Turkey on and after November 15, 1994. Goods in Categories 611, 629 and 641-Y which are exported during the period November 15, 1994 through December 14, 1994 shall not be denied entry for lack of a visa. Goods in Categories 611, 629 and 641-Y which are exported on and after December 15, 1994 shall be denied entry if not accompanied by an appropriate export visa.

Merchandise in merged Categories 341-Y/641-Y and 625/626/627/628/629 may be accompanied by either the appropriate merged export visa or the correct category or part-category visa corresponding to the actual shipment. Goods in Categories 341-Y, 625, 626, 627, 628 which are exported prior to November 15, 1994 shall continue to require a visa.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-28103 Filed 11-14-94; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Forms; and OMB Control Number: Pre-Candidate Procedures; USMA Forms 21-12, 21-27, FL 375, FL 723, FL 450, and FL 381.

Type of Request: Reinstatement.

Number of Respondents: 55,100.

Responses Per Respondent: 1.

Annual Responses: 55,100.

Average Burden Per Response: 8 minutes.

Annual Burden Hours: 7,425.

Needs and Uses: Pre-candidates for admission to the U.S. Military Academy provide personal background information in responding to this information collection. The information collected hereby, enables the West Point admissions committee to make subjective determinations on the non-academic experience of pre-applicants. It is also utilized by West Point's Office of Institutional Research for correlation with success in graduating, and in subsequent military careers.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondents' Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–28068 Filed 11–14–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title; Applicable Form; and OMB Control Number: Application for AFROTC Membership; AFROTC Form 20; OMB Control Number 0701–0105.

Type of Request: Extension.

Number of Respondents: 20,000.

Responses Per Respondent: 1.

Annual Responses: 20,000.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 3,333.

Needs and Uses: Applicants for admission to the Air Force Reserve Officers Training Corps program fill out and submit the AFROTC Form 20. The information provided thereby, is reviewed and evaluated by the Air Force to determine the qualifications, as well as the eligibility, of applicants for admission to the program.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–28069 Filed 11–14–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Breast Cancer Treatment Clinical Trials

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties of a demonstration project in which the DoD will participate in breast cancer treatment clinical trials under approved National Institutes of Health, National Cancer Institute (NCI) clinical trials for high dose chemotherapy with stem cell rescue (HDC/SCR). Participation in these clinical trials will improve access to HDC/SCR for CHAMPUS eligible female family members when their conditions meet protocol eligibility criteria. DoD financing of these procedures will assist in meeting clinical trial goals and arrival at conclusions regarding the safety and efficacy of HDC/SCR in the treatment of breast cancer. This demonstration project is under the authority of 10 U.S.C., chapter 55, section 1092.

EFFECTIVE DATE: September 15, 1994.

FOR FURTHER INFORMATION CONTACT: Martha M. Maxey, Health Care Policy Analyst, Program Development Branch, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Aurora, Colorado 80045–6900, telephone (303) 361–1227.

SUPPLEMENTARY INFORMATION:

A. Background

Breast cancer is the leading cause of cancer deaths for women aged 15 to 54 years and, after lung cancer, the second leading cause of cancer deaths. An estimated one in eight women will develop the disease in her lifetime.

The five-year survival rate for early stage breast cancer is 70 percent, but it decreases to only 4 percent if it has advanced and metastasized. Initial uncontrolled clinical trials of HDC/SCR for patients with advanced metastatic breast cancers reported a five-year survival rate of 16 percent. Initially, the procedures themselves carried a 10 percent or greater mortality rate but this has decreased to less than 5 percent at experienced centers.

The interest sparked by these early trials led the National Cancer Institute (NCI) in 1990 to approve scientifically rigorous, controlled phase III clinical research protocols under the auspices of the National Institutes of Health. The goal is to compare the safety and efficacy of HDC/SCR for breast cancer with a standard chemotherapy regimen. Currently, the protocols are only about 50 percent complete. HDC provides some effectiveness in eradicating the breast cancer cells but does tend to disable the body's immune system. By removing the stem cells from the bone marrow or blood before HDC, and then replacing them after the HDC has occurred, a level of immune response is restored.

The American Cancer Society considers HDC/SCR experimental for breast cancer, but has established it as proven therapy for certain other less common cancers at specific stages.

B. CHAMPUS Experience

CHAMPUS, by regulation, does not approve payment for experimental or investigational procedures and any change in the experimental status of HDC/SCR logically awaits the findings from the Phase III clinical trials. Meanwhile, professional support for the procedure is not universal, but there is growing public sentiment that the procedure is a right of patients with advanced breast cancer despite the fact that this procedure is not clearly better than standard treatments.

The result has been multiple court cases to force third party payers, including CHAMPUS, to pay for the procedure in specific instances although many third party payers consider the procedure experimental or investigational and exclude payment.

C. Caseload, Costs

Approximately 3,000 CHAMPUS female family members are diagnosed with breast cancer each year, based on age adjusted incidence rates. Some 600 family members each year would have breast cancers that would be eligible for the NCI clinical trials, and of these, 200 to 300 could be expected to participate.

Some of them would be randomly selected for conventional treatment as part of a control group. The three military treatment facilities authorized to serve as protocol centers report a total annual capability of about 20 breast cancer cases per year with little potential for expansion.

The probable number of cases receiving HDC/SCR payable with DoD breast cancer research support funds is roughly estimated at from 200 to 250. The number may grow as awareness of the trials increases the potential pool meeting the protocol eligibility requirements, and as new NCI studies are established for a wider variety of breast cancer treatments.

Applicable literature reports first year treatment protocol costs of from $125,000 to $140,000 per case. Case costs have been decreasing recently but the reported range is used to avoid underestimating total costs.

Resulting net annual estimated costs: $25 million to $35 million.

D. Operation of the Demonstration

The Assistant Secretary of Defense (Health Affairs) will designate a Project Officer in the Office of the Deputy Assistant Secretary of Defense for Clinical Services.

The Project Officer will provide clinical oversight, and will determine the list of the NCI protocols and institutions which will participate in the demonstration.

All family members eligible for CHAMPUS would be eligible to participate in the demonstration. Active duty members would continue to be eligible for direct care system services.

OCHAMPUS will contract for and provide day to day oversight of contractor case referral, case coordination, demonstration funds disbursements and maintaining the integrity of those funds, identification of the limited services for HDC/SCR patients that are payable under CHAMPUS and TRICARE, and all related tracking and reporting requirements.

Patients with breast cancer would undergo an initial evaluation by their physician. After discussing the various treatment options with the patient, if the patient agreed to enter a clinical study, the physician would contact one of the oncology cooperative groups to determine which centers are currently participating in the NCI clinical trials. The physician would then arrange for evaluation of the patient at the selected center. Physicians at the center involved in the clinical trial would make the actual patient selection based upon the clinical criteria for their study.

The contractor(s) would not be involved in clinical issues or in directing patients to a particular institution or a specific clinical trial. The contractor(s) would be the single point of contact for nationwide provider and patient information and HDC/SCR claims adjudication and payment.

E. Possible Future Expansion of Demonstration Project

At present, this demonstration project is limited to the Phase III (randomized and non-randomized) HDC/SCR treatment for breast cancer. It is possible that in the future, other protocol-based clinical investigations which have been NCI approved may be added to this demonstration project. If this occurs, an amendment to this notice will be published in the **Federal Register**.

Dated: November 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–28000 Filed 11–14–94; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Semiconductor Technology Council

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Action," notice is hereby given that the Semiconductor Technology Council will hold its initial meeting. The Council's mission is to: link industry and national security needs to opportunities for cooperative investments, foster pre-competitive cooperation among industry, government and academia, recommend opportunities for new R&D efforts and potential to rationalize and align on-going industry and government investments. Part of the meeting will be closed to the public in accordance with Section 10(d) of the Federal Advisory Committee Act, and pursuant to the appropriate provisions of Section 552b(c) (3) and (4), Title 5, U.S.C. There will be an open session from 3:30 to 4:00 p.m.

DATES: November 21, 1994

ADDRESSES: The Willard Intercontinental Hotel (Hughes Room), 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Lance Glasser, Director, ARPA/ESTO, 3701 N. Fairfax Drive, Arlington, VA 22203–1714; telephone: 703/696–2213.

Dated: November 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–28070 Filed 11–14–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11367–001]

Peak Power Corp., Kvaerner Venture, Inc. and Las Vegas Energy Storage Limited Partnership; Postponement of Scoping Meetings

November 8, 1994.

The public and agency meetings, and the site visit, for the Sheep Mountain Hydroelectric Project (FERC No. 11367–001), which were scheduled for November 15 and 16, 1994, are postponed. (59 FR 55089), November 3, 1994). Another notice will be issued as soon as the meetings are rescheduled.

If you have any question on this matter, please call Mike Strzelecki at 202–219–2827.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28135 Filed 11–14–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No 94–73–NG]

Westcoast Gas Services Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Westcoast Gas Services Inc. authorization to import up to 2,431 Mcf per day of natural gas from Canada for sale to Wisconsin Gas Company over a

nine-year term beginning on November 1, 1994, through September 19, 2003.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., October 27, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–28185 Filed 11–14–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–74–NG]

Westcoast Gas Services Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Westcoast Gas Services Inc. authorization to import up to 3,712 Mcf per day of natural gas from Canada for sale to Metropolitan Utilities District over a nine-year term beginning on November 1, 1994, through September 19, 2003.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., October 27, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–28186 Filed 11–14–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No 94–75–NG]

Westcoast Gas Services Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Westcoast Gas Services Inc. authorization to import up to 6,536 Mcf per day of natural gas from Canada for sale to Midwest Gas Company, a Division of Midwest Power Systems Inc., over a nine-year term beginning on November 1, 1994, through September 19, 2003.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., October 27, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–28187 Filed 11–14–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No 94–76–NG]

Westcoast Gas Services Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Westcoast Gas Services Inc. authorization to import up to 949 Mcf per day of natural gas from Canada for sale to Northwestern Public Service Company over a nine-year term beginning on November 1, 1994, through November 1, 2003.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., October 27, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–28188 Filed 11–14–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–77–NG]

Westcoast Gas Services Inc.; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Westcoast Gas Services Inc. authorization to import up to 1,072 Mcf per day of natural gas from Canada for sale to Interstate Power Company, Inc. over a nine-year term beginning on November 1, 1994, through November 1, 2003.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., October 27, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–28189 Filed 11–14–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–78–NG]

Westcoast Gas Services Inc.; Order Granting Long-Term Authorization To Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Westcoast Gas Services Inc. authorization to import up to 1,210 Mcf per day of natural gas from Canada for sale to Cibola Corporation over a nine-year term beginning on November 1, 1994 through September 19, 2003.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., October 31, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–28190 Filed 11–14–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP95–36–000]

ANR Storage Co.; Notice of Proposed Changes in FERC Gas Tariff

November 8, 1994.

Take notice that on November 2, 1994, ANR Storage Company (ANR Storage), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets, as listed in Appendix A, to be effective November 15, 1994.

ANR Storage states that it has tendered for filing certain tariff sheets which revise its existing tariff to allow its existing and future customers more flexibility in the use of the storage service provided by ANR Storage, as more fully detailed in the application filed by ANR Storage. ANR Storage is not proposing any change to the rates charged for its storage services.

ANR Storage requests that the Commission grant ANR Storage whatever waivers are necessary under its regulations (including the thirty day notice period) to allow the instant tariff sheets to become effective on November 15, 1994.

ANR Storage states that copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 15, 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D.Cashell,

Secretary.

APPENDIX A

Original Sheet No. 20A

First Revised Sheet No. 9
First Revised Sheet No. 10
First Revised Sheet No. 12
First Revised Sheet No. 14
First Revised Sheet No. 15
First Revised Sheet No. 16
First Revised Sheet No. 17
First Revised Sheet No. 18
First Revised Sheet No. 19
First Revised Sheet No. 20
First Revised Sheet No. 25
First Revised Sheet No. 26
First Revised Sheet No. 30
First Revised Sheet No. 125
First Revised Sheet No. 128
First Revised Sheet No. 132
First Revised Sheet No. 133
First Revised Sheet No. 146
First Revised Sheet No. 148
First Revised Sheet No. 149
First Revised Sheet No. 151
First Revised Sheet No. 154
First Revised Sheet No. 157

[FR Doc. 94–28090 Filed 11–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–23–000]

Eastern Shore Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

November 8, 1994.

Take notice that on November 3, 1994, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing certain revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective November 1, 1994.

Eastern Shore states that the above-referenced tariff sheets are being filed pursuant to 154.309 of the Commission's regulations and Section 21 of the General Terms and Conditions of Eastern Shore's FERC Gas Tariff to reflect lower prices being paid to Eastern Shore's suppliers under its market-responsive gas supply contracts. As filed herein, Eastern Shore seeks to decrease its Demand and Commodity sales rates by $0.5044 and $0.6784 per dt, respectively.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR Section 385.211 and 385.214). All motions or protests should be filed on or before November 15, 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28091 Filed 11–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–82–000]

Fitchburg Gas and Electric Light Company; Notice of Filing

November 3, 1994.

Take notice that on October 27, 1994, Fitchburg Gas and Electric Light Company (Fitchburg) filed with the Commission a service agreement between Fitchburg and Massachusetts Municipal Wholesale Electric Company (MMWEC) for sale of 7.5 MW (winter maximum claimed capability) of capacity and associated energy from Fitchburg #7. This is a service agreement under Fitchburg's FERC Electric Tariff, Original Volume No. 2, which was accepted for filing by the Commission in Docket No. ER92–88–000 on September 30, 1992. The capacity rate to be charged MMWEC is below the maximum capacity charges set forth in the Tariff, and the energy rate is that established in the Tariff. Fitchburg requests that service commence as of November 1, 1994. A notice of cancellation was also filed.

Fitchburg states that copies of the filing were served on MMWEC and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 17, 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. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–28136 Filed 11–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–47–011]

National Fuel Gas Supply Corp.; Notice of Compliance Filing

November 8, 1994.

Take notice that on November 4, 1994, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, proposed Original Sheet No. 215A.

National states that it is submitting this sheet and the attached workpapers to flowthrough the take-or-pay (TOP) charges allocated to National by Texas Eastern Transmission Corporation (Texas Eastern).

National further states that this tariff sheet is filed in compliance with the order issued by the Federal Energy Regulatory Commission on May 4, 1994. National states that in May 4 Order, the Commission required that it submit an allocation methodology to flowthrough to its customers on an as-billed basis, the TOP charges allocated to National by its upstream pipeline-suppliers after the Commission's approval of the upstream pipeline's allocation methodology.

National states that it proposes to allocate to its customers their share of the fixed TOP charges from Texas Eastern using the 1988 WRQ components, which is the closest measure on National's system that appropriates the Texas Eastern flowthrough methodology.

National respectfully requests waiver of the 30-day notice requirement in Section 152.22 of the Commission's regulations for good cause shown. In this regard, National states that implementation of this allocation method on December 1, 1994, will not impose significantly high costs on its customers, certainly when compared with their original payments.

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 385.211). All such protest should be filed on or before November 15, 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. 94–28092 Filed 11–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–36–000]

Natural Gas Pipeline Co. of America; Notice of Informal Settlement Conference

November 8, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, November 14, 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 exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 395.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact David R. Cain (202) 208–0917 or John P. Roddy (202) 208–1176.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28093 Filed 11–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–404–001]

Northern Border Pipeline Co.; Notice of Tariff Filing

November 8, 1994.

Take notice that on November 3, 1994, Northern Border Pipeline Company (Northern Border) tendered for filing Substitute First Revised Sheet Number 160 of its FERC Gas Tariff, First Revised Volume No. 1.

Northern Border states that the filing is in compliance with the Commission's order, issued October 31, 1994, in the above-referenced docket. Northern Border further states that the October 31 Order required Northern Border to revise its tariff language to incorporate the change regarding flowing gas priority for Rate Schedule IT–1 volumes.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 15, 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 and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28094 Filed 11–14–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–59–000]

Northern Natural Gas Co.; Notice of Proposed Changes in Rates

November 8, 1994.

Take notice that on November 4, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that Sixteenth Revised Sheet No. 53 is being filed to establish the September 1994 Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 15, 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 proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–28095 Filed 11–14–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5106–8]

Acid Rain Program: Draft Permits and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permits and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for

comment 5-year sulfur dioxide (SO_2) and nitrogen oxide (NO_X) compliance plans which either amend previously issued Phase I Acid Rain Permits, or will, if approved, result in the issuance of a Phase I Acid Rain Permit to sources not previously required to have one. These actions are taken in accordance with the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on the draft permits and modifications must be received no later than 30 days after the date of this notice (December 15, 1994) or the date of publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at EPA Region 3, 841 Chestnut Building, Philadelphia, PA, 19107.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to EPA Region 3, Air, Radiation and Toxics Division, Attn: Richard Killian (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting an SO_2 or NO_X compliance plan.

FOR FURTHER INFORMATION CONTACT: Call Richard Killian, (215) 597–7547.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. On January 11, 1993, EPA promulgated final rules implementing the SO_2 portion of the program. Subsequently, several parties filed petitions for review of the rules with the U.S. Court of Appeals for the District of Columbia Circuit. On May 4, 1994, EPA and other parties signed a settlement agreement addressing the substitution and reduced utilization issues. In today's action, EPA is issuing to the following utility plants draft SO_2 compliance plans that allocate SO_2 emission allowances and approve SO_2 compliance plans, consistent with the May 4, 1994 settlement (draft NO_X plans are included where appropriate):

Phase I Units Designating Substitution Units

Armstrong in Pennsylvania: One conditional substitution plan for 1995–1999, in which unit 1 designates Albright unit 1 as a substitution unit; one conditional substitution plan for 1995–1999, in which unit 2 designates Albright unit 2 as a substitution unit.

Albright in West Virginia: One conditional substitution plan for 1995–1999, in which unit 3 designates R P Smith unit 9 as a substitution unit.

Fort Martin in West Virginia: One substitution plan for 1995–1999, in which unit 2 designates R P Smith unit 11 as a substitution unit;

Phase II Substitution Units and NO_X Compliance Plans

R P Smith in Maryland: 386 conditional substitution allowances for each year 1995–1999 to unit 9; 3,128 substitution allowances for each year 1995–1999 to unit 11 (See Albright and Fort Martin descriptions in Phase I section above); one NO_X compliance plan for 1996–1999 in which unit 11 will comply with the standard emission limitation of 0.45 lbs/MMBtu; this unit is not required to meet an emission limitation for NO_X until April 1, 1996.

Albright in West Virginia: 4,831 conditional substitution allowances for each year 1995–1999 to unit 1; 5,024 conditional substitution allowances for each year 1995–1999 to unit 2 (See Armstrong description in Phase I section above).

Mitchell in West Virginia: One NO_X compliance plan for 1996–1999 in which unit 33 will comply with the standard emission limitation of 0.45 lbs/MMBtu; this unit is not required to meet an emission limitation for NO_X until April 1, 1996.

Dated: November 9, 1994.

Brian J. McLean

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–28275 Filed 11–14–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5106–9]

Acid Rain Program: Draft Permits and Permit Modifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permits and permit modifications.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment 5-year sulfur dioxide (SO_2) and nitrogen oxide (NO_X) compliance plans which either amend previously issued Phase I Acid Rain Permits, or will, if approved, result in the issuance of a Phase I Acid Rain Permit to sources not previously required to have one. These actions are taken in accordance with the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on the draft permits and modifications must be received no later than 30 days after the date of this notice (December 15, 1994) or the date of publication of a similar notice in a local newspaper, whichever is later.

ADDRESSES: *Administrative Records.* The administrative record for the permits, except information protected as confidential, may be viewed during normal operating hours at the following locations: for sources in Maryland: EPA Region 3, 841 Chestnut Bldg., Philadelphia, PA 19107, (215) 597–9800; for sources in Alabama and Mississippi: EPA Region 4, 345 Courtland St., NE, Atlanta, GA, 30365; for sources in Illinois: EPA Region 5, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604; for sources in Utah and Wyoming: EPA Region 8, 999 18th St., Denver, CO 80202–2466.

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions to the following locations: for sources in Maryland: EPA Region 3, Air, Radiation, and Toxics Division, Attn: Thomas Maslany, Director (address above); for sources in Alabama and Mississippi: EPA Region 4, Air, Pesticides, and Toxics Management Division, Attn: Brian Beals (address above); for sources in Illinois: EPA Region 5, Air and Radiation Division, Attn: David Kee, Director (address above); for sources in Utah and Wyoming: EPA Region 8, Air, Radiation and Toxics Division, Attn: Patricia Hull, Director (address above). Submit comments in duplicate and identify the permit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of all units in the plan. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 or issues not relevant to the permit or the permit modification.

Hearings. To request a public hearing, state the issues proposed to be raised in

the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting an SO_2 compliance plan.

FOR FURTHER INFORMATION CONTACT: For sources in Maryland, call Kimberly Peck, (215) 597–9839; for sources in Alabama and Mississippi, call Scott Davis, (404) 347–5014; for sources in Illinois, call Cecilia Mijares, (312) 886–0968; for sources in Utah and Wyoming, call Mark Komp, (303) 293–0956.

SUPPLEMENTARY INFORMATION: Title IV of the Clean Air Act directs EPA to establish a program to reduce the adverse effects of acidic deposition by promulgating rules and issuing permits to emission sources subject to the program. On January 11, 1993, EPA promulgated final rules implementing the SO_2 portion of the program. Subsequently, several parties filed petitions for review of the rules with the U.S. Court of Appeals for the District of Columbia Circuit. On May 4, 1994, and August 10, 1994, EPA and other parties signed settlement agreements addressing the substitution issues. In today's action, EPA is issuing to the following utility plants draft SO_2 compliance plans that allocate SO_2 emission allowances and approve SO_2 compliance plans, consistent with these settlements:

Phase I Units Designating Substitution Units

C P Crane in Maryland: four substitution plans for 1995, in which unit 2 designates Huntington unit 1, Hunter units 1 and 2, and Dave Johnston unit BW44 as substitution units; one conditional substitution plan for 1996–1999, in which unit 2 designates Hunter unit 1 as a substitution unit; one conditional substitution plan for 1996–1999, in which unit 2 designates Hunter unit 2 as a substitution unit; one conditional substitution plan for 1996–1999, in which unit 2 designates Huntington unit 1 as a substitution unit; one conditional substitution plan for 1996–1999, in which unit 2 designates Dave Johnston unit BW44 as a substitution unit; two substitution plans for 1995–1999, in which unit 2 designates R D Morrow units 1 and 2 (one plan), and Charles R Lowman units 2 and 3 (one plan) as substitution units.

Baldwin in Illinois: one substitution plan for 1995, in which unit 2 designates Jim Bridger unit BW74 as a substitution unit; one conditional substitution plan for 1996–1999, in which unit 2 designates Jim Bridger unit BW74 as a substitution unit.

Phase II Substitution Units and NO_X Compliance Plans

Charles R Lowman in Alabama: 6,226 substitution allowances and a maximum annual average SO_2 emissions rate of 0.6052 lbs/MMBtu for each year 1995–1999 to unit 2; 5,614 substitution allowances and a maximum annual average SO_2 emissions rate of 0.5895 lbs/MMBtu for each year 1995–1999 to unit 3 (See C P Crane description above); one NO_X averaging plan for 1995–1999 for units 2 and 3; under the averaging plan, each unit's actual annual emission rate for NO_X shall not exceed the alternative emission limitation of 0.50 lbs/MMBtu, and there is no annual heat input limit.

R D Morrow in Mississippi: 4,571 substitution allowances and a maximum annual average SO_2 emissions rate of 0.6439 lbs/MMBtu for each year 1995–1999 to unit 1; 5,002 substitution allowances and a maximum annual average SO_2 emissions rate of 0.6931 lbs/MMBtu for each year 1995–1999 to unit 2 (See C P Crane description above); one NO_X averaging plan for 1995–1999 for units 1 and 2; under the averaging plan, each unit's actual annual emission rate for NO_X shall not exceed the alternative emission limitation of 0.50 lbs/MMBtu, and there is no annual heat input limit.

Hunter in Utah: 2,040 substitution allowances and a maximum annual average SO_2 emissions rate of 0.1208 lbs/MMBtu for 1995 to unit 1; 1,826 substitution allowances and a maximum annual average SO_2 emissions rate of 0.1012 lbs/MMBtu for 1995 to unit 2; 2,040 conditional substitution allowances and a maximum annual average SO_2 emissions rate of 0.1208 lbs/MMBtu for 1996–1999 to unit 1; 1,826 conditional substitution allowances and a maximum annual average SO_2 emissions rate of 0.1012 lbs/MMBtu for 1996–1999 to unit 2 (See C P Crane description above); one NO_X compliance plan for 1995–1999 in which units 1 and 2 will each comply with the standard emission limitation of 0.45 lbs/MMBtu.

Huntington in Utah: 1,790 substitution allowances and a maximum annual average SO_2 emissions rate of 0.0889 lbs/MMBtu for 1995 to unit 1; 1,790 conditional substitution allowances and a maximum annual average SO_2 emissions rate of 0.0889 lbs/MMBtu for 1996–1999 to unit 1 (See C P Crane description above); one NO_X compliance plan for 1995–1999 in which unit 1 will comply with the standard emission limitation of 0.45 lbs/MMBtu.

Dave Johnston in Wyoming: 3,025 substitution allowances and a maximum annual average SO_2 emissions rate of 0.2095 lbs/MMBtu for 1995 to unit BW44; 3,025 conditional substitution allowances and a maximum annual average SO_2 emissions rate of 0.2095 lbs/MMBtu for 1996–1999 to unit BW44 (See C P Crane description above); one NO_X compliance plan for 1995–1999 in which unit BW44 will comply with the standard emission limitation of 0.45 lbs/MMBtu.

Jim Bridger in Wyoming: 3,165 substitution allowances and a maximum annual average SO_2 emissions rate of 0.1331 lbs/MMBtu for 1995 to unit BW74; 3,165 conditional substitution allowances and a maximum annual average SO_2 emissions rate of 0.1331 lbs/MMBtu for 1996–1999 to unit BW74 (See Baldwin description above); one NO_X compliance plan for 1995–1999 in which unit BW74 will comply with the standard emission limitation of 0.45 lbs/MMBtu.

Dated: November 10, 1994.

Brian J. McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–28276 Filed 11–14–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5105–6]

Transfer of Data to Contractor

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intended Transfer of Confidential Business Information to Contractors and Subcontractors.

SUMMARY: The Environmental Protection Agency (EPA) intends to transfer confidential business information (CBI) collected from the pulp, paper, and paperboard manufacturing; pharmaceutical manufacturing; and other industries listed below to Science Applications International Corporation, Inc. (SAIC); Abt Associates, Inc.; and their subcontractors. Transfer of the information will allow the contractors and subcontractors to assist EPA in developing effluent limitations guidelines and standards under the Clean Water Act (CWA), and in developing or evaluating the need for regulations under the Clean Air Act (CAA), the Resource Conservation and Recovery Act (RCRA), and the Toxic Substances Control Act (TSCA). The information being transferred was or will be collected under the authority of section 308 of the Clean Water Act. Some of the information was provided

voluntarily by industrial facilities; this information also could have been collected under section 308. Information being transferred from the pulp, paper, and paperboard industry was or will be collected under the additional authorities of section 114 of the Clean Air Act (CAA) and section 3007 of the Resource Conservation and Recovery Act (RCRA). Interested persons may submit comments on this intended transfer of information to the address noted below.

DATES: Comments on the transfer of data are due November 21, 1994.

ADDRESSES: Comments may be sent to Mr. David Hoadley, Document Control Officer, Engineering and Analysis Division (4303), 911 East Tower, U.S. EPA, 401 M Street S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. David Hoadley, Document Control Officer, at (202) 260–7765.

SUPPLEMENTARY INFORMATION: EPA has previously transferred to its contractors, SAIC (located in Falls Church, Virginia) and Abt Associates (located in Cambridge, Massachusetts), information, including confidential business information (CBI) concerning certain industries collected under the authority of section 308 of the Clean Water Act. EPA determined that this transfer was necessary to enable the contractors and subcontractors to perform their work in assisting EPA in developing effluent guidelines and standards for certain industries. Notice to this effect was provided to the affected industries.

Today, EPA is giving notice that it has entered into additional contracts, numbers 68–C4–0046 and 68–C4–0060, with SAIC and Abt Associates, respectively. The reason for these contracts is to secure additional contractor support in statistical and economic analyses. To obtain assistance in responding to these contracts, SAIC and Abt Associates have entered into contracts with their subcontractors.

SAIC will provide the same type of statistical, technical, and data base support services as previously provided in contract number 68–C0–0035. In the new contract, SAIC has retained, from the previous contract, the statistical and economic analysis services of subcontractor Research Triangle Institute (RTI) located in Research Triangle Park, North Carolina. SAIC has also obtained the services of two other subcontractors, Software Technology Group (located in Fairfax, Virginia) and Highland Data Services (located in Bluegrass, Virginia), for computer support and data entry.

Abt Associates will provide the same type of economic and regulatory analysis and evaluation support services as previously provided in contract number 68–C0–0080. In the new contract, Abt Associates has retained, from the previous contract, the economic analysis services of three subcontractors: Eastern Research Group (located in Lexington, Massachusetts); Industrial Economics, Inc. (located in Cambridge, Massachusetts); and RCG/Hagler Bailly Inc. (located in Boulder, Colorado). Abt Associates has also obtained the economic analysis services of five other subcontractors: Apogee Research (located in Bethesda, Maryland); Booz-Allen & Hamilton, Inc. (also located in Bethesda, Maryland); Fu & Associates, Ltd. (located in Arlington, Virginia); Radian Corporation (located in Herndon, Virginia); and Research Triangle Institute (located in Research Triangle Park, North Carolina). Fu & Associates will provide computer support in addition to economic analysis support.

All EPA contractor and subcontractor personnel are bound by the requirements and sanctions contained in their contracts with EPA and in EPA's confidentiality regulations found at 40 CFR Part 2, Subpart B. SAIC, Abt Associates, and their subcontractors adhere to EPA-approved security plans which describe procedures to protect confidential business information (CBI). The procedures in these plans are applied to CBI previously gathered by EPA for the industries identified below and to CBI that may be gathered in the future for these industries. The security plans specify that contractor and subcontractor personnel are required to sign non-disclosure agreements and are briefed on appropriate security procedures before they are permitted access to CBI. No person is automatically granted access to CBI; a *need to know* must exist.

The information that will be transferred to SAIC, Abt Associates, and their subcontractors consists primarily of information previously collected by EPA to support the development of effluent limitations guidelines and standards under the Clean Water Act. In particular, information, including CBI, collected for the development of effluent limitations guidelines and standards for the following industries may be transferred: centralized waste treatment; industrial laundries; incinerators; landfills; machinery products and manufacturing; oil and gas; organic chemicals; pesticide manufacturing; pesticides formulating, packaging, and repackaging; pharmaceutical manufacturing; petroleum refining; pulp, paper, and paperboard manufacturing; steam and electric; and transportation equipment cleaning.

EPA also intends to transfer to SAIC, Abt Associates, and their subcontractors all information listed in this notice, of the type described above (including CBI) that may be collected in the future under the authority of section 308 of the Clean Water Act, as is necessary to enable SAIC, Abt Associates and their subcontractors to carry out the work required by their contracts to support EPA's development of effluent limitations guidelines and standards for the industries listed above.

Dated: November 3, 1994.

Tudor T. Davies,

Director, Office of Science and Technology, Office of Water.

[FR Doc. 94–28148 Filed 11–14–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5105–9]

Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting of the Management Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting at the Pontchartrain Hotel, 2031 St. Charles Avenue, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee of the Gulf of Mexico Program will be held December 6–7, 1994, at the Pontchartrain Hotel, 2031 St. Charles Avenue, New Orleans, LA. The committee will meet from 1:00 to 5:00 p.m. on December 6 and from 8:00 a.m. to 4:00 p.m. on December 7. Agenda items will include: September Meeting Summary Review; Presentation on Current Research (Vibrio vulnificus); Strategic Assessment Progress Report; Review of Draft Federal Agreement; Report on FACA Review (Business and Industry Proposal); FY95 Project Review and Recommendations; FY96 Project Funding Methodology; Gulf Information Network Business Plan; Review of Meeting Policies/Practices; Appointment of New Issue Committee State Co-Chairs; Intergovernmental

Oceanographic Commission Presentation; and Symposium Status Report.

The meeting is open to the public.

William D. Holland,

Acting Director, Gulf of Mexico Program.

[FR Doc. 94-28149 Filed 11-14-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-5105-7]

C & R Battery Company, Inc. De Minimis Settlement; Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation and Liability Act

AGENCY: United States Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of 66 *de minimis* parties for response costs incurred by the United States Environmental Protection Agency at the C & R Battery Company, Inc. Site, Chesterfield County, Virginia.

DATES: Comments must be provided on or before December 15, 1994.

ADDRESSES: Comments should be addressed to the Docket Clerk, United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania, 19107, and should refer to: In Re: C & R Battery Company, Inc. Site, Chesterfield County, Virginia, U.S. EPA Docket No. III-94-25-DC.

FOR FURTHER INFORMATION CONTACT: Lydia Isales (215) 597-9951, United States Environmental Protection Agency, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107.

SUPPLEMENTARY INFORMATION:

Notice of De Minimis Settlement

In accordance with Section 122(i)(1)of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the C & R Battery Company, Inc. Site in Chesterfield County, Virginia. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on 9/26/94 and subject to review by the public pursuant to this Notice. The agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee and for the grant of a covenant not to sue for natural resource damages, is also subject to agreement in writing by the Department of Interior and the National Oceanic and Atmospheric Administration. Below are listed the parties who have executed binding certifications of their consent to participate in the settlement:

All-Scrap Salvage, Inc.
AT&T Corp
Annaco, Inc.
Arcon Equipment, Inc.
Baker Iron & Metal Co., Inc.
Barlow, F. Wayne
Bell Atlantic—Maryland, Inc. (f/k/a C&P Telephone of Maryland)
Berry Enterprises. Inc. (f/k/a Berry Iron & Metal Company)
Boydton Farm Supply Co.
Brenner Companies, Inc. (f/k/a Brenner Iron & Metal Company)
Bridgestone/Firestone, Inc.
Brittenham's Rebuilding Service, Inc.
Bruce's Iron & Metal, Inc.
Charles Bluestone Company
City of Richmond, Virginia
Cohen & Green Salvage Co., Inc.
Coiners Scrap Iron and Metal, Inc.
Columbia Steel & Metal Co., Inc.
Cook's Scrap Metal Inc.
Cumberland Battery Inc.
D.C. Systems, Inc.
Doody's Used Auto Parts, Incorporated
Exide Corporation
Exxon Corporation
Gould, Inc.
Hopewell Iron & Metal Company, Inc.
International Business Machines Corporation
J.C. Penney Company, Inc.
Kirk Battery Co.
Knox Metals Corporation
Lake City, Inc. (f/k/a Lake City Scrap Metal, Inc.)
Lake City, Inc. (f/k/a Bedford Recycling, Inc.)
Leesburg Iron & Metal, Inc.
Livingston & Co., Inc.
Manassas Scrap Metal Co.
Maryland Recycle Company, Inc. (f/k/a Ron's Recycling Center)
Metallics Recycling Co.
Metalmart, Inc.
Mine Battery Service, Inc.
Mountain Metal Company Incorporated, of West Prestonburg, Kentucky
Myers Brothers, Inc.
National Waste Paper Company, The
New Castle Battery Manufacturing Company
Newell Industries, Inc.
Newton, Clarence R. "Buddy" d/b/a B&N Auto Salvage Co.
Niles Iron & Metal Co., Inc.
Norfolk Southern Railway Company
Omnisource Corporation
Pascap Company, Inc.
RSR Corporation
Reserve Iron & Metal Ltd., Partnership (f/k/a Reserve Iron & Metal, Inc.)
Reynolds Metals Company
Richmond, Fredericksburg and Potomac Railroad Company
Rocky Mount Recyclers, Inc.
Sammett Towing and Salvage, Inc.
Siskin Steel & Supply Co., Inc.
Southern Foundry Supply, Inc.
St. Marys Iron and Steel Corporation
Street, James H.
Textron, Inc.
United Salvage Company
V.H. Holmes & Sons, Inc.
Ware's Van & Storage Co., Inc. (f/k/a S&M Systems Corp.)
Western Auto Supply Company
Willoughby Iron & Waste Material Co.
Zuckerman Metals, Inc.

These 66 parties collectively agreed to pay $684,947.58 to the Hazardous Substance Trust Fund. Out of such amount, the Environmental Protection Agency will forward $89,149.94 to the Department of Interior and the National Oceanic and Atmospheric Administration for natural resource damages. Such payment is being made by 63 of the 66 signatories (all but New Castle Manufacturing Company, Newton, Clarence R. "Buddy" d/b/a B & N Auto Salvage Co., and United Salvage Company). The agreement is subject to the contingency that the Environmental Protection Agency may elect not to complete the settlement based on matters brought to its attention during the public comment period established by this Notice.

EPA is entering into this agreement under the authority of Sections 122(g) and 107 of CERCLA, 42 U.S.C. 9622(g) and 9607. Section 122(g) of CERCLA, 42 U.S.C. 9622(g), authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities under, inter alia, Section 107 of CERCLA, 42 U.S.C. § 9607, to reimburse the United States for response costs incurred in cleaning up Superfund sites without incurring substantial transaction costs. Under this authority the Environmental Protection Agency proposes to settle with potentially responsible parties at the C & R Battery Company, Inc. Site who are, in total, responsible for less than 10% percent of the volume of hazardous substances at the Site. The grant of a covenant not to sue for natural resource damages by the Department of Interior and the National Oceanic and Atmospheric Administration to those parties paying their share of such allocated costs is subject to agreement in writing by the Department of Interior and the National Oceanic and Atmospheric Administration pursuant to Section 122(j) of CERCLA, 42 U.S.C. 9622(j).

The *de minimis* parties listed above will be required to pay their volumetric share of the Government's past response costs and the estimated future response costs at the C & R Battery Company, Inc. Site, and an appropriate premium in

accordance with Agency policy. The *de minimis* parties listed above (with the exception of New Castle Manufacturing Company, Newton, Clarence R. "Buddy" d/b/a B & N Salvage Co., and United Salvage Company) will be required to pay their share of the Department of Interior's and the National Oceanic and Atmospheric Administration's estimated natural resource damages. Three *de minimis* parties are paying a lesser amount than their volumetric share, based on ability to pay.

The Environmental Protection Agency will receive written comments to this proposed administrative settlement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, (3RC20), 841 Chestnut Building, Philadelphia, Pennsylvania, 19107 by contacting Lydia Isales, Senior Assistant Regional Counsel, at (215) 597–9951.

Peter H. Kostmayer,

Regional Administrator, EPA, Region III.

[FR Doc. 94–28150 Filed 11–14–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5105–8]

Clean Water Act (CWA) 304(l): Availability of List Submissions and Proposed Approval Decisions

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of a list submitted to USEPA pursuant to Section 304(l)(1)(C) of the (CWA), 33 U.S.C. 1314(l)(1)(C) as well as USEPA's proposed approval decision, and request for public comment.

DATES: Comments must be submitted to USEPA on or before December 15, 1994.

ADDRESSES: Copies of these items can be obtained by writing or calling: Mr. Howard Pham, USEPA-Region 5, 304(l) Coordinator, U.S. Environmental Protection Agency-Region 5, Water Division (Mail Code WQP–16J), 77 West Jackson Blvd., Chicago, Illinois 60604–3507, Telephone: (312) 353–2310.

Comments on these items should be sent to Howard Pham, USEPA–Region 5 at the address given above.

FOR FURTHER INFORMATION CONTACT: Howard Pham at the address and telephone number given above.

SUPPLEMENTARY INFORMATION: Section 304(l) of the CWA, 33 U.S.C. 1314(l), required each state, within 2 years after February 4, 1987, to submit to the USEPA, three lists of waters, including a list of those waters that the State does not expect to achieve applicable water quality standards, after application of technology-based controls, due to discharges of toxic pollutants from point sources (the "B List" or "Short List"). 33 U.S.C. 1314(l)(1)(B). The second, or "Mini" list consists of waters that are not meeting the new water quality standards developed under Section 303(c)(2)(B) for toxic pollutants because of pollution from point and nonpoint sources. 33 U.S.C. 1314(l)(1)(A)(i). The third, or "Long" list includes all waters on the other two lists, plus any waters which, after the implementation of technology-based controls, are not expected to meet the water quality goals of the Act. 33 U.S.C. 1314(l)(1)(A)(ii).

For each water segment identified in these lists, the State was required, by February 4, 1989, to submit a "C List" specifying point sources discharging toxic pollutants believed to be preventing or impairing such water quality. 33 U.S.C. 1314(l)(1)(C).

For each point source identified on the State's C list as discharging toxic pollutants into a water segment on the State's B list, the State was further required to submit to USEPA an individual control strategy (ICS) that the State determined would serve to reduce point source discharges of toxic pollutants to the receiving water to a degree sufficient to attain water quality standards in that water within 3 years after the date of the establishment of the ICS. 33 U.S.C. 1314(l)(1)(D).

USEPA initially interpreted the statute to require States to identify on the C list only those facilities that discharge toxic pollutants believed to be impairing waters listed on the B list. In *Natural Resources Defense Council (NRDC)* v. *U.S. EPA*, 915 F.2d 1314 (9th Cir. 1990), the Ninth Circuit Court of Appeals remanded that portion of the regulation and directed USEPA to amend the regulations to require the States to identify all point sources discharging any toxic pollutant that is believed to be preventing or impairing water quality of any stream segment listed on any of the three lists of waters, and to indicate the amount of the toxic pollutant discharges by each source. See *NRDC* v. *U.S. EPA*, 915 F.2d 1314, 1323–24 (9th Cir. 1990). USEPA amended 40 CFR 130.10(d)(3) accordingly. See 57 FR 33040 (July 24, 1992).

Consistent with USEPA's amended regulation, the State of Illinois submitted to U.S. PA for approval on January 21, 1993, a revised facility list as required under Section 304(l)(1)(C). USEPA's review of Illinois' 304(l) facility list and its procedures used to develop the list, found the procedures to be inconsistent with the requirements of the amended regulations. Based on the above findings, the State of Illinois revised their procedures which were reviewed and accepted by USEPA, Region 5. Using the new procedures the State of Illinois, on August 3, 1994, submitted a new revised facility list to USEPA for approval. Illinois' revised list contains one facility, Crest Hill, located on the Des Plaines River. The pollutant of concern at the Crest Hill facility is silver.

USEPA notes that Crest Hill's existing National Pollutant Discharge Elimination System permit is an acceptable ICS. The existing permit fully considers the water quality-based effluent limits.

USEPA today proposes to approve the revised 304(l) facility list for Illinois. USEPA solicits public comment on the approval decision.

Dated: October 19, 1994.

David A. Ullrich,

Acting Regional Administrator.

U.S. EPA Region 5 Section 304(l) Additional Listings

State	Waterbody name	NPDES No.	Discharger name	Pollutants of concern
IL	Des Plaines River	IL0064998	Crest Hill	Silver

[FR Doc. 94–28147 Filed 11–14–94; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

November 8, 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.

Please note: The Commission has requested expedited OMB review of this item by December 15, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: 3060–0110

Title: Application for renewal of license for AM, FM, TV, Translator or LPTV station

Form Number: FCC Form 303–S

Action: Revision of a currently approved collection

Respondents: State or local governments, non-profit institutions and businesses or other for-profit (including small businesses)

Frequency of Response: Other: once every 5 years for TV; once every 7 years for radio

Estimated Annual Burden: 1,310 responses; 1.04 hours average burden per response; 1,362 hours total annual burden

Needs and Uses: FCC Form 303–S is used in applying for renewal of license for a commercial or noncommercial AM, FM, or TV broadcast station and FM translator, TV translator or Low Power TV broadcast stations. It can also be used in seeking the joint renewal of licenses for an FM or TV translator station and its co-owned primary FM, TV or LPTV station. On 2/24/93, OMB approved a Notice of Proposed Rulemaking (NPRM) in MM Docket No. 92–304, Renewal Reporting Requirements for Full Power, Commercial AM, FM, and TV Broadcast Stations. On 8/20/92, the Commission adopted a Report and Order adopting the requirement that licensees of full power commercial AM, FM, and TV stations to report whether, at the time of license renewal, their stations are on-the-air or have discontinued operations. The necessary exhibit will have an additional burden of 1 hour on those stations that are off-the-air or have discontinued operations. On 10/13/94, the Commission adopted a Report and Order in MM Docket No. 92–168, Modifying Renewal Dates for Certain Stations Licensed Under Part 74 of the Commission's Rules; and Revising FCC Form 303–S. This Report and Order will change the license renewal dates of FM and TV translator stations and LPTV stations licensed under 47 CFR Part 74 to coincide with those of full service radio or television stations operating in the same state. The Commission will grant translator and LPTV applicants filing for license renewal a short-term renewal with the license period extending only until the end of the license period for full service stations located in the same state. This short license renewal period will create an extra one-time renewal filing for some licensees. The Commission will waive the filing fee for renewal applications of those stations who are required to make an extra filing. This Report and Order also eliminates FCC Form 348 and revises the FCC Form 303–S to incorporate information included in the Form 348. These form revisions will permit translator stations co-owned with primary stations in the same state which rebroadcast the same signal as the primary station to file for license renewal on a single application form with their primary station. In addition, the Report and Order added a certification that an FM translator applicant has complied with all FM translator rules, particularly those relating to ownership, funding and support. The data is used by FCC staff to assure that the necessary reports connected with the renewal application have been filed and that licensee continues to meet basic statutory requirements to remain a licensee of a broadcast station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–28192 Filed 11–14–94; 8:45 am]
BILLING CODE 6712–01–M

[GEN Docket No. 89–97; DA 94-1233]

Southern California Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice; Extension of Time.

SUMMARY: In response to a request filed by the State of Nevada, the Commission adopted an Order extending the time period in which to file comments and reply comments in this proceeding. The intended effect of this action is to give all interested parties additional time to file comments and reply comments.

DATES: Comments are due November 25, 1994 and reply comments are due December 9, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: November 4, 1994.

Released: November 4, 1994.

By the Deputy Chief, Land Mobile and Microwave Division:

1. On August 1, 1994, Southern California (Region 5) submitted a proposed amendment to its plan that would revise the current channel allotments. The Commission placed the proposal on Public Notice for comments due on November 4, 1994, 59 FR 50761 (October 5, 1994).

2. On November 3, 1994, State of Nevada (Region 27) filed a request to extend the comment period. Region 27 requested the extension to obtain additional information to conduct a more thorough review of the amendment filed by Region 5.

3. We find that the public interest would be served by granting an extension of the comment period. Accordingly, IT IS ORDERED, pursuant to Section 1.46 of the Commission's Rules, 47 CFR § 1.46, that the request for extension of time is GRANTED. Comments must be filed by November 25, 1994 and replies by December 9, 1994.

Federal Communications Commission.

Edward R. Jacobs,

Deputy Chief, Land Mobile and Microwave Division.

[FR Doc. 94–28125 Filed 11–14–94; 8:45 am]
BILLING CODE 6712–01–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1041–DR]

Texas; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, [FEMA–1041–DR], dated October 18, 1994, and related determinations.

EFFECTIVE DATE: November 4, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas dated October 18, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 18, 1994:

The counties of Burleson, Jasper, Polk and Tyler for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–28155 Filed 11–14–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1041–DR]

Texas; Amendment To Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1041–DR), dated October 18, 1994, and related determinations.

EFFECTIVE DATE: November 3, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas dated October 18, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 18, 1994:

Colorado County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–28156 Filed 11–14–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Commerzbank AG, et al.; Notice of Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) 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 commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each 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.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 28, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Commerzbank AG, Frankfurt, Germany; to engage *de novo* through its subsidiary Commerz Immobilien GmbH, Frankfurt, Germany, in leasing real and personal property or acting as agent, broker or adviser, pursuant to § 225.25(b)(5) of the Board's Regulation Y, and making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for the company's account or the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Park Bancorporation, Inc., Madison, Wisconsin; to engage *de novo* through its subsidiary Park Community Investment Corporation, Madison, Wisconsin, in community development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 8, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-28116 Filed 11-14-94; 8:45 am]

BILLING CODE 6210-01-F

First of America Bank Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be 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 November 28, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan; to acquire New England Trust Company, Providence, Rhode Island, and thereby engage in performing trust company functions, pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 8, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-28117 Filed 11-14-94; 8:45 am]

BILLING CODE 6210-01-F

Old Kent Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each 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 to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 8, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to merge with First National Bank Corp., Mount Clemens, Michigan, and thereby indirectly acquire First National Bank of Macomb County, Mount Clemens, Michigan.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Parker Bankshares, Incorporated, Parker, Colorado, and thereby indirectly acquire First National Bank of Parker, Parker, Colorado.

Board of Governors of the Federal Reserve System, November 8, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-28118 Filed 11-14-94; 8:45 am]

BILLING CODE 6210-01-F

Superior Holdings, Inc.; 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 December 8, 1994.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Superior Holdings, Inc., Scottsdale, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of De Anza Holding Corporation, Sunnyvale, California, and thereby indirectly acquire De Anza Bank, Sunnyvale, California.

In connection with this application, Applicant also has applied to continue to engage in mortgage banking activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 8, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-28119 Filed 11-14-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Availability of Draft Recommendations for Prevention of Opportunistic Infections in HIV-Infected Persons

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services.

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability for review and comment of a draft document entitled "Recommendations for Prevention of Opportunistic Infections in HIV-Infected Persons," prepared by the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), and the Infectious Diseases Society of America (IDSA).

DATES: To ensure consideration, written comments on this draft document must be received on or before December 16, 1994.

ADDRESSES: Requests for copies of the draft recommendations for prevention of opportunistic infections must be submitted to the Technical Information Activity, Division of HIV/AIDS, Mailstop E–49, Centers for Disease Control and Prevention (CDC), Atlanta, GA 30333; telephone (404) 639–2076, facsimile (404) 639–2007. Written comments on this draft document should be received by December 16, 1994.

FOR FURTHER INFORMATION CONTACT: Technical Information Activity, Division of HIV/AIDS, Mailstop E–49, Centers for Disease Control and Prevention (CDC), Atlanta GA 30333; telephone (404) 639–2076, facsimile (404) 639–2007.

SUPPLEMENTARY INFORMATION: Opportunistic infections (OIs) constitute a major cause of morbidity and mortality in HIV-infected persons. The draft recommendations, prepared by the CDC, the NIH, and the IDSA in consultation with representatives from numerous Federal and non-Federal agencies and community groups, represent a comprehensive approach to prevention of OIs in HIV-infected persons. They include recommendations pertinent to 17 major OIs, or groups of OIs, according to (1) prevention of exposure, (2) prevention of disease (first occurrence), and (3) prevention of disease recurrence.

Dated: November 8, 1994.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–28107 Filed 11–14–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 93N–0205]

Daco Laboratories, Ltd.; Withdrawal of a Notice of Opportunity for Hearing Proposing To Withdraw Approval of Medicated Feed Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Center for Veterinary Medicine (CVM), Food and Drug Administration (FDA), is withdrawing a notice of opportunity for hearing proposing to withdraw approval of seven applications held by Daco Laboratories, Ltd., for animal feeds bearing or containing new animal drugs (NAD's). CVM has determined that the firm is in compliance with current good manufacturing practice regulations for medicated animal feeds and has instituted a system to maintain its compliance status.

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Karen A. Kandra, Center for Veterinary Medicine (HFV–246), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1765.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 17, 1993 (58 FR 43638), CVM provided an opportunity for hearing on a proposal to withdraw approval of seven medicated feed applications (MFA's) held by Daco Laboratories, Ltd., for the manufacture of animal feeds bearing or containing new animal drugs. CVM took this action based on the failure of the firm to achieve sustained compliance with agency current good manufacturing practice (CGMP) requirements for medicated animal feeds after a series of inspections that began on August 17, 1988, and concluded on October 5, 1992.

In response to the notice, Daco Laboratories requested a hearing and stated that it had corrected the CGMP deviations and was currently in compliance. Additionally, the firm requested that FDA reinspect its facility to verify its compliance status.

On July 15, 1994, FDA reinspected Daco Laboratories and found that the firm had corrected all previous CGMP deficiencies and was in compliance at that time. In contrast to past inspections, however, the firm had instituted a system that should sustain its state of compliance. Accordingly, CVM is withdrawing the August 17, 1993, notice of opportunity for hearing proposing to withdraw approval of seven of the firm's MFA's.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 512 (21 U.S.C. 360b)) and under authority delegated to the Director, Center for Veterinary Medicine (21 CFR 5.84).

Dated: November 2, 1994.

Richard H. Teske,

Deputy Director, Pre-market Review, Center for Veterinary Medicine.

[FR Doc. 94–28065 Filed 11–14–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 85F–0567]

Cabot Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 6B3901) proposing that the food additive regulations be amended to provide for the safe use of high purity carbon black (furnace process) as a colorant in polymers and as an alternative additive where carbon black (channel process) is now permitted for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 4, 1986 (51 FR 4435), FDA published a notice announcing that a food additive petition (FAP 6B3901) had been filed by Cabot Corp., Concord Rd., Billerica, MA 01821 (currently 75 State St., Boston, MA 02109–1806). The petition proposed that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of high purity carbon black (furnace process) as a colorant in polymers. The petitioner also requested that the food additive regulations be amended to provide for the safe use of high purity carbon black as an alternative additive where carbon black (channel process) is now permitted for use in contact with food. Cabot Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: November 3, 1994.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–28066 Filed 11–14–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94E–0315]

Determination of Regulatory Review Period for Purposes of Patent Extension; CPI® Ventak® PRx® AICD System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CPI® Ventak® PRx® AICD System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

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

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device CPI® Ventak® PRx® AICD System. CPI® Ventak® PRx® AICD System is indicated for the treatment of patients with ventricular fibrillation and/or ventricular tachyarrhythmias who are at high risk of sudden cardiac death. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CPI® Ventak® PRx® AICD System (U.S. Patent No. 4,407,288) from Cardiac Pacemakers, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated September 21, 1994, advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of CPI® Ventak® PRx® AICD System represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CPI® Ventak® PRx® AICD System is 1,306 days. Of this time, 398 days occurred during the testing phase of the regulatory review period, while 908 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: November 21, 1990. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective on November 21, 1990.

2. *The date an application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: December 23, 1991. The applicant claims December 20, 1991, as the date the premarket approval application (PMA) for CPI® Ventak® PRx® AICD (PMA P910077) was initially submitted. However, FDA records indicate that PMA P910077 was submitted on December 23, 1991.

3. *The date the application was approved*: June 17, 1994. FDA has verified the applicant's claim that PMA P910077 was approved on June 17, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 394 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 17, 1995, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 15, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–2, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 3, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–28064 Filed 11–14–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Cancer Institute; Notice of Meetings of the National Cancer Advisory Board and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, and its Subcommittees on December 5–7, 1994. The full Board will meet in Conference Room 10, 6th Floor, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times

and places listed below. All meetings of the Board and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, Room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301–496–5708) will provide a summary of the meeting and roster of the Board members, upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carole Frank, Committee Management Specialist, at 301/496–5708 in advance of the meeting.

Name of Committee: National Cancer Advisory Board.

Executive Secretary: Dr. Marvin R. Kalt, Executive Plaza North, Room 600A, Bethesda, MD 20892; (301) 496–5147.

Dates of Meeting: December 5–6, 1994.

Place of Meeting: Building 31C, Conference Room 10.

Open: December 5—8 am to 11:25 am; December 5—1 pm to approximately 6 pm; December 6—8 am to adjournment.

Agenda: Report on activities of the President's Cancer Panel; the Director's Report on the National Cancer Institute; Legislative Update; Tour of the Frederick Cancer Research Facilities; and Scientific Presentations.

Name of Committee: Subcommittee on Cancer Centers.

Executive Secretary: Dr. Brian Kimes, Executive Plaza North, Room 300, Bethesda, MD 20892; (301) 496–8537.

Date of Meeting: December 5, 1994.

Place of Meeting: Building 31C, Conference Room 8.

Open: 11:25 am to 1:10 pm.

Agenda: Discussion of operational policies and future program strategies.

Name of Committee: Subcommittee on Planning and Budget.

Executive Secretary: Ms. Cherie Nichols, Building 31, Room 11A19, Bethesda, MD 20892 (301) 496–5515.

Date of Meeting: December 5, 1994.

Place of Meeting: Building 31C, Conference Room 9.

Open: 11:25 am to 12:30 pm.

Agenda: To discuss the NCI budget and various planning issues.

Name of Committee: Subcommittee on Activities and Agenda.

Executive Secretary: Dr. Marvin R. Kalt, Room 600, 6130 Executive Plaza North, Rockville, MD 20892; (301) 496–4128.

Date of Meeting: December 5, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Metro Center, Bethesda, MD 20814.

Open: 7:30 pm to 9 pm.

Agenda: To discuss future activities and potential agenda items.

Catalog of Federal Domestic Assistance Program Numbers: (93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: November 7, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–28097 Filed 11–14–94; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Notice of Meeting President's Cancer Panel

Pursuant to Public Law 92–463, notice is hereby given of a meeting of ad hoc advisors to the President's Cancer Panel, National Cancer Institute, December 5 and 6, 1994, at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on December 5 and 6, 1994, from 8 am to 5 pm. The topic will be Review and Evaluation of the Federal Trade Commission Cigarette Testing Method.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, Executive Plaza North, Room 630, 9000 Rockville Pike, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide a roster of the committee members upon request.

Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact Ms. Nora Winfrey, (301–496–1148), in advance of the meeting.

Dr. Maureen O. Wilson, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20892 (301–496–1148) will provide a roster of the Panel members and substantive program information upon request.

Dated: November 7, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–28099 Filed 11–14–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review Small Business Innovation Research Program grant applications.

Name of SEP: Biophysical and Physiological Sciences.

Date: November 28, 1994.

Time: 3:00 p.m.

Place: NIH, Westwood Building, Room 209, Telephone Conference.

Contact Person: Dr. Michael Lang, Scientific Review Administrator, 5333 Westbard Ave., Room 209, Bethesda, MD 20892, (301) 594–7332.

Purpose/Agenda: To review individual grant applications.

Name of SEP: Clinical Sciences.

Date: November 29, 1994.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room 219A, Telephone Conference.

Contact Person: Dr. Larry Pinkus, Scientific Review Administrator, 5333 Westbard Ave., Room 219A, Bethesda, MD 20892, (301) 594–7315.

Name of SEP: Clinical Sciences.

Date: December 6, 1994.

Time: 2:00 p.m.

Place: NIH, Westwood Building, Room 220, Telephone Conference.

Contact Person: Dr. Daniel McDonald, Scientific Review Admin., 5333 Westbard Ave., Room 220, Bethesda, MD 20892, (301) 594–7301.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 6, 1994.

Time: 1:00 p.m.

Place: NIH, Westwood Building, Room A23, Telephone Conference.

Contact Person: Dr. Anita Weinblatt, Scientific Review Admin., 5333 Westbard Ave., Room A23, Bethesda, MD 20892, (301) 594–7175.

Name of SEP: Microbiological and Immunological Sciences.

Date: December 8, 1994.

Time: 2:00 p.m.

Place: NIH, Westwood Building, Room A23, Telephone Conference.

Contact Person: Dr. Anita Weinblatt, Scientific Review Administrator, 5333 Westbard Ave., Room A23, Bethesda, MD 20892, (301) 594–7175.

Name of SEP: Clinical Sciences.

Date: December 8, 1994.

Time: 11:00 a.m.

Place: NIH, Westwood Building, Room 353, Telephone Conference.

Contact Person: Dr. Anthony Chung, Scientific Review Administrator, 5333 Westbard Ave., Room 353, Bethesda, MD 20892, (301) 594–7338.

The meetings will be closed in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty

of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 7, 1994.

Margery G. Grubb,

Senior Committee Management Specialist, NIH.

[FR Doc. 94–28098 Filed 11–14–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–94–3835]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority. Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 8, 1994.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Proposal: Request for Preliminary Determination of Eligibility as Nonprofit Sponsor and/or Mortgagor

Office: Housing

Description of the Need for the Information and its Proposed Use: Form HUD–3433 identifies the nonprofit qualifications to successfully sponsor a multifamily housing project. Forms HUD–3434 and 3435 identify the nonprofit motivation for sponsoring the project and relationships that exists between the officers, directors and other development team members. Outstanding regulations prohibit nonprofits from being controlled or under the direction of firms seeking to derive a profit or gain.

Form Number: HUD–3433, HUD–3434, and HUD–3435

Respondents: Businesses or Other For-Profit and Non-Profit Institutions

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–3433	30		1		.75		22.50
HUD–3434	30		1		.50		15
HUD–3435	210		1		.25		52.50

Total Estimated Burden Hours: 90

Status: Extension, no changes

Contact: Richard S. Fitzgerald, HUD, (202) 708–0283, Joseph F. Lackey, Jr., OMB, (202) 395–7316

Dated: November 8, 1994.

Proposal: Pet Ownership in Assisted Rental Housing for the Elderly or Handicapped (FR–1936)

Office: Public and Indian Housing

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies (PHAs) are required to give written notices to elderly or handicapped applicants that pets are permitted, working animals excluded from regulation requirements. A copy of pet rules and a written notice must be given to each applicant when offered a unit. Leases that prohibit pets may be amended upon a tenant's request.

Form Number: None

Respondents: State or Local Governments

Frequency of Submission: On Occasion

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	3,000		10		.00833		250

Total Estimated Burden Hours: 250
Status: Reinstatement, no changes
Contact: Edward C. Whipple, HUD, (202) 708–0744, Joseph F. Lackey, Jr., OMB, (202) 395–7316

Dated November 8, 1994.

Proposal: Comprehensive Needs Assessment (CNA)
Office: Housing
Description of the Need for the Information and its Proposed Use: The Comprehensive Needs Assessment (CNA) describes current and future financial resources and needs of certain multifamily projects that will include a thorough and detailed inspection of the project. Also, the CNA includes a description of modernization needs and activities, a description of supportive services needed and supportive services provided, and a description of any personnel needs of the project. The information will be used to make annual reports to Congress when formulating the annual budget.
Form Number: HUD–96001, 96002, and 96003
Respondents: Individuals or Households, Businesses or Other For-Profit and Small Businesses or Organizations
Frequency of Submission: Annually
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Tenants	25,000		1		.25		6,250
Owners	1,200		1		43.50		52,200

Total Estimated Burden Hours: 58,450
Status: New
Contact: Barbara D. Hunter, HUD, (202) 708–3944, Joseph F. Lackey, Jr., OMB, (202) 395–7316

Dated: November 8, 1994.

[FR Doc. 94–28153 Filed 11–14–94; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Availability of the Record of Decision for the Proposed Institute of Marine Science Infrastructure Improvement Project Located in Seward, AK

AGENCY: Office of the Secretary, Interior (DOI).

ACTION: Notice of availability of the Record of Decision for the Proposed Institute of Marine Science Infrastructure Improvement Project in Seward, Alaska.

SUMMARY: The DOI, as lead Federal Agency on behalf of the Exxon Valdez Oil Spill (EVOS) Trustee Council, announces the availability of the Record of Decision (ROD) for the Proposed Institute of Marine Science (IMS) Infrastructure Improvement Project in Seward, Alaska. The proposed project is intended to enhance the Trustee Council's capabilities to study marine mammals, marine birds, and the ecosystem injured by the EVOS. Further, the improvements are intended to help focus and carry out a long-term research and monitoring program for the EVOS area as part of an overall restoration plan.

The DOI, as lead Federal Agency on behalf of the EVOS Trustee Council, published a **Federal Register** Notice of Intent to prepare an environmental impact statement (EIS) for the proposed project on March 9, 1994 (59 FR 11082–1183). Pursuant to the National Environmental Policy Act of 1969, DOI prepared a draft and final EIS on the proposed project. The final EIS describes three alternatives, including the proposed action; presents the major issues associated with the proposed action and its alternatives as identified through the public scoping process; examines the environmental consequences of each alternative; presents measures to avoid or minimize adverse environmental effects; and presents and responds to comments made during the public review of the draft EIS.

The ROD documents DOI's decision regarding the environmental aspects of the proposed project, based on information, analysis and public comments in the final EIS. The ROD was approved by DOI and concurred in by the U.S. Department of Agriculture and the National Oceanic and Atmospheric Administration on October 31, 1994.

ADDRESSES: Single copies of the ROD can be obtained from the Oil Spill Public Information Center, 645 G Street, Anchorage, Alaska 99501. Telephone Numbers: (907) 278–8008, (800) 478–7745 (within Alaska), or (800) 283–7745 (outside Alaska). Copies of the ROD have been sent to public libraries in Seward, Homer, Kodiak, Valdez, Cordova, Kenai, Anchorage, Fairbanks, and Juneau, among others, as well as the DOI Library in Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Nancy K. Swanton, DOI Project Manager, 949 East 36th Avenue, Anchorage, Alaska 99508–4302. Telephone Numbers: (907) 271–6622 (voice) or (907) 271–6507 (fax).

Dated: November 7, 1994.

George T. Frampton, Jr.,

Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior.

[FR Doc. 94–28078 Filed 11–14–94; 8:45 am]
BILLING CODE 4310–MR–M

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for a Permit To Allow Incidental Take of the Threatened Northern Spotted Owl and Marbled Murrelet by Coast Range Conifers, Yachats, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that Coast Range Conifers (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application has been assigned permit number PRT–791930. The requested permit would authorize the incidental take of the threatened northern spotted owl (*Strix occidentalis caurina*) and marbled murrelet (*Brachyramphus marmoratus*) near Yachats, Lincoln County, Oregon. The proposed incidental take would occur as a result of timber harvest activities in northern spotted owl and marbled murrelet habitat.

The Service also announces the availability of an Environmental Assessment (EA) for the proposed issuance of the incidental take permit. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the permit application and EA should be received on or before December 15, 1994.

ADDRESSES: Comments regarding the application or EA should be addressed to Mr. Curt Smitch, Supervisor, U.S. Fish and Wildlife Service, Pacific Northwest Habitat Conservation Plan Program, 3773 Martin Way East, Building C, Suite 101, Olympia, Washington 98501. Please refer to permit No. PRT–791930 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Burns, U.S. Fish and Wildlife Service, Portland Field Office, 2600 S.E. 98th Ave., Suite 100, Portland, Oregon 97266 (503–231–6179). Individuals wishing copies of the application or EA for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act and its implementing regulations, "taking" of the northern spotted owl or marbled murrelet, both threatened species, is prohibited. However, the Service, under limited circumstances, may issue permits to take threatened wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are in 50 CFR 17.32.

The Applicant proposes to implement a Habitat Conservation Plan (HCP) on 155 acres of their land for the spotted owl and marbled murrelet that will allow loss of 60 acres of owl and murrelet habitat as a result of commercial timber harvest near Yachats, Oregon. The Applicant's proposed timber harvest may result in the take, as defined in the Act and its implementing regulations, of any owls and/or murrelets in the harvest area. The permit would be in effect for 5 years. The application includes an HCP and Implementation Agreement.

The Applicant proposes to mitigate for the incidental take by selling 49 acres of the highest quality spotted owl and murrelet habitat to the U.S. Forest Service (USFS). The USFS would protect and manage the 49 acres as a late successional reserve for spotted owl and murrelet habitat as long as required under provisions of the Act. The Applicant will minimize take by conducting spotted owl and murrelet surveys prior to any timber harvest on the 60-acre tract during the owl or murrelet nesting season, March 1 through September 15. Timber harvest activities will not be conducted during the spotted owl or murrelet nesting season if owl nesting occurs within 0.25 miles of the harvest area, or if the stand to be harvested is determined to be occupied by murrelets. Oregon Department of Forestry requirements for retention of green legacy trees, snags and woody debris, and riparian buffers will be met.

The EA considers the environmental consequences of four alternatives, including the proposed action and no-action alternatives. The proposed action is the issuance of a permit under section 10(a) of the Act that would authorize incidental take of spotted owls and marbled murrelets during the Applicant's harvest of 60 acres of owl and murrelet habitat, and require implementation of the Habitat Conservation Plan. Under the no-action alternative, the proposed timber harvest would not occur and the permit would not be issued. The third alternative is to exchange or sell the entire 155-acre tract to the USFS which would involve the transfer of USFS lands for harvest, or increase the cost to protect the site. The fourth alternative is for the Applicant to harvest the 109 acres of mature forest located on the property, while observing Oregon Department of Forestry regulations.

Dated: November 8, 1994.

Thomas Dwyer,

Deputy Regional Director, Region 1, Portland, OR.

[FR Doc. 94–28108 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–55–P

Notice to Withdraw the Proposal To Establish the New Madrid National Wildlife Refuge Located in New Madrid County, Missouri

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) is withdrawing its proposal to establish the New Madrid National Wildlife Refuge in New Madrid County in southeastern Missouri. The proposed refuge would have been superimposed on portions of two drainage districts in the Mississippi River Floodplain: The St. Johns Levee and Drainage District and the St. Johns Bayou Basin Drainage District (Districts). The Districts opposed refuge establishment without Congressionally ratified assurances to protect and support their ongoing operations and future development plans. The Service has decided it cannot provide or support the required assurances; therefore, is withdrawing the proposal to establish the refuge.

This notice further advises the public that the Service will not continue the National Environmental Policy Act process it initiated August 22, 1990, nor finalize the Draft Environmental Impact Statement dated January 29, 1993.

DATES: This action will become effective November 30, 1994. Although a public comment period is not required, the Service will accept comments on this action during this fifteen day period.

ADDRESSES: Written comments should be mailed to Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Sue Haseltine, Assistant Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, telephone (612) 725–3507.

SUPPLEMENTARY INFORMATION: On August 22, 1993, the Service published in the **Federal Register** a Notice of Intent to prepare an Environmental Impact Statement for the creation of the New Madrid National Wildlife Refuge. Subsequently, a Draft Environmental Impact Statement was prepared and released for public review and comment on January 29, 1993. A public meeting was held April 1, 1993, and comments were accepted through April 26, 1993. The number of written comments supporting and opposing the proposal were nearly equal. The Service tried to reconcile the opposition of the Local Drainage Districts by drafting a cooperative agreement that accommodated their concerns about loss of tax levels and assured freedom to operate, maintain, and further develop their facilities. The Districts' development plans include a project authorized by the Water Resources Department Act of 1986 that also includes closure (Authorized by the 1954 Flood Control Act) of a 1,500-foot opening in an existing Mississippi River levee. Because of the complexities created in trying to make the proposed refuge compatible with the operations of the Districts the Service is withdrawing its proposal to establish the refuge.

The Service remains committed to initiating a major habitat preservation and restoration effort in the Missouri Bootheel in support of the North American Waterfowl Management Plan. In coordination with the Missouri Department of Conservation, the Service intends soon to identify other suitable habitat areas in the Bootheel as possible national wildlife refuge sites. Subsequently, the planning for refuge

establishment at such sites would proceed in accordance with the National Environmental Policy Act of 1969.

Sam Marler,

Regional Director, Region 3, Twin Cities, MN.

[FR Doc. 94–27962 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 5, 1994. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by November 30, 1994.

Carol D. Shull,

Chief of Registration, National Register.

Arkansas

Jefferson County

Bellingrath House, 7520 Dollarway Rd., White Hall, 9400–1410

Johnson County

Harmony Presbyterian Church, AR 103, N side, approximately 8 mi. N of Clarksville, Harmony, 9400–1411

Pennington House, 317 Johnson St., Clarksville, 9400–1416

Newton County

Newton County Courthouse, Courthouse Sq., Jasper, 9400–1412

Newton County Jail, Jct. of Spring and Elm Sts., Jasper, 9400–1414

Pope County

Norristown Cemetery, Off AR 78 on Lock and Dam Rd., Russelville vicinity, 9400–1415

Sebastian County

Sebastian County Jail, Old, AR 10, E of County Courthouse, Greenwood, 9400–1413

Sevier County

First Presbyterian Church, Jct. of Vandervoort and N. Fifth Sts., SW corner, DeQueen, 9400–1419

California

Riverside County

March Field Historic District, Eschscholtzia Ave., March Air Force Base, Riverside Vicinity, 9400–1420

Connecticut

Litchfield County

Mount Riga Ironworks Site, Address Restricted, Salisbury vicinity, 9400–11417

District of Columbia

District of Columbia State Equivalent

Brownley Confectionary Building, 1309 F St., NW., Washington, 9400–1408

Germuiller Row, 748 3rd St. and 300–302 H St., NW., Washington, 9400–1406

Harris & Ewing Photographic Studio, 1311–1313 F St., NW., Washington, 9400–1407

Kansas

Decatur County

First National Bank of Oberlin, 187 S. Penn, Oberlin, 9400–1418

MARYLAND

Baltimore Independent City

Building at 409 West Baltimore Street (Cast Iron Architecture of Baltimore MPS), 409 W. Baltimore St., Baltimore (Independent City), 9400–1395

Knipp, George & Brother Building (Cast Iron Architecture of Baltimore MPS), 121 N. Howard St., Baltimore (Independent City), 9400–1394

MINNESOTA

Stearns County

Arnold, Francis, House, 32268 Co. Rd. 1, LeSauk Township, St. Cloud vicinity, 9400–1409

MISSOURI

Butler County

Butler County Courthouse (Poplar Bluff MPS), Public Sq., Poplar Bluff, 9400–1400

Moore—Dalton House (Poplar Bluff MPS), 421 N. Main St., Poplar Bluff, 9400–1398

Poplar Bluff Commercial Historic District (Poplar Bluff MPS), Roughly, S. Broadway from Cedar St. to Vine St. and Vine from Fifth St. to S. Broadway, Poplar Bluff, 9400–1401

Poplar Bluff Public Library (Poplar Bluff MPS), 318 N. Main St., Poplar Bluff, 9400–1399

St. Louis, Iron Mountain and Southern Railroad Depot (Poplar Bluff MPS), 400 S. Main St., Poplar Bluff, 9400–1397

St. Louis—San Francisco Railroad Depot (Poplar Bluff MPS), 303 Moran St., Poplar Bluff, 9400–1396

Zehe Building (Poplar Bluff MPS), 203 Poplar St., Poplar Bluff, 9400–1402

NEVADA

Douglas County

Jensen, Arendt, Jr., House, 1243 A and 1243 B Eddie St., Gardnerville, 9400–1405

White Pine County

American Legion Hall, 24 Fourth St., McGill, 9400–1404

NEW MEXICO

Quay County

Arch Hurley Conservancy District Office Building, 101 E. High St., Tucumcari, 9400–1403

[FR Doc. 94–28112 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–70–M

Revision of National Environmental Policy Act Procedures, Request for Comments; Extension of Time

The National Park Service announced its intent to revise its procedures on implementing the National Environmental Policy Act on August 23, 1994 (59 FR 43355). At that time a request was made for public and agency suggestions for improvement of the existing guidance. This notice extends the comment and suggestion period to November 30, 1994.

ADDRESSES: Comments or suggestions for improvements to the process should be sent to: National Park Service, Environmental Quality Division (774), P.O. Box 37127, Washington, D.C. 20013–7127.

FOR FURTHER INFORMATION CONTACT: Jacob J. Hoogland, Chief, Environmental Quality Division, National Park Service, Room 1210, 1849 C Street, N.W., Washington, D.C. 20240. Telephone (202) 208–5214.

Dated: November 4, 1994.

Denis P. Galvin,

Associate Director, Planning and Development.

[FR Doc. 94–28073 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–70–P

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0047), Washington, DC 20503, telephone 202–395–7340.

Title: Permanent Program Performance Standards—Surface Mining Activities, 30 CFR Part 816

OMB approval number: 1029–0047

Abstract: Section 525 of the Surface Mining Control Reclamation Act of 1977 provides that permittees conducting surface coal mining operations shall meet all applicable performance standards of the Act. The

information collected is used by the regulatory authority in monitoring and inspecting surface coal mining activities to ensure that they are conducted in compliance with the requirements of the Act.

Bureau form number: None
Frequency: On occasion, quarterly, and annually
Description of respondents: Surface coal mining operators
Estimated completion time: 1 hour
Annual responses: 1,104,522
Annual burden hours: 867,886
Bureau clearance officer: John A. Trelease, 202–343–1475

Dated: September 27, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–28086 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–05–M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau Clearance Officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0048), Washington, D.C. 20503, telephone 202–395–7340.

Title: Permanent Program Performance Standards—Underground Mining Activities, 30 CFR Part 817
OMB approval number: 1029–0048
Abstract: Section 515 of the Surface Mining Control and Reclamation Act of 1977 provides that permittees conducting underground coal mining operations shall meet all applicable performance standards of the Act. The information collected is used by the regulatory authority in monitoring and inspecting underground coal mining activities to ensure that they are conducted in compliance with the requirements of the Act
Bureau form number: None
Frequency: On occasion, quarterly, and annually
Description of respondents: Underground Coal Mining Operators
Estimated completion time: 4 hours
Annual responses: 75,120
Annual burden hours: 301,025
Bureau clearance officer: John A. Trelease, (202) 343–1475

Dated: September 27, 1994.

Andrew F. DeVito,

Chief, Branch of Environmental and Economic Analysis.

[FR Doc. 94–28087 Filed 11–14–94; 8:45 am]

BILLING CODE 4310–05–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32593]

The Atchison, Topeka & Santa Fe Railway Co.; Rio Grande, El Paso and Santa Fe Railroad Co.; Oklahoma City Junction Railway Co.; The Gulf & Inter-State Railway Co. of Texas; and Los Angeles Junction Railway Co.—Corporate Family Reorganization Exemption

The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), and four of its subsidiaries: Rio Grande, El Paso and Santa Fe Railroad Company (RES); Oklahoma City Junction Railway Company (OCJ); The Gulf and Inter-State Railway Company of Texas (GIS); and Los Angeles Junction Railway Company (LAJ) (collectively, Subsidiaries), have jointly filed a notice of exemption to undertake a corporate family reorganization.[1]

The proposed transaction involves Santa Fe purchasing from each of its four Subsidiaries all of the real estate and improvements now owned by the Subsidiaries. Each of these Subsidiaries will convey these assets to Santa Fe by means of a deed (a quitclaim deed for each of the Subsidiaries except LAJ, which will convey these assets by grant deed). In return, Santa Fe will pay to each of the Subsidiaries the fair market value of the real estate and improvements to be purchased, as determined by an independent appraisal that has been conducted by Price Waterhouse LLP.

Following the sales, rail operations conducted by each of the Subsidiaries will be conducted without change. Both before and after the sales, Santa Fe does and will conduct all rail operations on RES, OCJ, and GIS. Both before and after the sales, LAJ does and will conduct all rail operations on LAJ. Also as part of this reorganization Santa Fe will lease back to LAJ, for a period of 99 years (renewable by notice from LAJ), all of the real estate and improvements which it will acquire from LAJ, with the result that LAJ will remain the sole party responsible for all rail operations and maintenance, and all rail common carrier and switching activities that are now conducted by LAJ, on the same terms and conditions as LAJ conducts such activities now. This will include LAJ continuing to provide non-discriminatory switching and connecting rail service to Santa Fe, Union Pacific Railroad Company and Southern Pacific Transportation Company.

The parties state that they intended to consummate the transactions on or after October 10, 1994.

These transactions are within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties say that the transactions will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the Santa Fe corporate family. The stated purpose of the reorganization is to concentrate Santa Fe's railroad real estate holdings in a single corporation and to save administrative expenses and improve its after-tax income.

As a condition to use of this exemption, any employees adversely affected by the transactions will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transactions. Pleadings must be filed with the Commission and served on: Dennis W. Wilson, The Atchison, Topeka and Santa Fe Railway Company, 1700 E. Golf Road, Schaumburg, IL 60173.

Decided: November 3, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–28127 Filed 11–14–94; 8:45 am]

BILLING CODE 7035–01–P

[1] We note that Santa Fe is an applicant in the control and merger application filed in Finance Docket No. 32549. Under 49 CFR 1180.4(c)(2)(vi), any proceeding directly related to an application in a major transaction must be filed concurrently with the primary application. This notice was filed 10 days before the merger application in Finance Docket No. 32549 and appears not directly related to that application. Comments by Santa Fe or others regarding the relationship, if any, between this corporate family reorganization and the proposed merger in Finance Docket No. 32549 are invited.

[Docket No. 40774]

American Rail Heritage, Ltd., D/B/A Crab Orchard & Egyptian Railroad, Transportation Concepts, Inc., and The Grafton & Upton Railroad Company v. CSX Transportation, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Request for comments from interested persons.

SUMMARY: By a separate decision in this docket, the Commission is reopening the record to request comments from interested persons concerning the issues raised in this complaint. The decision can be obtained as described below.

DATES: Any person interested in participating in this proceeding as a party of record by filing and receiving written comments must file a notice of intent to do so by November 25, 1994. We will issue a service list of the parties of record shortly thereafter. Initial written comments must be filed within 30 days after service of the service list. Reply comments must be filed within 50 days of service of the service list. The exact filing dates will be specified in the notice accompanying the service list. Comments must be served upon all other parties of record.

ADDRESSES: Send notices of intent and an original and 10 copies of pleadings referring to Docket No. 40774 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423.

FOR ADDITIONAL INFORMATION CONTACT: Beryl Gordon, (202) 927–5312. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: A major issue in this case is whether the exemption for transportation of trailers or containers on flatcars (TOFC/COFC) should be revoked concerning the interchange of trailers between CSX Transportation, Inc. and two class III railroads, Crab Orchard & Egyptian Railroad and The Grafton & Upton Railroad Company.

Additional information about this proceeding and the information now requested by the Commission are available in the Commission's decision served on November 14, 1994. For a copy of this decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Room 2229, Washington, D.C. 20423. Telephone (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

This request for comments will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 5 U.S.C. 553.

Dated: November 2, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmmons and Morgan. Vice Chairman Phillips recused herself in this proceeding.

Vernon A. Williams,

Secretary.

[FR Doc. 94–28128 Filed 11–14–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32590]

Fort Worth & Western Railroad Company—Trackage Rights Exemption—Fort Worth and Dallas Belt Railroad Company

Fort Worth & Western Railroad Company (FWWR) has filed a verified notice under 49 CFR 1180.2(d)(7) to acquire non-exclusive overhead and local trackage rights over two connecting segments of rail line in Tarrant County, TX, totaling about 1.97 miles. The segment between mileposts 632.27 and 632.68 is owned by Fort Worth and Dallas Belt Railroad Company (FW&DB); FW&DB leases the segment between mileposts 632.68 and 634.246. The parties expect to consummate the transaction on or soon after its November 1, 1994, effective date.

As a condition to this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to reopen will not stay the exemption's effectiveness. An original and 10 copies of all pleadings, referring to Finance Docket No. 32590, must be filed with the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, a copy of each pleading must be served on Kevin M. Sheys, OPPENHEIMER WOLFF & DONNELLY, 1020 Nineteenth Street N.W., Suite 400, Washington, DC 20036.

Decided: November 4, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94–28129 Filed 11–14–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32173 et al.]

Orange County Transportation Authority/Riverside County Transportation Commission/San Bernardino Associated Governments/San Diego Metropolitan Transit Development Board/North San Diego County Transit Development Board—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Petition for exemption and other relief.

SUMMARY: We are seeking public comments on a petition filed by commuter transportation agencies in the Los Angeles, CA, area. The agencies request a blanket exemption from 49 U.S.C. Subtitle IV (Subtitle IV) concerning their operation of properties acquired from The Atchison, Topeka and Santa Fe Railway Company (Santa Fe). The agencies also request that we clarify a prior decision by finding that the operation of a line acquired from the Southern Pacific Transportation Company (Southern Pacific) by one of the agencies has already received a blanket exemption from Subtitle IV. Finally, the petition requests that we establish procedures for their use in implementing actions taken under the authority of exemptions from Subtitle IV. For the details, see the Supplementary Information below.

DATES: Statements are due by December 15, 1994.

ADDRESSES: Send an original and 10 copies of pleadings referring to Finance Docket No. 32173 et al. to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, D.C. 20423. A copy of each pleading should also be sent to the commuter transportation agencies' representative: Charles A. Spitulnik, Hopkins & Sutter, 888 16th Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Certain transportation agencies in the area of Los Angeles, CA, have been seeking to

acquire right-of-way from freight railroads for the provision of commuter service. On October 16, 1992, in Finance Docket No. 32173, five county transportation agencies in the Los Angeles area (County Agencies) [1] jointly filed a notice invoking our class exemption to allow their acquisition of certain railroad lines from Santa Fe. The lines acquired from Santa Fe through Finance Docket No. 32173 are identified in the Appendix, below. In *Los Angeles County Transportation Commission—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32172 (ICC served Dec. 2, 1992), the Commission exempted other conveyances from Santa Fe to the Los Angeles County Transportation Commission (LACTC).[2] The lines acquired from Santa Fe through Finance Docket No. 32172 are also identified in the Appendix, below.

The extent of our jurisdiction over the agencies' acquisition and operation of lines from freight railroads has been the subject of several proceedings before this agency. In *Orange County Transportation Authority, et al.—Acquisition Exemption—The Atchison, Topeka and Santa Fe Railway Company*, 10 I.C.C.2d 78 (1994) (*Orange County*), we upheld our jurisdiction over the acquisitions from Santa Fe involved in Finance Docket Nos. 32173 and 32172. Because we upheld our jurisdiction over the acquisitions, we denied the agencies' request that we vacate the exemptions involved in those proceedings, exemptions that they requested solely as a protective device to legalize the acquisitions in the event that we affirmed our jurisdiction over them.

In their petition filed July 15, 1994, the five County Agencies and the Los Angeles County Metropolitan Transportation Authority (jointly, the Transit Agencies) request a blanket exemption from Subtitle IV for all of the Santa Fe properties whose acquisition was exempted in Finance Docket Nos. 32173 and 32172. The Transit Agencies seek this exemption to be free of the obligation to provide freight service and other regulatory requirements that accompany the acquisition of active lines from freight railroads. The requested exemption would, for example, allow the Transit Agencies to abandon or to discontinue freight service over the lines that were acquired without seeking our prior approval. We seek comments on this request.

In *Orange County*, one of five County Agencies, the San Bernardino Associated Governments (SANBAG), received a blanket exemption from Subtitle IV for its acquisition and operation of a single line from Southern Pacific, the Baldwin Park Line. In their petition filed July 15, 1994, the Transit Agencies argue that our decision in *Orange County* must be interpreted as also granting a blanket exemption from Subtitle IV for a second acquisition, *i.e.*, the Orange County Transportation Authority's acquisition of the West Santa Ana Branch.[3] The Transit Agencies request that we clarify our decision in *Orange County* to this effect. We seek comments on this request.

Finally, the Transit Agencies request that we establish procedures for the implementation of actions taken under the authority of blanket exemptions from Subtitle IV. Such an action could include, for example, abandonment of freight service over the line. As noted, one county agency, SANBAG, has already received such an exemption concerning its acquisition and operation of one line, the Baldwin Park Line, and similar exemptions may be granted for other lines as a result of this petition. The Transit Agencies request (Petition, p. 12) that, in the event that they invoke the exemption and seek to abandon lines covered by it, they be required only to file a notice identifying the line segment involved, the action to be taken and the applicable labor protection arrangement (if any is required) and incorporating by reference the environmental and historic reports filed by the railroad that has sought to discontinue providing freight service over the line. We seek comments on this proposed procedure.

On August 25, 1994, a group of railroad unions (the Unions) filed a reply in opposition to the Transit Agencies' petition filed on July 15, 1994. In their reply, the Unions argue that: (1) We lack the authority to grant blanket exemptions from Subtitle IV; (2) even if we were to assert jurisdiction to grant blanket exemptions from Subtitle IV, the Transit Agencies have not satisfied the requirements of 49 U.S.C. 10505(a) for granting such an exemption; (3) we should not grant the requested clarification of *Orange County* on the grounds (a) that *Orange County* clearly did not exempt any properties from Subtitle IV and (b) that decision is administratively final; and (4) in view of their contention that we lack authority to grant blanket exemptions from Subtitle IV, we need not adopt procedures for implementing such exemptions. According to the Unions, any subsequent transactions are subject to regulation, and procedures are already in place to process regulated transactions. We also seek comments on the arguments raised by the Unions. The Unions may supplement their earlier comments.

This request for comments will not significantly affect the quality of the human environment or the conservation of energy resources.

Authority: 5 U.S.C. 553.

Decided: October 31, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons, Morgan, and Owen. Vice Chairman Phillips recused herself in this proceeding.

Vernon A. Williams,

Secretary.

Appendix—Santa Fe Trackage Proposed for Blanket Subtitle IV Exemption

I. Lines Acquired Through Finance Docket No. 32173

1. Pasadena Subdivision between milepost 82.62 and milepost 140.05 at Mission Tower;

2. San Diego Subdivision between milepost 267.70 in San Diego and milepost 165.55 at Fullerton, including the Fallbrook Yard but excluding interchange tracks at Anaheim and Santa Ana and the Tustin Spur Track;

3. Olive Subdivision from milepost .14 at Atwood to milepost 5.37 at Olive Junction;

4. Escondido Subdivision between milepost .10 at Escondido Junction and milepost 21.31 in Escondido;

5. San Jacinto Subdivision between milepost .30 at Highgrove and milepost 38.33 at San Jacinto; and

6. Redlands Subdivision between milepost .12 at San Bernardino and milepost 13.40 at or near Mentone.

These mileposts reflect the County Agencies' corrections to their prior statement of them brought to our attention by a letter filed May 26, 1994 (*compare Orange County*, 10 I.C.C.2d at 80 n.4).

II. Lines Acquired Through Finance Docket No. 32172

1. Pasadena Subdivision between milepost 104.2 and milepost 140.05 at Mission tower in Los Angeles County;

2. San Bernardino Subdivision between milepost 140.05 at Mission Tower and milepost 143.19 in Los Angeles County; and

3. Harbor Subdivision between milepost 0.05 at Redondo Junction and milepost 26.36 near Watson, but excluding Van Ness Yard.

[1] The agencies are: Orange County Transportation Authority; Riverside County Transportation Commission; San Bernardino Associated Governments; San Diego Metropolitan Transit Development Board; and North San Diego County Transit Development Board.

[2] On April 1, 1993, LACTC merged with the Southern California Rapid Transit District to form a new entity, the Los Angeles County Metropolitan Transportation Authority (LACMTA).

[3] In particular, a portion of the West Santa Ana Branch at milepost 495.14 near Paramount to approximately milepost 507.84, the centerline of Beach Boulevard near Stanton.

Malabar Yard, and El Segundo Yard, all in Los Angeles County.

[FR Doc. 94–28130 Filed 11–14–94; 8:45 am]
BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 27, 1994, Norac Company Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substances Tetrahydrocannabinols (7370).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

The firm plans to manufacture medication for the treatment of AIDS wasting syndrome and as an antiemetic.

Any such comments objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 15, 1994.

Dated: November 4, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–28082 Filed 11–14–94; 8:45 am]
BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 25, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 25, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 31st day of October, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services Office of Trade, Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Abbott & Company (Co)	Prospect, OH	10/31/94	10/19/94	30,441	Control Enclosure Assemblies.
Abbott & Company (Co)	Marion, OH	10/31/94	10/19/94	30,442	Electrial Wiring Harnesses.
Shimazaki Corp (Wkrs)	Port Neward, NJ	10/31/94	10/03/94	30,443	Ship Imported Automobiles to Dealers.
Martin Marietta Aerospace (IAMAW)	Utica, NY	10/31/94	10/04/94	30,444	Assemble and Repair of Circuit Boards.
Mercersburg Tanning Co (Wkrs)	Mercersburg, PA	10/31/94	10/20/94	30,445	Boot & Shoe Leather.
Machine Technology Inc (Wkrs)	Parsippany, NJ	10/31/94	09/26/94	30,446	Automated Processing Equipment.
Fashion Tanning Co., Inc (ACTWU)	Gloversville, NY	10/31/94	08/19/94	30,447	Leathers.
Alkon Corp (Wkrs)	Pine Brook, NJ	10/31/94	10/14/94	30,448	Pneumatic & Hydraulic Valves & Fittings.
Youngstown Welding & Engineering (USWA).	Youngstown, OH	10/31/94	09/25/94	30,449	Steel Fabrication & Tubing.
Roxanne Swimsuit Co., Inc (ILGWU)	Corona, NY	10/31/94	10/21/94	30,450	Ladies; Swimsuits.
Robert Shaw Control Co (Wkrs)	El Paso, TX	10/31/94	10/19/94	30,451	Gas Control Valves.
Fulton & Lighty Inc (Co)	Hayden Lake, ID	10/31/94	10/25/94	30,452	Pressure Preserving of Wood.
Omni/Leisure Design (Wkrs)	Medley, FL	10/31/94	10/19/94	30,453	Cushions.
Most Manufacturing, Inc (Wkrs)	Colorado Springs, CO.	10/31/94	10/21/94	30,454	Optical Disk Drive Components
Marathon Oil Co (Wkrs)	Robinson, IL	10/31/94	10/18/94	30,455	Oil and Greases.
Gates Aerospace Batteries (Wkrs)	Gainesville, FL	10/31/94	10/20/94	30,456	Rechargeable Battery Cells.
IdaPine Mill (Wkrs)	Grangerville, ID	10/31/94	10/19/94	30,457	Dimension Lumber.
Allied Split Corp (ACTWU)	Johnstown, NY	10/31/94	10/24/94	30,458	Leather Accessory Items.
Borg Textile Corp (ILGWU)	Rossville, GA	10/31/94	10/19/94	30,459	High Pile Fabrics.
Bollman Hat Co (Wkrs)	Adamstown, PA	10/31/94	10/13/94	30,460	Ladies' & Men's Felt Cloth & Fur Hats.
Ball Glass Container Corp (Wkrs)	Okmulgee, OK	10/31/94	10/27/94	30,461	Glass Containers.

[FR Doc. 94–28179 Filed 11–14–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,775]

Airfoil Textron, Fostoria, Ohio; Negative Determination Regarding Application for Reconsideration

By an application dated September 7, 1994, after having been granted a filing extension, the company requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on July 21, 1994 and published in the **Federal Register** on August 8, 1994 (59 FR 40370).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of Trade Act was not met.

The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department's survey revealed that none of the respondents increased their purchases of imports while decreasing their purchases from Airfoil Textron during the relevant period.

Local #1246 of the United Auto Workers and a company official claim that one of Airfoil Textron's domestic customers of vanes reduced their purchases from Fostoria and gave the order to an Israeli firm.

A review of the investigation file shows that the Fostoria workers were certified earlier under TA–W–24,990 because Airfoil Textron lost a bid for P.W. 4000 vanes to an Israeli firm which submitted a lower bid. The Fostoria workers were certified through December 18, 1992 under TA–W–24,990.

The findings also show that the P.W. 4000 vanes which are used on commercial aircraft accounted for about 10 percent of Fostoria's sales in 1992. There was no production of the P.W. 4000 vanes in 1993. These findings would not provide a basis for a worker group certification.

Industry sources indicates that recent deferrals and cancellations of aircraft orders by the domestic airlines in 1993 and 1994 affected engine and engine parts orders for those aircraft.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 2nd day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–28177 Filed 11–14–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–30,230]

Ansewn Shoe Co., Bangor, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification of Eligibility to Apply for Worker Adjustment Assistance on October 27, 1994. The Notice will soon be published in the **Federal Register.**

The Department, on its own motion, is deleting the impact date of August 5, 1993 and inserting a new impact date of May 15, 1994 in order to avoid a coverage overlap for the same group of workers at Ansewn Shoe Company in Bangor, Maine who were previously covered under certification TA–W–27,026.

The amended notice for TA–W–30,230 is issued as follows: "All workers of Ansewn Shoe Company, Bangor, Maine engaged in employment related to the production of handsewn leather footwear who became totally or partially separated from employment on or after May 15, 1994 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 3rd day of November, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–28176 Filed 11–14–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29, 723]

British Gas Exploration & Production, Houston, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at British Gas Exploration & Production, Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–29, 723; British Gas Exploration & Production Houston, Texas (October 31, 1994)

Signed at Washington, DC, this 7th day of November, 1994.

Victor J. Trunzo,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–28172 Filed 11–14–94; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–30,286]

Dana Corp. Colorado Piston Plant, Pueblo, Colorado; Revised Determination on Reconsideration

On October 27, 1994, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice will soon be published in the **Federal Register.**

Investigation findings show that sales and production of aluminum pistons decreased in the first four months of 1994 compared to the same period in 1993.

New findings on reconsideration show substantial worker separations in 1994. Other findings on reconsideration show the first shipment of imported aluminum pistons occurred in October 1994.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers and former workers of Dana Corporation in Pueblo, Colorado were adversely affected by increased imports of articles like or directly competitive with aluminum pistons produced at Dana Corporation in Pueblo, Colorado.

All workers of Dana Corporation, Colorado Piston Plant, Pueblo, Colorado who became totally or partially separated from employment on or after

August 24, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance

[FR Doc. 94–28182 Filed 11–14–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,857; TA–W–29,857A]

The Harwood Companies, Inc., Marion, Virginia and The Harwood Companies, New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 24, 1994, applicable to all workers of the subject firm. The certification notice was published in the **Federal Register** on July 19, 1994 (59 FR 36793). The certification was amended on July 7, 1994 to change an overlap in certification.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The findings show that the New York, New York headquarters experienced a reduced demand for their services resulting in worker separations in 1994. The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification to include the New York, New York headquarters.

The amended notice applicable to TA–W–29,857 is hereby issued as follows:

All workers of The Harwood Companies, Inc., Marion, Virginia and New York, New York engaged in employment related to the production of activewear underwear, robes and sleepwear who became totally or partially separated from employment on or after February 20, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of October 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–28183 Filed 11–14–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,409]

Imerman, Inc., New York, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 17, 1994 in response to a worker petition which was filed on behalf of workers at Imerman, Incorporated, New York, New York.

All workers of the subject firm are covered under amended certification (TA–W–29,959A). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 4th day of November, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–28173 Filed 11–14–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,207]

Reserve Oil Corp. Olney, Illinois; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 15, 1994 in response to a worker petition which was filed on behalf of workers at Reserve Oil Corporation, Olney, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 1st day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–28178 Filed 11–14–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,802; TA–W–29,802A]

Western Geophysical Co. A/K/A Halliburton Co. A/K/A Western Atlas International, Inc., Houston, TX and Alvin, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of the subject firm.

The certification notice was issued on May 31, 1994 and published in the **Federal Register** on June 14, 1994 (59 FR 30618). The certification was amended on June 15, 1994 and July 18, 1994. The notices were published in the **Federal Register** on June 28, 1994 (59 FR 33306) and July 26, 1994 (59 FR 37997), respectively.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The investigation findings show that workers at the Alvin, Texas facility should be included under this certification since there reduced activity and worker separations resulted from the certified worker group in Houston.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,802 is hereby issued as follows:

All workers of Western Geophysical Company, Houston, Texas and Alvin, Texas (the successor-in-interest firm to Halliburton Geophysical Services) who had wages reported under Western Atlas International, Inc., Houston, Texas for UI tax account purposes and who had become totally or partially separated from employment on or after April 25, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–28181 Filed 11–14–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30, 338]

Babcock & Wilcox, Special Metals Plant, Koppel, Pennsylvania; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated by the Office of Trade Adjustment Assistance on September 19, 1994, in response to a worker petition for NAFTA-Transitional Adjustment Assistance filed on August 8, 1994, on behalf of workers at Babcock & Wilcox, Special Metals Plant, Koppel, Pennsylvania.

The petitioning group of workers was subject to an ongoing investigation at that time for which a determination was issued on September 30, 1994 (TA–W–30,215). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 3rd day of November, 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Service, Office of Trade Adjustment Assistance.

[FR Doc. 94–28175 Filed 11–14–94; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00247]

Oxford Industries, Inc., Lanier Clothes Division, Unadilla, Georgia; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on September 29, 1994 in response to a petition filed on behalf of the workers at the Lanier Clothes Division of Oxford Industries, Incorporated, located in Unadilla, Georgia. The workers are engaged in the manufacturing of men's tailored suitcoats and sportcoats.

In a letter transmitted on October 17, 1994, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, this case is terminated. A trade adjustment assistance investigation is currently ongoing for the workers at the Lanier Clothes division of Oxford Industries, Incorporated, located in Unadilla, Georgia (TA–W–30,388).

Signed in Washington, DC, this 7th day of November 1994.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 94–28174 Filed 11–14–94; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Thermal Hydraulic Phenomena

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on December 1, 1994, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, December 1, 1994—8:30 a.m. until the conclusion of business.

The Subcommittee will continue its review of the NRC Office of Nuclear Regulatory Research (RES) analysis program associated with the use of RELAP5/MOD3 code to model the Westinghouse AP600 passive plant design. The focus of this meeting will be on the development of the Phenomena Identification and Ranking Table (PIRT) in this regard. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual on the working day prior to the meeting to be advised of any potential changes in the proposed agenda, etc., that may have occurred.

Dated: November 8, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–28124 Filed 11–14–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0940.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on October 3, 1994 (59 FR 50302). Individual authorities established or revoked under Schedules A and B and established under Schedule C between September 1 and September 30, 1994, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing for all authorities as of June 30, was published on October 3, 1994 (59 FR 50278).

Schedule A

Positions established to implement the Crime Control and Law Enforcement Act of 1994 or the Violent Crime Control Appropriations Act, 1995. No new appointments may be made under this authority after September 30, 1995. Effective September 13, 1994.

Schedule B

No Schedule B authorities were established or revoked during September 1994.

Schedule C

Commission on Civil Rights

Special Assistant to the Commissioner. Effective September 29, 1994.

Executive Assistant to the Staff Director. Effective September 29, 1994.

Consumer Product Safety Commission

Special Assistant to the Chairman. Effective September 29, 1994.

Department of Agriculture

Confidential Assistant to the Administrator, Rural Development Administration. Effective September 8, 1994.

Confidential Assistant to the Special Assistant to the Secretary. Effective September 12, 1994.

Confidential Assistant to the Administrator, Rural Development Administration. Effective September 12, 1994.

Confidential Assistant to the Executive Assistant to the Secretary. Effective September 26, 1994.

Executive Speech Writer to the Director, Office of Public Affairs. Effective September 26, 1994.

Confidential Assistant to the Administrator, Animal and Plant Inspection Service. Effective September 29, 1994.

Department of the Army (DOD)

Secretary (Steno/OA) to the General Counsel. Effective September 26, 1994.

Department of Commerce

Confidential Assistant to the Deputy Under Secretary for Policy Development. Effective September 2, 1994.

Special Assistant to the Assistant Secretary of Economic Development. Effective September 13, 1994.

Department of Defense

Paralegal Specialist to the Chief Judge, United States Court of Military Appeals. Effective September 2, 1994.

Confidential Assistant to the Under Secretary for Acquisition and Technology. Effective September 26, 1994.

Department of Education

Confidential Assistant to the Assistant Secretary, Office of Legislation and Congressional Affairs. Effective September 1, 1994.

Confidential Assistant to the Chief of Staff, Office of the Secretary. Effective September 1, 1994.

Special Assistant to the Assistant Secretary, Office of Human Resources and Administration. Effective September 2, 1994.

Confidential Assistant to the Director, Community Reform Initiatives Services. Effective September 8, 1994.

Confidential Assistant to the Director, Office of Public Affairs. Effective September 16, 1994.

Special Assistant to the Director, Historically Black Colleges and Universities. Effective September 19, 1994.

Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective September 26, 1994.

Department of Energy

Staff Assistant to the Deputy Assistant Secretary for Transportation Technologies. Effective September 8, 1994.

Special Assistant to the Deputy Secretary of Energy. Effective September 8, 1994.

Staff Assistant to the Director, Office of Public Accountability. Effective September 16, 1994.

Legislative Affairs Liaison Office to the Assistant Secretary of Congressional and Intergovernmental Affairs. Effective September 16, 1994.

Special Assistant to the Director, Office of Public Accountability. Effective September 16, 1994.

Special Assistant to the Director, Office of Nuclear Energy. Effective September 16, 1994.

Department of Health and Human Services

Special Assistant to the Assistant Secretary for Planning and Evaluation. Effective September 1, 1994.

Special Assistant to the Deputy Director, Office of Child Support Enforcement. Effective September 16, 1994.

Deputy Director of Speechwriting to the Director of Speechwriting. Effective September 19, 1994.

Confidential Assistant (Advance) to the Director of Scheduling and Advance. Effective September 26, 1994.

Department of Housing and Urban Development

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective September 12, 1994.

Special Projects Officer to the Senior Advisor to the Secretary. Effective September 19, 1994.

Special Assistant to the Director, Office of Executive Scheduling. Effective September 26, 1994.

Special Assistant to the General Deputy Secretary for Housing, Federal Housing Administration. Effective September 26, 1994.

Department of the Interior

Special Assistant (Speech Writer) to the Director, Office of Communications. Effective September 16, 1994.

Department of Justice

Staff Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective September 2, 1994.

Special Assistant to the Assistant Attorney General, Office of Policy Development. Effective September 16, 1994.

Staff Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective September 19, 1994.

Special Assistant to the Assistant Attorney General, Civil Rights Division. Effective September 28, 1994.

Special Assistant to the Assistant Attorney General, Office of Legislative Affairs. Effective September 28, 1994.

Special Assistant to the Assistant Attorney General, Civil Division. Effective September 28, 1994.

Secretary (OA) to the United States Attorney, Middle District of Florida. Effective September 29, 1994.

Department of Labor

Special Assistant to the Assistant Secretary for Employment and Training. Effective September 12, 1994.

Special Assistant to the Assistant Secretary for Mine Safety and Health. Effective September 26, 1994.

Department of State

Foreign Affairs Officer to the Deputy Assistant Secretary for Public Affairs. Effective September 1, 1994.

Supervisory Foreign Affairs Officer to the Deputy Assistant Secretary, Democracy, Human Rights and Labor. Effective September 1, 1994.

Department of Transportation

Special Assistant to the Administrator, National Highway Traffic Safety Administration. Effective September 7, 1994.

Deputy Director of Public Affairs to the Assistant to the Secretary and Director of Public Affairs. Effective September 7, 1994.

Special Assistant to the Administrator, Research and Special Programs Administration. Effective September 8, 1994.

Special Assistant to the Deputy Administrator, Maritime Administration. Effective September 23, 1994.

Department of the Treasury

Senior Policy Analyst to the Deputy Assistant Secretary, Governmental Financial Policy. Effective September 22, 1994.

Environmental Protection Agency

Executive Assistant to the Assistant Administrator for Prevention, Pesticides and Toxic Substances. Effective September 8, 1994.

Equal Employment Opportunity Commission

Media Contact Specialist to the Director, Office of Communications and Legislative Affairs. Effective September 19, 1994.

Director Legislative Affairs Staff to the Director, Office of Communications and Legislative Affairs. Effective September 19, 1994.

Executive Assistant to the Director, Office of Communications and

Legislative Affairs. Effective September 23, 1994.

Federal Energy Regulatory Commission

Staff Assistant to the Director, Office of External Affairs. Effective September 12, 1994.

Federal Maritime Commission

Administrative Assistant to the Chairman. Effective September 23, 1994.

Special Assistant to the Commission. Effective September 26, 1994.

Special Assistant to the Commission. Effective September 29, 1994.

Federal Mediation and Conciliation Service

Staff Assistant to the Director, Federal Mediation and Conciliation Service. Effective September 12, 1994.

Public Affairs Director to the Director, Federal Mediation and Conciliation Service. Effective September 12, 1994.

General Services Administration

Director of Industry and Public Outreach to the Commissioner, Information Resources Management Services. Effective September 1, 1994.

International Boundary and Water Commission, United States and Mexico

Special Assistant (OA) to the Commissioner, United States Section, International Boundary and Water Commission, United States and Mexico. Effective September 1, 1994.

Office of Management and Budget

Special Assistant to the Director, Office of Management and Budget. Effective September 16, 1994.

U.S. Arms Control and Disarmament Agency

Confidential Assistant to the Special Representative to the Treaty on the Nonproliferation of Nuclear Weapons Office. Effective September 1, 1994.

U.S. International Trade Commission

Confidential Assistant to the Commissioner. Effective September 8, 1994.

Staff Assistant (Economics) to the Chairman. Effective September 16, 1994.

United States Information Agency

Public Affairs Specialist to the Director, New York Foreign Press Center. Effective September 22, 1994.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–28077 Filed 11–4–94; 8:45 am]

BILLING CODE 6325–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability (Catalpa Farms, Culpeper County, VA)

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Catalpa Farms, located in Culpeper, Culpeper County, Virginia, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until February 13, 1995.

ADDRESSES: Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Dan Hummer, Resolution Trust Corporation, Atlanta Field Office, 245 Peachtree Center Avenue, NE, Marquis One Tower, 10th Floor, Atlanta, GA 30303, (404) 230–6594; Fax (404) 225–5092.

SUPPLEMENTARY INFORMATION: The Catalpa Farms property is located at Route 522, North Virginia Avenue, Culpeper County, Virginia, west of the Town of Culpeper and south of Route 522. The site consists of approximately 213 acres of undeveloped land with a mix of open fields and woodland. A portion of the Catalpa Farms property is situated in an undeveloped floodplain and contains wetlands. The site is adjacent to the northeast shore of Lake Pelham which is managed by the Town of Culpeper for recreational purposes. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before February 13, 1995, by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

Re: [insert name of property]
Federal Register Publication Date:_____
[insert **Federal Register** publication date]

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 501(c)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).

4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: November 9, 1994.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 94–28158 Filed 11–14–94; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Acting Agency Clearance Officer: Richard T. Redfearn (202) 942–8800. *Upon written request copy available from:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Proposed Revisions:

Form 8–K	File No. 270–50
Regulation S–K	File No. 270–2
Regulation S–B	File No. 270–370
Regulation C	File No. 270–68
Form F–1	File No. 270–249
Form F–2	File No. 270–250
Form F–3	File No. 270–251
Form F–4	File No. 270–288
Form S–1	File No. 270–58
Form S–2	File No. 270–60

Form S–3	File No. 270–61
Form S–4	File No. 270–287
Form S–8	File No. 270–66
S–11	File No. 270–64
Form SB–2	File No. 270–366
Rule 30d–1	File No. 270–21

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), that the Securities and Exchange Commission ("Commission") has submitted proposed rule revisions for OMB approval.

Form 8–K is used to disclose current reports under the Exchange Act. If the proposed revisions are adopted, an estimated 12,300 respondents would file Form 8–K annually at an estimated 5 burden hours per response with a total annual burden of 61,500 hours.

Regulations S–K and S–B provide an integrated disclosure system for reports and registration statements filed pursuant to the federal securities laws. If the proposed revisions are adopted, an estimated 1 burden hour would be required for Regulation S–K; and 1 burden hour would be required for Regulation S–B. Regulation C provides standard instructions to guide registrants filing registration statements pursuant to the federal securities laws. If the proposed revisions are adopted, an estimated 1 burden hour would be required for Regulation C.

Forms F–1, F–2, F–3, and F–4 are used to register securities of certain foreign private issuers under the Securities Act of 1933. The staff estimates that if the proposed amendments are adopted, approximately 13 respondents would file Form F–1 annually at an estimated 2,195 burden hours per response with a total annual burden of 28,535 hours; 3 respondents would file Form F–2 annually at an estimated 769 burden hours per response with a total annual burden of 2,307 hours; 5 respondents would file Form F–3 annually at an estimated 219 burden hours per response with a total annual burden of 1,095 hours; and 2 respondents would file Form F–4 annually at an estimated 1,314 burden hours per response with a total annual burden of 2,628 hours.

Forms S–1, S–2, S–3, S–4, S–8, and S–11 are used to register securities to be issued publicly under the Securities Act of 1933. If the proposed amendments are adopted, the staff estimates that approximately 1,239 respondents would file Form S–1 annually at an estimated 1,270 burden hours per response with a total burden of 1,573,530 hours; 334 respondents would file Form S–2 annually at an estimated 502 burden hours per response with a total annual burden of 167,668 hours; 2,280 respondents would file Form S–3 annually at an estimated 428 burden hours per response with a total annual burden of 975,840 hours; 505 respondents would file Form S–4 annually at an estimated 1,240 burden hours per response with a total annual burden of 626,200 hours; 2,854 respondents would file Form S–8 annually at an estimated 47 burden hours per response with a total annual burden of 134,138 hours; and 340 respondents would file Form S–11 annually at an estimated 872 burden hours per response with a total annual burden of 296,480 hours.

Form SB–2 is used to register publicly offered securities of small business issuers under the Securities Act of 1933. If the proposed rules are adopted, it is estimated that approximately 259 respondents would file Form SB–2 annually at an estimated 929 burden hours per response with a total annual burden to 240,611 hours.

Rule 30d–1 prescribes the minimum content of reports to shareholders that management investment companies must send at least semi-annually. The rule requires approximately 600 hours annually per respondent. The amendment to rule 30d–1 submitted for approval requires respondents to provide additional information related to matters submitted to a vote of shareholders. This revision will increase the amount of time needed to comply with rule 30d–1 by one hour annually per respondent.

General comments regarding the estimated burden hours should be directed to the Clearance Officer of the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Richard T. Redfearn, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget, (Project Nos. 3235–0060; 3235–0071; 3235–0417; 3235–0074; 3235–0258; 3235–0257; 3235–0256; 3235–0325; 3235–0065; 3235–0072; 3235–0073; 3235–0324; 3235–0066; 3235–0067; 3235–0418; and 3235–0025), Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 7, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–28137 Filed 11–14–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34949; File No. SR–Amex–94–47]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval To Proposed Rule Change by American Stock Exchange, Inc. Relating to a Pilot Program for Execution of Odd-lot Market Orders.

November 8, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes that the Commission extend for three months the Exchange's existing pilot program under Rule 205 requiring execution of odd-lot market orders at the prevailing Amex quote with no differential charged.[1] The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The Exchange seeks accelerated approval of the proposed rule change in order to allow the pilot program, which expires on November 8, 1994, to continue without interruption. The Commission notes that, under current Rule 205, no differential may be charged on odd-lot order transactions, except for non-regular way trades. *See infra*, note 5.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved, on a pilot basis extending to November 8, 1994, amendments to Exchange Rule 205 to require the execution of odd-lot market orders at the prevailing Amex quote with no odd-lot differential.[2] These procedures initially were approved by the Commission on a pilot basis,[3] and subsequently were extended nine times.[4]

Under the pilot procedures, odd-lot market orders with no qualifying notations are executed at the Amex quotation at the time the order is represented in the market, either by being received at the trading post or though the Exchange's Post Execution Reporting ("PER") system. Enhancements to the PER system have been implemented to provide for the automatic execution of odd-lot market orders entered through PER. For purposes of the pilot program, odd-lot limit orders that are immediately executable based on the Amex quote at the time the order is received, at the trading post or through PER, are executed in the same manner as odd-lot market orders.

The Exchange proposes that the pilot program applicable to odd-lot execution procedures be extended for three months. This would provide the Commission with an additional period of time to assess procedures under the pilot program and would permit the Exchange to provide additional data and information regarding its experience under the pilot program.

[2] *See* Securities Exchange Act Release No. 34496 (August 8, 1994), 59 FR 41807 (August 15, 1994) (approving File No. SR–Amex–94–28).

[3] *See* Securities Exchange Act Release No. 26445 (January 10, 1989), 54 FR 2248 (January 19, 1989) (approving File No. SR–Amex–88–23).

[4] *See* Securities Exchange Act Release Nos. 34496 (August 8, 1994), 59 FR 41807 (August 15, 1994) (approving File No. SR–Amex–94–28); 33584 (February 7, 1994), 59 FR 6983 (February 14, 1994) (approving File No. SR–Amex–93–45); 32726 (August 9, 1993), 58 FR 43394 (August 16, 1993) (approving File No. SR–Amex–93–24); 31828 (February 5, 1993) 58 FR 8434 (February 12, 1993) (approving File No. SR–Amex–93–06); 30305 (January 30, 1992), 57 FR 4653 (February 6, 1992) (approving File No. SR–Amex–92–04); 29922 (November 8, 1991), 56 FR 58409 (November 19, 1991), (approving File No. SR–Amex–91–30); 29186 (May 9, 1991); 56 FR 22488 (May 15, 1991) (approving File No. SR–Amex–91–09); 28758 (January 10, 1991), 56 FR 1656 (January 16, 1991) (approving File No. SR–Amex–90–39); and 27590 (January 5, 1990), 55 FR 1123 (January 11, 1990) (approving File No. SR–Amex–89–31).

2. Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Sections 6(b)(5) and 11A(a)(1) in particular in that it facilitates the economically efficient execution of odd-lot transactions, and is intended to result in improved execution of customer orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statements on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–94–47 and should be submitted by December 6, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

For the same rationale discussed in its previous orders regarding the Amex's odd-lot execution pilot program,[5] the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Sections 6(b)[6] and 11A(a)(1)[7] of the Act and the rules and regulations thereunder. The Commission believes that the revised procedures, which provide for pricing of odd-lot market orders at the prevailing Amex quote rather than at the execution price of a subsequent transaction, should provide investors with more timely execution of their orders. The Exchange has implemented enhancements to its PER system for the automatic execution of odd-lot market orders.

In its previous orders,[8] however, the Commission expressed concern about whether customers receive the best execution, both in terms of price and time, under the Amex's pilot procedures. Specifically, the Commission asked the Exchange to analyze the difference in odd-lot executions between using the Intermarket Trading System ("ITS") consolidated best bid or offer and using the Amex quote. The Commission also was interested in the feasibility of implementing an odd-lot pricing system based on the ITS best bid or offer.[9]

The Amex has submitted to the Commission several monitoring reports regarding the operation of its odd-lot execution pilot program, including the requested information about the difference in executions between the ITS best bid or offer and the Amex quote. As discussed in more detail below, the Commission believes that it is reasonable to extend the pilot for an additional three months to enable the Commission to review fully the Amex reports and to enable the pilot to continue without interruption during the Commission's review.

Based on the Amex data, the pilot procedures provide a superior execution for a substantial majority of odd-lot orders. The Commission, however, remains concerned that some odd-lot orders cold receive executions at less

[5] See e.g., Securities Exchange Act Release No. 26445, supra note 3, for a description of the Commission's rationale for approving the Amex's odd-lot procedures on a pilot basis. The discussion in the aforementioned order is incorporated by reference into this order. Since initial approval of the pilot program, however, the Exchange has amended Rule 205 to provide that no differential may be charged on odd-lot order transactions, except for non-regular way trades. See Securities Exchange Act release No. 34591 (August 24, 1994), 59 FR 44783 (August 30, 1994) (approving File No. SR–AMEX–94–15).

[6] 15 U.S.C. § 78f (1988).

[7] 15 U.S.C. § 78k–1(a)(1) (1988).

[8] See supra, note 4.

[9] The Commission has approved amendments to the New York Stock Exchange's ("NYSE") rules which incorporate the ITS quotation into the NYSE odd-lot pricing procedures through the use of the Best Pricing Quote ("BPQ"). See Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19409 (May 9, 1990) (File No. SR–NYSE–90–06).

than the best available price, because the Exchange's pricing formula does not include quotations from other markets.[10] Nevertheless, due to the relatively low number of odd-lot market orders on the Amex,[11] the percentage of Amex quotes that are worse than the ITS best bid or offer, and the benefits to customers under the pilot procedures as compared to the former pricing procedures, the Commission believes that it is acceptable to extend the pilot program under Rule 205 for an additional three months.

During that period, the Commission requests that the Exchange continue to monitor its pilot program and provide data on (1) the percentage of odd-lot orders executed when the Amex quote is worse than the ITS consolidated best bid or offer and (2) the number of odd-lot orders as a percentage of total Exchange share volume and of the total number of trades. Moreover, the Commission remains interested in the feasibility of implementing an odd-lot pricing system using the ITS best bid or offer. Accordingly, the Commission requests that the Amex evaluate the feasibility and cost of developing such a plan, along with a projected time frame for potential implementation.

The Commission finds good cause for granting approval of the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the procedures the Exchange proposes to continue using are substantially identical to the procedures that were published in the **Federal Register** for the full comment period and were approved by the Commission.[12]

It is therefore ordered, pursuant to Section 19(b)(2)[13] of the Act, that the proposed rule change (SR–Amex–94–47), is approved for a three month period ending on February 8, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–28138 Filed 11–14–94; 8:45 am]

BILLING CODE 8010–01–M

[10] See supra, note 9.

[11] See footnote 9 of Securities Exchange Act Release No. 29922 (November 8, 1991), 56 FR 58409.

[12] No comments were received in connection with the proposed rule changes that implemented these procedures. See supra, notes 3–4.

[13] 15 U.S.C. § 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12)(1991).

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Lifschultz Industries, Inc., Common Stock, $.001 Par Value) File No. 1–10287

November 8, 1994.

Lifschultz 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 ("Security") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

The Company has requested that the Secretary be delisted from the Exchange. It will continue to be traded on National Association of Securities Dealer Automated Quotation System ("NASDAQ"). Trading was suspended at the opening of business on June 16, 1993.

Any interested person may, on or before November 28, 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. 94–28139 Filed 11–14–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (RCM Technologies, Inc., Common Stock, $.05 Par Value and Class C Warrants) File No. 1–10245

November 8, 1994.

RCM Technologies, 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 ("Securities") from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing the Securities from listing and registration include the following:

Because the vast majority of trades in the Securities occur on the National Association of Securities Dealer Automated Quotation System, the Company can no longer justify the listing cost given the limited trading activity of the Securities on the BSE.

Any interested person may, on or before November 28, 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. 94–28140 Filed 11–14–94; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License # 09/09–0324]

Latigo Capital Partners I; Notice of License Surrender

Notice is hereby given that *Latigo Capital Partners I, ("LCP I"), 850 South Rancho Drive, Suite 2–333, Las Vegas, Nevada 89106*, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). LCP was licensed by the Small Business Administration on August 30, 1983.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder the surrender of the license was accepted on February 25, 1994, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 8, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–28079 Filed 11–14–94; 8:45 am]

BILLING CODE 8025–01–M

[License # 09/09–0357]

Latigo Capital Partners II; Notice of License Surrender

Notice is hereby given that *Latigo Capital Partners II, ("LCP II"), 850 South Rancho Drive, Suite 2–333, Las Vegas, Nevada 89106,* has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). LCP was licensed by the Small Business Administration on September 20, 1985.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder the surrender of the license was accepted on May 14, 1992, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 8, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–28080 Filed 11–14–94; 8:45 am]

BILLING CODE 8025–01–M

[License #09/09–0373]

New West Partners 11; Notice of License Surrender

Notice is hereby given that *New West Partners II, ("NWP II"), 4050 Executive Drive, Suite 206 San Diego, California 92121,* has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). NWP II was licensed by the Small Business Administration on February 17, 1987.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on September 1, 1994, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 1, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–28081 Filed 11–14–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on November 29, 1994. The session is expected to focus on: (1) Report of the ITS AMERICA Coordinating Council; (2) Report on United States Federal ITS Initiatives; (3) Discussion of ITS AMERICA Board of Directors and Committee Involvement in Developing Consensus on a National System Architecture; (4) Report on Plans for World Congresses; (5) Approval of ITS Privacy Principles; (6) Report on European Commission Third and Fourth Framework Programs; (7) Report of the ITS AMERICA Bylaws Committee; and (8) Board Meeting Schedule. In addition, information on the following will be provided to Board members: (1) Report on National ITS Program Plan; (2) Report on Program Successes; (3) Discussion of European Standards Development; (4) Plans for ITS AMERICA Fifth Annual Meeting; (5) Report on ITS AMERICA State Chapters Program; and (6) Report on ITS AMERICA priority items. ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 U.S.C. app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on November 29 from 1 p.m. to 5 p.m.

ADDRESSES: Hotel Concorde, Lafayette, 6, place du General Koenig, 75017 Paris, France, (33)–1–40–68–50–68. (Note: This meeting is being held in conjunction with the first annual World Congress in Paris on November 30 through December 3.)

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW, Suite 800, Washington, D.C. 20024. Persons desiring further information or requesting to speak at this meeting should contact Mr. Steve Hay at ITS AMERICA by telephone at (202) 484–4665, or by FAX at (202) 484–3483. The DOT contact is Mr. Gary Euler, FHWA, HVH–1, Washington, D.C. 20590, (202) 366–2201. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for holidays.

(23 U.S.C. 315; 49 CFR 1.48).

Issued on: November 8, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–28100 Filed 11–14–94; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted To OMB for Review

November 4, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

SPECIAL REQUEST: In order to conduct the survey described below in a timely manner, the Department of the Treasury is requesting Office of Management and Budget (OMB) review and approve this information collection by November 4, 1994. To obtain a copy of this survey, please contact the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Survey Project Number: IRS PC:V 94–010–G.

Type of Review: Revision.

Title: New England Construction Team Practitioner Survey.

Description: Several IRS districts in New England (Augusta, Boston, Burlington, Hartford, Portsmouth, and Providence) have established a Compliance 2000 construction team. The objectives of this New England Construction Team are to identify the problems and concerns experienced in the construction industry, to develop methods to improve compliance, and reduce tax burden in the Construction Industry.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,380.

Estimated Burden Hours Per Respondent: 7 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 161 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 94–28133 Filed 11–14–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted To OMB for Review.

November 7, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to have the four (4) forms, described in the information collection request below, printed and sent to the Federal Reserve Bank of Philadelphia to use by November 21, 1994, the Department of the Treasury on behalf of the Bureau of the Public Debt is requesting OMB review and approval by November 10, 1994. In accordance with 5 CFR 1320.18, each of the forms and its instructions will accompany this **Federal Register** notice. Copies may be obtained for review by contacting the Public Debt Clearance Officer listed at the end of this notice.

Bureau of the Public Debt (BPD)

OMB Number: New

Form Number: PD F 3475, PD F 5354, PD F 5366, and PD F 5367

Type of Review: New collection

Title:

Special Form of Assignment for FHA Registered Definitive Debentures (3475);

FHA Transaction Request (5354);

FHA New Account Request (5366); and

FHA Debenture Transaction Request (5367)

Description: These forms will be used to (1) establish a book-entry account; (2) change information on a book-entry account; (3) transfer ownership of a book-entry account; and (4) transfer a definitive debenture to a book-entry account on the HUD system, maintained by the Federal Bank of Philadelphia

Respondents: Individuals or households, Businesses or other for-profit

Estimated Number of Respondents: 600

Estimated Burden Hours Per Response:

PD F 3475—15 minutes
PD F 5354—10 minutes
PD F 5366—10 minutes
PD F 5367—10 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 102 hours

Clearance Officer: Vicki S. Ott, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

BILLING CODE 4810–40–P

PD F 3475
Department of the Treasury
Bureau of the Public Debt
(Revised October 1994)

SPECIAL FORM OF ASSIGNMENT FOR FHA REGISTERED DEFINITIVE DEBENTURES

OMB No. 0000-0000

For value received, I/We hereby assign to the FEDERAL HOUSING COMMISSIONER the following _____ (Descriptive title of debentures: interest rate, fund, and alphabetical and yearly series) inscribed in the name of _____

for ☐ CONVERSION to book-entry and deposit in HUD ACCOUNT NUMBER

HUD ACCOUNT NAME

or for ☐ TRANSFER to: _____ (Name of assignee and taxpayer identification number)

_____ (Address)

or for ☐ PURCHASE (in advance of call or maturity date) ☐ REDEMPTION (at call or maturity)

(If the purchase or redemption is for the account of other than the registered owner, complete the transfer section also.)

DENOMINATION	SERIAL NUMBERS OF DEBENTURES ASSIGNED HEREBY

TOTAL NUMBER OF PIECES	TOTAL FACE AMOUNT
	$

_____ (Name of firm owning debentures and taxpayer identification number)

_____ (Signature and title of officer(s), assigning on behalf of firm)[1]

I certify that above-named person(s) as described, whose identity is known or has been proved to me, personally appeared before me this _____ day of _____, 19 ____ at _____ (City and State), and signed this assignment.

(OFFICIAL SEAL OR STAMP)

_____ (Signature and title of certifying officer)

(See other side for list of authorized Certifying Officers and other instructions)

[1] Evidence of the assignor's authority to act on behalf of the firm should be attached to the form if such evidence has not been filed previously with the Federal Reserve Bank of Philadelphia. Such evidence is required for transfers, and for book-entry conversions, purchases, or redemptions for the account of other than the registered owner.

INSTRUCTIONS

A separate form should be provided for debentures assigned for (1) conversion to book-entry, (2) transfer, (3) purchase, or (4) redemption and, within these classifications, a separate form should be provided for debentures of each (1) rate of interest, (2) fund and alphabetical series, and (3) yearly series; except that assignment forms of debentures for transfer should be further restricted to debentures of the same issue and maturity dates (month, day and year). The debentures should be listed on each assignment form by denomination and in serial number order thereunder. The serial numbers may be listed left to right, line by line, or from top to bottom.

AUTHORIZATION AND CERTIFICATION

You must sign and date the form in the presence of an authorized certifying individual. Then, the certifying individual must complete the certification section. Authorized certifying officers are available at insured depository institutions. Brokerage officials and notaries public are only acceptable certifying officers if the transaction requested is for the account of the registered owner. Additional PD F 3475 forms may be used if necessary to accommodate more than two owners. If joint owners of a debenture are in different locations, each person may complete a separate PD F 3475 in the presence of an authorized certifying individual. If another sheet is attached for identification of other debentures, you must initial and date that sheet and reference PD F 3475.

ADDITIONAL INFORMATION

For a complete list of authorized certifying officers, a copy of the regulations, additional forms, other information and further instructions, contact a Federal Reserve Bank or Branch or the Bureau of the Public Debt.

SUBMISSION

The debentures and PD F 3475 must be sent to the Federal Reserve Bank of Philadelphia, P.O. Box 90, Securities Division, HUD Unit, Philadelphia, PA 19105-0090, when transmitting securities.

NOTICE UNDER THE PRIVACY AND PAPERWORK REDUCTION ACTS

The collection of the information you are requested to provide on this form is authorized by 31 U.S.C. Ch. 31 relating to the public debt of the United States. The furnishing of a taxpayer identification number, if requested, is also required by Section 6109 of the Internal Revenue Code (26 U.S.C. 6109).

The purpose for requesting the information is to enable the Bureau of the Public Debt and its agents to issue securities, process transactions, make payments, identify owners and their accounts, and provide reports to the Internal Revenue Service. Furnishing the information is voluntary; however, without the information Public Debt may be unable to process transactions.

Information concerning securities holdings and transactions is considered confidential under Treasury regulations (31 CFR, Part 323) and the Privacy Act. This information may be disclosed to a law enforcement agency for investigation purposes; courts and counsel for litigation purposes; others entitled to distribution or payment; agents and contractors to administer the public debt; agencies or entities for debt collection or to obtain current addresses for payment; agencies through approved computer matches; Congressional offices in response to an inquiry by the individual to whom the record pertains; as otherwise authorized by law or regulation.

We estimate that it will take you about 15 minutes to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form. If you have comments or suggestions regarding the above estimate or ways to simplify this form, forward correspondence to Bureau of the Public Debt, Forms Management Officer, Parkersburg, WV 26106-1328 and the Office of Management and Budget, Paperwork Reduction Project 1535-0000, Washington, DC 20503. **DO NOT SEND completed form to either of the above addresses; instead, send to the correct address shown in the instructions on this form.**

PD F 535-
Department of the Treasury
Bureau of the Public Debt

OMB No. 000000

FHA TRANSACTION REQUEST

HUD ACCOUNT IDENTIFICATION

ACCOUNT NUMBER

ACCOUNT NAME

FOR DEPARTMENT USE

ENTERED BY

APPROVED BY

DATE APPROVED

TRANSACTIONS REQUESTED

CHECK THE BOX NEXT TO EACH TRANSACTION REQUESTED AND PRINT THE INFORMATION AS IT SHOULD APPEAR ON YOUR HUD ACCOUNT.

☐ NAME CHANGE (Signature certification may be required)

☐ ADDRESS CHANGE

CITY STATE ZIP CODE

☐ TAXPAYER IDENTIFICATION NUMBER CHANGE (For correction only)

1ST NAMED OWNER

SOCIAL SECURITY NUMBER

EMPLOYER IDENTIFICATION NUMBER

☐ TELEPHONE NUMBER CHANGE

( ) –

☐ DIRECT DEPOSIT INFORMATION ☐ ADD ☐ CHANGE (Signature certification required)

ROUTING NUMBER

FINANCIAL INSTITUTION NAME

ACCOUNT NUMBER

ACCOUNT NAME

ACCOUNT TYPE (Check One) ☐ CHECKING ☐ SAVINGS

☐ CONSOLIDATION OF HUD ACCOUNTS

CLOSING HUD ACCOUNT NUMBER(S)

SEE INSTRUCTIONS FOR PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

AUTHORIZATION

NOTE: IF YOUR SIGNATURE REQUIRES CERTIFICATION, DO NOT SIGN THIS FORM UNTIL YOU ARE IN THE PRESENCE OF A CERTIFYING OFFICER. SIGN YOUR NAME EXACTLY AS IT CURRENTLY APPEARS ON YOUR ACCOUNT.

I SUBMIT THIS REQUEST PURSUANT TO THE PROVISIONS OF 31 CFR PART 306 AND 31 CFR PART 337.

UNDER PENALTIES OF PERJURY, I CERTIFY THAT THE INFORMATION PROVIDED ON THIS FORM IS TRUE, CORRECT AND COMPLETE.

FOR TAXPAYER IDENTIFICATION NUMBER CHANGES ONLY: Under penalties of perjury I certify that the number shown on this form is my correct Taxpayer Identification Number and that I am not subject to backup withholdings because (1) I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (2) the Internal Revenue Service has notified me that I am no longer subject to backup withholding.

_____ _____

SIGNATURE(S) DATE

_____

TITLE (IF APPROPRIATE)

CERTIFICATION

SIGNATURE CERTIFICATION IS REQUIRED FOR CERTAIN NAME CHANGES AND ALL DIRECT DEPOSIT INFORMATION CHANGES.

I CERTIFY THAT THE ABOVE-NAMED PERSON(S) AS DESCRIBED, WHOSE IDENTITY IS KNOWN OR PROVEN TO ME, PERSONALLY APPEARED BEFORE ME THIS _____ DAY OF _____ (MONTH/YEAR) AT _____ (CITY/STATE) AND SIGNED THIS REQUEST.

_____

SIGNATURE AND TITLE OF CERTIFYING INDIVIDUAL

OFFICIAL SEAL OR STAMP (SUCH AS CORPORATE SEAL, SIGNATURE GUARANTEED STAMP, OR MEDALLION STAMP)

_____

NAME OF FINANCIAL INSTITUTION

_____

ADDRESS

_____

CITY/STATE

CERTIFICATION BY A NOTARY PUBLIC IS NOT ACCEPTABLE.

INSTRUCTIONS FOR COMPLETING AN FHA TRANSACTION REQUEST

PURPOSE

You may use this form to request changes to any of the following information for your HUD account:

- name,
- address,
- taxpayer identification number,
- telephone number, or
- direct deposit information.

You may also use this form to request the consolidation of two or more HUD accounts into a single HUD account.

IMPORTANT NOTICES

This form cannot be used to transfer debentures.

Unless all the required information is provided legibly, there may be a delay in processing your request. To avoid delays, read the instructions carefully and print clearly in ink only. Where boxes are provided, enter only one letter or number in each box and leave blank spaces where appropriate.

HUD ACCOUNT IDENTIFICATION

Provide your HUD ACCOUNT NUMBER and ACCOUNT NAME. You will find this information on your HUD Statement of Account.

TRANSACTIONS REQUESTED

NAME CHANGE (See CERTIFICATION instruction)

Check this box to change the name that currently appears on your account. Provide the complete account name as it should appear. You may not use this form to remove the first-named owner from your account, but you may use this form to add or remove the name of a second owner or beneficiary.

TAXPAYER IDENTIFICATION NUMBER CHANGE (For correction only)

Check this box to correct the taxpayer identification number that currently appears on your account. Provide the correct number for the first-named owner.

DIRECT DEPOSIT INFORMATION CHANGE (Signature certification required)

Check this box to change the direct deposit information that currently appears on your account. Provide the complete direct deposit information as it should appear, including:

- ROUTING NUMBER (your financial institution's ABA identifying number)
- FINANCIAL INSTITUTION NAME (the name of the institution to which payments are to be sent)
- ACCOUNT NUMBER (the account number at your financial institution)
- ACCOUNT TYPE (checking or savings)
- ACCOUNT NAME (the name as it appears on the account at your financial institution)
- If both the HUD account and the receiving financial institution account are in the names of individuals then at least one of the individuals named on the HUD account must be named on the deposit account at the receiving financial institution.

CONSOLIDATION OF HUD ACCOUNTS

Check this box to consolidate two or more of your HUD accounts. All HUD accounts to be consolidated must have the same name, address, taxpayer identification number and direct deposit instructions. Provide the number(s) of the account(s) from which debentures are to be moved.

AUTHORIZATION

Sign and date the request form. Identification may be required. If this account is jointly owned (i.e., John Smith and Mary Smith), both owners must sign the request. If you are requesting a change to a social security number, this form must be signed by the first-named owner (whose social security number is shown) or accompanied by IRS Form W-9 completed by the first-named owner. If the IRS has notified you that you are subject to backup withholding and you have not received notice from the IRS that backup withholding has terminated, you should strike out the language certifying that you are not subject to backup withholding.

CERTIFICATION

Certification of your signature is required if you add or delete a beneficiary or second owner or if you change the direct deposit information. Acceptable certifying individuals include authorized employees of insured depository institutions and corporate central credit unions. Certification by a notary public is not acceptable. All other transactions do not require that your signature be certified.

SUBMISSION

Completed forms should be submitted to the Federal Reserve Bank of Philadelphia, P.O. Box 90, Securities Division, HUD Unit, Philadelphia, PA 19105-0090

CONFIRMATION OF THE TRANSACTION

You will receive a HUD Statement of Account after your transaction has been processed.

NOTICE UNDER THE PRIVACY AND PAPERWORK REDUCTION ACTS

The collection of the information you are requested to provide on this form is authorized by 31 U.S.C. Ch. 31 relating to the public debt of the United States. The furnishing of a taxpayer identification number, requested, is also required by Section 6109 of the Internal Revenue Code (26 U.S.C. 6109).

The purpose for requesting the information is to enable the Bureau of the Public Debt and its agents to issue securities, process transactions, make payments, identify owners and their accounts, and provide reports to the Internal Revenue Service. Furnishing the information is voluntary; however, without the information Public Debt may be unable to process transactions.

Information concerning securities holdings and transactions is considered confidential under Treasury regulations (31 CFR, Part 323) and the Privacy Act. This information may be disclosed to a law enforcement agency for investigation purposes; courts and counsel for litigation purposes; others entitled to distribution or payment; agents and contractors to administer the public debt; agencies or entities for debt collection or to obtain current addresses for payment; agencies through approved computer matches; Congressional offices in response to an inquiry by the individual to whom the record pertains; as otherwise authorized by law or regulation.

We estimate that it will take you about 10 minutes to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form. If you have comments or suggestions regarding the above estimate or ways to simplify this form, forward correspondence to Bureau of the Public Debt, Forms Management Officer, Parkersburg, WV 26106-1328 and the Office of Management and Budget, Paperwork Reduction Project 1535-0000, Washington, DC 20503. **DO NOT SEND completed form to either of the above addresses; instead, send to the correct address shown in the instructions on this form.**

PD F 5366
Department of the Treasury
Bureau of the Public Debt

OMB No.

FHA NEW ACCOUNT REQUEST

INVESTOR INFORMATION

ACCOUNT NAME

ADDRESS

CITY STATE ZIP CODE

FOR DEPARTMENT USE

ACCOUNT NUMBER

ENTERED BY

APPROVED BY

DATE APPROVED

TAXPAYER IDENTIFICATION NUMBER

1ST NAMED OWNER — — SOCIAL SECURITY NUMBER OR — EMPLOYER IDENTIFICATION NUMBER

CONTACT PERSON

NAME

TELEPHONE NUMBER

( ) -

DIRECT DEPOSIT INFORMATION

ACCOUNT TYPE (Check One) ☐ CHECKING ☐ SAVINGS

ROUTING NUMBER

FINANCIAL INSTITUTION

ACCOUNT NUMBER

ACCOUNT NAME

AUTHORIZATION

I submit this request pursuant to the provisions of 31 CFR Part 306 and 31 CFR Part 337.

Under penalties of perjury, I certify that the number shown on this form is my correct taxpayer identification number and that I am not subject to backup withholding because (1) I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends or (2) the Internal Revenue Service has notified me that I am no longer subject to backup withholding. I further certify that all other information provided on this form is true, correct and complete.

SIGNATURE DATE

SEE INSTRUCTIONS FOR PRIVACY ACT AND PAPERWORK REDUCTION ACT

INSTRUCTIONS FOR COMPLETING AN FHA NEW ACCOUNT REQUEST

PURPOSE

You may use this form to establish a HUD account. The Federal Reserve Bank of Philadelphia will establish and maintain your book-entry account for the future deposit of debentures.

IMPORTANT NOTICES

This form cannot be used for the purchase of debentures or to request a change to an existing account.

Unless all the required information is provided legibly, there may be a delay in processing your request. To avoid delays, read the instructions carefully and print in ink only. Where boxes are provided, enter only one letter or number in each box and leave blank spaces where appropriate.

TAXPAYER IDENTIFICATION NUMBER

Provide the taxpayer identification number required on tax returns and other documents submitted to the Internal Revenue Service. For individuals, this is the social security number (SSN) of the person whose name appears FIRST on the account. In the case of a partnership, company, organization or trust, the employer identification number assigned by the IRS is used.

DIRECT DEPOSIT INFORMATION

Enter the following information:

- ROUTING NUMBER (your financial institution's ABA identifying number)
- FINANCIAL INSTITUTION NAME (the name of the institution to which payments are to be made)
- ACCOUNT NUMBER (the account number at your financial institution)
- ACCOUNT TYPE (checking or savings)
- ACCOUNT NAME (the name as it appears on the account at your financial institution)

Payments to you will be made by direct deposit to the financial institution you designate. The ROUTING NUMBER can be obtained from the institution or found on the bottom line of a check or deposit slip. When providing your account number, please include hyphens. A hyphen is represented by the symbol "-".

AUTHORIZATION

Sign and date the request form. Requests in the names of two individuals may be signed by either. However, if the second-named owner signs, then IRS Form W-9 signed by the first-named owner, must be submitted with the request. If the IRS has notified you that you are subject to backup withholding and you have not received notice from the IRS that backup withholding has terminated, you should strike out the language certifying that you are not subject to backup withholding.

SUBMISSION

Submit this request to the Federal Reserve Bank of Philadelphia, P. O. Box 90, Securities Division, HUD Unit, Philadelphia, PA 19105-0090.

NOTICE UNDER THE PRIVACY AND PAPERWORK REDUCTION ACTS

The collection of the information you are requested to provide on this form is authorized by 31 U.S.C. Ch. 31 relating to the public debt of the United States. The furnishing of a taxpayer identification number, if requested, is also required by Section 6109 of the Internal Revenue Code (26 U.S.C. 6109).

The purpose for requesting the information is to enable the Bureau of the Public Debt and its agents to issue securities, process transactions, make payments, identify owners and their accounts, and provide reports to the Internal Revenue Service. Furnishing the information is voluntary; however, without the information Public Debt may be unable to process transactions.

Information concerning securities holdings and transactions is considered confidential under Treasury regulations (31 CFR, Part 323) and the Privacy Act. This information may be disclosed to a law enforcement agency for investigation purposes; courts and counsel for litigation purposes; others entitled to distribution or payment; agents and contractors to administer the public debt; agencies or entities for debt collection or to obtain current addresses for payment; agencies through approved computer matches; Congressional offices in response to an inquiry by the individual to whom the record pertains; as otherwise authorized by law or regulation.

We estimate that it will take you about 10 minutes to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form. If you have comments or suggestions regarding the above estimate or ways to simplify this form, forward correspondence to Bureau of the Public Debt, Forms Management Officer, Parkersburg, WV 26106-1328 and the Office of Management and Budget, Paperwork Reduction Project 1535-0000, Washington, DC 20503. **DO NOT SEND completed form to either of the above addresses; instead, send to the correct address shown in the instructions on this form.**

PD F 5367
Department of the Treasury
Bureau of the Public Debt

OMB No. 0000-0000

FHA DEBENTURE TRANSFER REQUEST

HUD ACCOUNT INFORMATION

FROM: HUD ACCOUNT NUMBER

ACCOUNT NAME

FOR DEPARTMENT USE

ENTERED BY

APPROVED BY

DATE APPROVED

ADVICE NUMBER

DEBENTURE IDENTIFICATION AND AMOUNT

☐ Transfer $ _____ of my holdings for CUSIP _____

☐ Transfer $ _____ of my holdings for CUSIP _____

☐ Transfer $ _____ of my holdings for CUSIP _____

☐ Transfer $ _____ of my holdings for CUSIP _____

☐ Transfer $ _____ of my holdings for CUSIP _____

TRANSFER REQUESTED

TO: HUD ACCOUNT NUMBER

If no HUD account exists, the transferee must complete PD F 5366, FHA New Account Request.

ACCOUNT NAME Identify the HUD account to which you want your debentures transferred.

TAXPAYER IDENTIFICATION NUMBER (If available)

– – OR –

SOCIAL SECURITY NUMBER EMPLOYER IDENTIFICATION NUMBER

SEE INSTRUCTIONS FOR PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE.

AUTHORIZATION

DO **NOT** SIGN THIS FORM UNTIL YOU ARE IN THE PRESENCE OF AN AUTHORIZED CERTIFYING INDIVIDUAL.

I SUBMIT THIS REQUEST PURSUANT TO THE PROVISIONS OF 31 CFR PART 306 AND 31 CFR PART 337.

UNDER PENALTIES OF PERJURY, I CERTIFY THAT THE INFORMATION PROVIDED ON THIS FORM IS TRUE, CORRECT AND COMPLETE.

_____ _____
SIGNATURE(S) DATE

_____
TITLE (IF APPROPRIATE)

CERTIFICATION

YOUR SIGNATURE MUST BE CERTIFIED BY AN AUTHORIZED CERTIFYING INDIVIDUAL.

I CERTIFY THAT THE ABOVE-NAMED PERSON(S) AS DESCRIBED, WHOSE IDENTITY IS KNOWN OR PROVEN TO ME, PERSONALLY APPEARED BEFORE ME THIS _____ DAY OF _____ AT _____
Month/Year City/State

_____
SIGNATURE AND TITLE OF CERTIFYING INDIVIDUAL

OFFICIAL SEAL OR STAMP (SUCH AS CORPORATE SEAL OR SIGNATURE GUARANTEED STAMP OR MEDALLION STAMP)

_____
NAME OF FINANCIAL INSTITUTION

_____
ADDRESS

_____
CITY/STATE

CERTIFICATION BY A NOTARY PUBLIC IS **NOT** ACCEPTABLE.

INSTRUCTIONS FOR COMPLETING AN FHA DEBENTURE TRANSFER REQUEST

PURPOSE

You may use this form to request the **transfer of debentures** from a HUD account to another HUD account.

IMPORTANT NOTICES

This form cannot be used to transfer debentures to a financial institution.

Unless all the required information is provided legibly, there may be a delay in processing your request. To avoid delays, read the instructions carefully and **print clearly in ink only.** Where boxes are provided, enter only one letter or number in each box and leave blank spaces where appropriate.

HUD ACCOUNT INFORMATION

Print your HUD ACCOUNT NUMBER and the ACCOUNT NAME as stated on your HUD STATEMENT OF ACCOUNT.

DEBENTURE IDENTIFICATION AND AMOUNT

Complete one line per CUSIP number, indicating the dollar amount of debentures to be transferred. THE AMOUNT TO BE TRANSFERRED AND THE AMOUNT REMAINING IN THE CUSIP MUST SATISFY THE MINIMUM HOLDING REQUIREMENTS FOR THE DEBENTURE.

TRANSFER REQUESTED

Provide the HUD ACCOUNT NUMBER, ACCOUNT NAME and if available, the taxpayer identification number of the account to which the debentures are to be transferred.

AUTHORIZATION

Sign and date the request in the presence of an authorized certifying individual. Identification may be required. Remember, if there are two owners joined by the word "and", both must sign.

CERTIFICATION

Certification of your signature is required. Acceptable certifying individuals include authorized employees of insured depository institutions and corporate central credit unions. Certification by a notary public is not acceptable.

SUBMISSION

Completed forms should be submitted to the Federal Reserve Bank of Philadelphia, P.O. Box 90, Securities Division, HUD Unit, Philadelphia, PA 19105-0090. **This form must be received at least twenty days in advance of:**

- the **maturity date** of the debenture to ensure processing, and
- an **interest payment date** for the debenture to ensure processing prior to that date.

CONFIRMATION OF THE TRANSFER

You will receive a HUD STATEMENT OF ACCOUNT after your debentures have been transferred.

NOTICE UNDER THE PRIVACY AND PAPERWORK REDUCTION ACTS

The collection of the information you are requested to provide on this form is authorized by 31 U.S.C. Ch. 31 relating to the public debt of the United States. The furnishing of a taxpayer identification number, if requested, is also required by Section 6109 of the Internal Revenue Code (26 U.S.C. 6109).

The purpose for requesting the information is to enable the Bureau of the Public Debt and its agents to issue securities, process transactions, make payments, identify owners and their accounts, and provide reports to the Internal Revenue Service. Furnishing the information is voluntary; however, without the information Public Debt may be unable to process transactions

Information concerning securities holdings and transactions is considered confidential under Treasury regulations (31 CFR, Part 323) and the Privacy Act. This information may be disclosed to a law enforcement agency for investigation purposes; courts and counsel for litigation purposes; others entitled to distribution or payment; agents and contractors to administer the public debt; agencies or entities for debt collection or to obtain current addresses for payment; agencies through approved computer matches; Congressional offices in response to an inquiry by the individual to whom the record pertains; as otherwise authorized by law or regulation.

We estimate that it will take you about 10 minutes to complete this form. This includes the time it will take to read the instructions, gather the necessary facts and fill out the form. If you have comments or suggestions regarding the above estimate or ways to simplify this form, forward correspondence to Bureau of the Public Debt, Forms Management Officer, Parkersburg, WV 26106-1328 and the Office of Management and Budget, Paperwork Reduction Project 1535-0000, Washington, DC 20503. DO NOT SEND completed form to either of the above addresses; instead, send to the correct address shown in the instructions on this form.

[FR Doc. 94–28132 Filed 11–14–94; 8:45 am]

BILLING CODE 4810–40–C

Public Information Collection Requirements Submitted To OMB for Review

November 7, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0054
Form Number: IRS Form 1000
Type of Review: Extension
Title: Ownership Certificate

Description: Form 1000 is used by citizens, resident individuals, fiduciaries, partnerships and nonresident partnerships in connection with interest on bonds of a domestic, resident foreign, or nonresident foreign corporation containing a tax-free covenant and issued before January 1, 1934. IRS uses the information to verify that the correct amount of tax was withheld.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents/ Recordkeepers: 1,500

Estimated Burden Hours Per Respondent/Recordkeeper: 3 hrs., 10 mins.

Frequency of Response: On occasion

Estimated Total Reporting/ Recordkeeping Burden: 4,740 hours

OMB Number: 1545–0704

Form Number: IRS Form 5471 and Schedules J, M, N, and O

Type of Review: Revision

Title: Information Return of U.S. Persons with Respect to Certain Foreign Corporations

Description: Form 5471 and related schedules are used by U.S. persons that have an interest in a foreign corporation. The form is used to report income from the foreign corporation. The form and schedules are used to satisfy the reporting requirements of sections 6035, 6038 and 6046 and the regulations thereunder pertaining to the involvement of U.S. persons with certain corporations.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents/ Recordkeepers: 43,000

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
5471	77 hr., 15 min	23 hr., 1 min	30 hr., 35 min.
Sch. J	3 hr., 50 min	53 min	1 hr., 0 min.
Sch. M	26 hr., 33 min	6 min	32 min.
Sch. N	8 hr., 22 min	8 hr., 22 min	3 hr., 2 min.
Sch. O	10 hr., 46 min	12 min	23 min.

Frequency of Response: Annually
Estimated Total Reporting/ Recordkeeping Burden: 7,040,350 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–28134 Filed 11–14–94; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted To OMB for Review

November 7, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (BPD)

OMB Number: 1535–0104
Form Number: PD F 2066
Type of Review: Extension
Title: Application by Survivors for Payment and Bond or Check Issued Under the Armed Forces Leave Act of 1946, As Amended

Description: This form serves as an application for payment of a bond or check issued under the Armed Forces Leave Act of 1946 to veterans of World War II. The veteran would have died before he or she received the proceeds.

Respondents: Individuals or households
Estimated Number of Respondents: 400
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 200 hours

OMB Number: 1535–0105
Form Number: PD F 2481
Type of Review: Extension
Title: Application for Recognition as Natural Guardian of a Minor Not Under Legal Guardianship and for Disposition of Minor's Interest in Registered Securities

Description: This form is executed by individuals to certify that they are the natural guardians of a specific minor not under legal guardianship. The situation involved Government Securities erroneously registered in the name of that minor. The alleged natural guardians request appropriate disposition of the securities.

Respondents: Individuals or households
Estimated Number of Respondents: 25
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 13 hours

OMB Number: 1535–0106
Form Number: PD F 3905
Type of Review: Extension
Title: Request for Securities Transaction

Description: This form is used to request a transaction involving securities such as redemption, exchange, or transfer. The person executing the form

furnishes specific instructions concerning the transaction.
Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 7,000
Estimated Burden Hours Per Response: 12 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,400 hours
OMB Number: 1535–0108
Form Number: PD F 2471
Type of Review: Extension

Title: Certificate to Support Application for Relief on Account of Lost, Stolen or Destroyed United States Securities
Description: This form is executed by individuals to support an application for relief on account of lost, stolen or destroyed United States Securities. The person executing the form must provide a statement that furnishes all of the facts, to the best of their knowledge, pertaining to the lost, stolen or destroyed securities.
Respondents: Individuals or households
Estimated Number of Respondents: 400
Estimated Burden Hours Per Response: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 200 hours
Clearance Officer: Vicki S. Ott, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–28131 Filed 11–14–94; 8:45 am]
BILLING CODE 4810–40–P

Sunshine Act Meetings

Federal Register
Vol. 59, No. 219
Tuesday, November 15, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, November 17, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed 1995 Private Sector Adjustment Factor.

Discussion Agenda

2. Proposed 1995 fee schedules for priced services.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 10, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-28241 Filed 11-10-94; 8:45 am]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Thursday, November 17, 1994, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 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: November 10, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-28242 Filed 11-10-94; 10:27 am]

BILLING CODE 6210-01-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., November 21, 1994.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the October 17, 1994, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. 1995 Board meeting schedule.
4. Investment policy review.
5. Review of KPMG Peat Marwick audit report:
   - "Pension and Welfare Benefits Administration Review of the Policies and Procedures of the Federal Retirement Thrift Investment Board Administrative Staff"
   - "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Loan Operations at the United States Department of Agriculture, Office of Finance and Management, National Finance Center"
   - "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Forfeiture and Forfeiture Restoration Operations and Interfund Transfer Process at the United States Department of Agriculture, Office of Finance and Management, National Finance Center"
6. Ethics briefing.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: November 9, 1994.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94-28229 Filed 11-10-94; 8:45 am]

BILLING CODE 6760-01-M

TENNESSEE VALLEY AUTHORITY (MEETING NO. 1471)

TIME AND DATE: 10 a.m., November 16, 1994.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee

STATUS: Open

Agenda

Approval of minutes of meeting held on October 26, 1994.

Action Items

New Business

C—Energy

C1. Approval of a delegation of authority to the Vice President of Fossil Fuels to award seven six-year coal contracts under requisition 30 and coal transportation for Paradise, Cumberland and Widows Creek Fossil plants.

E—Real Property

E1. Public Auction Sale of Approximately 0.15 Acre of Land on Guntersville Lake in Marshall County, Alabama.

E2. Sale of Permanent Easement and Temporary Construction Easement to the City of Soddy-Daisy, Tennessee.

E3. Abandonment of Surface Rights to Use the Overlying Coal and the Associated Right to Mine Coal from Two Tracts of Land Containing Approximately 595 Acres of Land in Campbell County, Tennessee.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Proposed Supplement to Tool-Smith Co., Inc., Contract No. 93XS3-45247C-002 for Power Tools, Rental and Refurbishment of Power Tools.

F3. Proposed Supplement to Porter-Walker, Inc., Contract No. 93XS3-45247C-001 for Hand, Measuring, and Cutting Tools.

F4. The Board, Acting in its Capacity as Management Committee for the Center for Rural Studies Trust, will consider selection of Union Planters Bank as Trustee for the Center for Rural Studies Trust and delegation of authority to Craven Crowell to execute the Center for Rural Studies Trust Agreement and appropriate documents.

F5. Approval of procedures for sequential voting by the TVA Board of Directors to standardize and clarify process.

Information Items

1. Approval of a Grant of Permanent Easement to Holston Electric Cooperative, Inc., for a Substation Affecting Approximately 1.7 Acres of Land on Cherokee Lake in Hawkins County, Tennessee.

2. Amendment to the Rules and Regulations of the TVA Retirement System to Allow Vested Members of the System who Voluntarily Leave TVA by March 31, 1996, to Receive an Immediate Retirement Benefit, Regardless of Age.

3. Approval to Abandon an Easement Affecting Approximately 6.85 Acres of the TVA Pickwick-Corinth Transmission Line Right-of-Way in Hardin County, Tennessee.

4. Approval of 1994–95 Salary Rates for Schedule SC, SD, SE, SF and SG Resulting from Negotiations with the Salary Policy Employee Panel.

5. Approval of a $800,000 supplement to the Manpower Temporary Services contract for temporary clerical help.

6. Approval of the fiscal year 1994 success sharing award.

CONTACT PERSON FOR MORE INFORMATION: Ron Loving, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, (202) 898–2999.

Dated: November 9, 1994.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 94–28240 Filed 11–10–94; 8:45 am]

BILLING CODE 8120–08–M

Federal Register

Tuesday
November 15, 1994

Part II

Department of Labor

Occupational Safety and Health Administration
29 CFR Part 1910 et al.
Respiratory Protection; Proposed Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. H049]

RIN 1218–0099

Respiratory Protection

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

ACTION: Notice of proposed rulemaking (NPRM) and public hearings.

SUMMARY: OSHA is proposing to modify its existing standards on respiratory protection (29 CFR 1910.134, 29 CFR 1915.152 and 29 CFR 1926.103). The current respirator standard was adopted from a voluntary consensus standard in 1971. Since that time, changes in methodology, technology, and approach related to respiratory protection have occurred, which OSHA's standard does not include. The purpose of this rulemaking is to update the current standard to reflect these changes so that employers will provide effective protection for employees who wear respirators.

The proposed standard includes requirements for a written respiratory protection program; procedures for selecting respirators; requirements for medical evaluation; procedures for fit testing; requirements for using respirators; procedures for maintaining respirators; training; criteria for evaluating program effectiveness. Public hearings are being scheduled to provide interested parties the opportunity to orally present information and data related to the issues raised by this proposed rule.

DATES: Written comments on the proposed standard must be postmarked on or before February 13, 1995. Notices of intention to appear at the informal public hearings on the proposed standard must be postmarked by January 27, 1995. Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full test of their testimony and all documentary evidence postmarked no later than February 13, 1995. The hearing will take place in Washington, D.C. and is scheduled to being on March 7, 1995 and continue until Friday, March 24, 1995.

ADDRESSES: Written comments should be submitted in quadruplicate or 1 original (hardcopy) and 1 disk (5¼ or 3½) in WordPerfect 5.0, 5.1, 6.0 or ASCII to: The Docket Office, Docket H–049, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2625, 200 Constitution Avenue, N.W. Washington, D.C. 20210; (202) 219–7894. (Any information not contained on disk, e.g., studies, articles, etc., must be submitted in quadruplicate.)

Notices of intention to appear at the informal rulemaking hearing, testimony, and documentary evidence are to be submitted in quadruplicate to: Mr. Tom Hall, OSHA Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N3649, Washington, D.C. 20210; (202) 219–8615. Written comments received, notices of intention to appear, and all other material related to the development of this proposed standard will be available for inspection and copying in the public record in the Docket Office, Room N2439, at the above address.

The hearing will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Proposal:* Ms. Anne Cyr, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N3647, Washington, D.C. 20210; (202) 219–8151.

Hearings: Mr. Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Room N3649, Washington, D.C. 20210; (202) 219–8615.

SUPPLEMENTARY INFORMATION:

I. Clearance of Information Collection Requirements

5 CFR Part 1320 sets forth procedures for agencies to follow in obtaining OMB clearance for information collection requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The proposed revised respirator standard requires employers to allow OSHA access to records. In accordance with the provisions of the Paperwork Reduction Act and the regulations issued pursuant thereto, OSHA certifies that it has submitted the information collection requirements for this proposed rule on respiratory protection to OMB for review under Section 3504(h) of that Act. OMB has approved (OMB number 1218–0099) in concept the submitted information collection activities contained in the proposed revision pending public consideration and comment.

Public reporting burden for this collection of information is estimated to be five minutes per response. Send comments regarding this burden estimate or any other aspect of this collection of information, to the Office of Information Management, Department of Labor, Room N–1301, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1218–AA05), Washington, DC 20503.

II. Introduction

A. Format of the Preamble

The preamble accompanying this notice of proposed rulemaking is divided into fifteen parts, numbered I through XV. The following is a table of contents:

XV. Proposed Substance Specific Standards Revisions

B. History of the Development of Respiratory Protection

The concept of using respiratory protective devices to reduce or eliminate hazardous exposures to airborne contaminants first came from Pliny (c. A.D. 23–79) who discussed the use of loose fitting animal bladders in Roman mines to protect workers from the inhalation of red oxide of lead (1,2). Later, in the 1700's, the ancestors of modern atmosphere-supplying devices, such as the self-contained breathing apparatus or hose mask, were developed. Although the devices themselves have become more sophisticated in design and materials, respirators' performance is still based on one of two basic principles; purifying the air by removing contaminants before they reach the breathing zone of the worker, or providing clean air from an uncontaminated source.

In 1814, a particulate-removing filter encased in a rigid container was developed—the predecessor of modern filters for air-purifying respirators. In 1854, it was recognized that activated charcoal could be used as a filtering medium for vapors. World War I and the use of chemical warfare also resulted in improvement in the design of respirators. Overall, there have been few major developments in the basic design of respirators over the years except for the resin-impregnated dust filter in 1930. This development has made available efficient, inexpensive filters that have good dust-loading characteristics and low breathing resistance. Another more recent development is the ultrahigh efficiency filter made from paper that contains very fine glass fibers. These extremely efficient filters are used for very small airborne particles and produce little breathing resistance.

C. Respirator Use

The purpose of a respirator is to prevent the inhalation of harmful airborne substances. Functionally, a respirator is designed as an enclosure which covers the nose and mouth or the entire face or head. Respirators are of two general "fit" types: Tight fitting (i.e., quarter masks, which cover the mouth and nose, and where the lower sealing surface rests between the chin and the mouth; the half mask, which fits over the nose and under the chin; and the full facepiece, which covers from the hairline to below the chin), and loose fitting (i.e., hoods, helmets, blouses, or full suits which cover the head completely). There are two major classes of respirators: Air-purifying respirators (devices which remove contaminants from the air), and atmosphere-supplying respirators (those which provide clean breathing air from an uncontaminated source).

Air-purifying respirators are grouped into three general types: Particulate removing, vapor and gas removing, and combination. Elements which remove particulates are called filters, while vapor and gas removing elements are called either chemical cartridges or canisters. Filters and canisters/cartridges are the functional portion of air-purifying respirators, and they can generally be removed and replaced once their effective life has expired. The exception would be disposable respirators, those which cannot be cleaned and disinfected or resupplied with an unused filter after use. Combination elements that protect for both particulates and vapors and gases are also available.

Particulate-removing respirators are designed to reduce inhaled concentrations of nuisance dusts, fumes, mists, toxic dusts, radon daughters, asbestos containing dusts or fibers, or any combination of these substances, by filtering some of the contaminants from the inhaled air before they enter the breathing zone of the worker. They may have single use or replaceable filters. These respirators may be non-powered or powered air-purifying (using a blower to pull contaminated air through a filter; the resulting cleaned air is blown on the face).

Vapor and gas removing respirators are designed with sorbent elements (canisters or cartridges) that adsorb and/or absorb the vapors or gases from the contaminated air before they enter the breathing zone of the worker. Combination cartridges and canisters are available to protect against both particulates and vapors and gases.

Atmosphere-supplying respirators are respirators which provide air from a source independent of the surrounding atmosphere instead of removing contaminants from the atmosphere. These respirators are classified by the method by which air is supplied and the way in which the air supply is regulated. Basically, these methods are: Self-contained breathing apparatus (air or oxygen is carried in a tank on the worker's back, similar to SCUBA gear); supplied air respirators (compressed air from a stationary source is supplied through a high pressure hose connected to the respirator); and combination self-contained and supplied air respirators.

D. Types of Respiratory Hazards

Respiratory hazards may result from either an oxygen deficient atmosphere or from breathing air contaminated with toxic particles, vapors, gases, fumes or mists. The proper selection and use of a respirator depends upon an initial determination of the concentration of the hazard or hazards present in the workplace.

Contaminants are classified as particulate contaminants, which include mechanical dispersoids, condensation dispersoids, dusts, sprays, fumes, mists, fogs, smokes, and smogs; and vapors or gases which include acids, alkalines, organics, organometallics, hydrides, and inert materials.

The particulates may be dusts such as clays, limestone, gypsum, or aluminum oxides; inert pulmonary reaction producing substances such as silicates; minimal pulmonary fibrosis producing substances such as iron oxide or tin oxide; extensive pulmonary fibrosis producing substances such as free silica or asbestos; chemical irritants such as acids or alkalies; systemic poisons such as pesticides, hydrogen cyanide or lead; allergy producing substances such as cotton, isocyanates, epichlorohydrin, fur fibers, or vegetable fibers; and febrile-reaction producing agents such as bagasse, or copper and zinc oxide; and biological materials.

The gaseous air contaminants include irritants such as nitrogen dioxide, phosgene, and arsenic trichloride; asphyxiants such as carbon monoxide, and hydrogen cyanide; anesthetics such as nitrous oxide, hydrocarbons, and ethyl and isopropyl ether; and systemic poisons such as carbon tetrachloride.

E. Limitations of Respirator Use

Not all workers can wear respirators. Individuals with impaired lung function, due to asthma or emphysema for example, may be physically unable to wear a respirator. Individuals who cannot get a good facepiece fit, including those individuals whose beards or sideburns interfere with the facepiece seal, will be unable to wear tight fitting respirators. Determination of adequate fit is required for a respirator to be effective.

In addition to the problems with usage already discussed, respirators may also present communication problems, vision problems, fatigue and reduced work efficiency. Nonetheless, it is sometimes necessary to use respiratory protection as the means of control.

In principle, respirators frequently may be capable of providing adequate protection. However, problems associated with selection, fit, and use

often render them ineffective in actual application, preventing the assurance of consistent and reliable protection; regardless of the theoretical capabilities of the respirator. Occupational safety and health experts have spent considerable effort over the years developing fit testing procedures and methods of measuring respirator protection so that these adverse variables can be better controlled, thereby improving protection for those employees required to wear them.

The comments which resulted from the Advance Notice of Proposed Rulemaking (ANPR) that was published by OSHA on May 14, 1982 (47 FR 20803) suggest that one method for controlling some of the problems associated with respirator selection, fit, and use is to describe clearly the steps to be followed in administering a program to protect employees required to wear respirators. The modifications in this proposal are also intended to upgrade the provisions in § 1910.134 to reflect the current state of the art in respiratory methodology and technology.

III. Legal Authority

Authority for issuance of this proposed revised standard is found primarily in sections 6(b), 8(c), and 8(g)(2) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655(b), and 657(g)(2).

Section 6(b) authorizes the Secretary to "by rule promulgate, modify, or revoke any occupational safety and health standard." This notice is the first mandatory step in the procedure prescribed for promulgating such new or modified standards.

The Congress specifically mandated that:

> The Secretary, in promulgating standards dealing with toxic materials, or harmful physical agents under this subsection, shall set the standard which most adequately assure, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of standards, and experience gained under this section and other health and safety laws. (Section 6(b)(5).

The revisions which OSHA proposes would update current standards concerning respiratory protection mainly by incorporating technological advances and by expanding certain respirator program elements such as fit testing and by clarifying other provisions.

These revisions are intended to ensure that employees who use respirators to protect them from workplace atmospheric contamination, will be protected to the technical limitations of the devices they wear. Protection from exposure to workplace airborne contaminants is one of the major goals of the Act and a major mission for the Agency, since the risk to employees of chronic and acute disease because of exposure to toxic substances is substantial and well documented (see e.g., preamble to 29 CFR Part 1910, Air Contaminants, Proposed Rule, at 53 FR 20960 *et seq.*)

Similarly, these regulations need to be updated to assure that employees are protected to the extent that currently available technology permits. Therefore OSHA finds that revisions to these regulations governing respiratory protection are clearly necessary and appropriate to protect employees against the risk of material impairment of health or functional capacity and are issued pursuant to the authority of section 6(b)(5) of the Act).

Authority to issue this standard is also found in section 8(c) of the Act. In general, this section empowers the Secretary to require employers to make, keep, and preserve records regarding activities related to the Act. In particular, section 8(c) gives the Secretary authority to require employers to "maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6." Provisions of OSHA standards which require the preparation and monitoring of exposure records, such as contained in a written respirator program, are also issued pursuant to section 8(c) of the Act.

The Secretary's authority to issue this proposed standard is further supported by the general rulemaking authority granted in section 8(g)(2) of the Act. This section empowers the Secretary "to prescribe such rules and regulations as he may deem necessary to carry out [his] responsibilities under the Act"—in this case as part of or ancillary to, a section 6(b) standard. The Secretary's responsibilities under the Act are defined largely by its enumerated purposes, which include:

Encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions (29 U.S.C. 651(b)(1));

Authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to business affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act; (29 U.S.C. 651(b)(3));

Building upon advances already made through employee and employer initiative for providing safe and health working conditions (29 U.S.C. 651(b)(5));

By providing for the development and promulgation of occupational safety and health standards; providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem; exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions * * * (29 U.S.C. 651(b)(6));

Encouraging joint labor-management efforts to reduce injuries and diseases arising out of employment (29 U.S.C. 651(b)(13));

And developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems (29 U.S.C. 651(b)(5)).

Because this proposed revised standard is reasonably related to these statutory goals, the Secretary finds that this standard is necessary to carry out his responsibilities under the Act.

In addition, section 4(b)(2) of the Act provides for OSHA standards to apply to construction and other work places where the Secretary determines these standards to be more effective than existing standards which otherwise apply to those workplaces. So we are applying them to construction and maritime.

The Supreme Court's benzene decision (*Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 601) requires OSHA, in general, to make a "significant risk determination" before issuing health and safety standards. It is clear that exposure to hazardous air contaminants in the workplace poses significant risks to workers. Where engineering controls cannot be used to reduce exposures below hazardous levels, respirators properly selected, fitted and worn can contribute substantially to a reduction in the level of air contaminants reaching the employee's breathing zone. Under

the current respiratory protection standard, which lacks adequate requirements for fit testing, selection, medical evaluation, use, maintenance, and respiratory protection program provisions, employees wearing respirators are receiving less protection than the respirators can potentially give, and in some cases may suffer exposure to hazards as a result of improper respirator use. The significant risk to employees therefore has not been adequately reduced by the existing respirator standard.

The enforcement experience of OSHA and various state health agencies demonstrate the wide-spread nature of defects in respirator programs while the unamended respirator standard has been in effect. From fiscal 1977 to 1982, 58% of inspected worksites where respirators were used to protect against excessive levels of air contamination had deficiencies in at least one respirator area, including respirator fit condition, unapproved or unsuitable respirators, and lack of continuous wear (Ex. 33–5). Inadequate supervision of respirator use was cited as a major cause of improper and ineffective usage by the North Carolina Department of Labor, Kentucky's Department of Labor and Virginia's Bureau of Occupational Health (Docket H–160, Ex. 2–69, 2–103, 2–129). These state plan states have respirator standards that are the same as OSHA's unamended standard.

OSHA cannot precisely quantify the risk to employees whose employers rely on inadequate respiratory protection programs to protect them against excessive levels of atmospheric contamination. However, the widespread levels of improper use of respirators put at significant risk employees who, at least some of the time, are overexposed to air contaminants. Based on OSHA's experience that one half of workplaces using respirators use them incorrectly under the current standard, even a small improvement in respirator use should work a significant reduction in the risk of developing adverse health effects because of preventable misuse of respirators. OSHA believes that a greater benefit will result from the imposition of these revised requirements for the following reason.

Each controllable variable of respirator performance, i.e., initial fit, appropriateness of selection, and consistency of use is addressed by these revisions. The proposed requirement for a program administrator, for example, addresses the concerns of many commenters that proper supervision is the core of an adequate respirator program and effective respirator performance. Required fit testing protocols are proposed to assure that the respirator does not leak around the face, is comfortable and that the employee is taught how to properly tension straps for optimum fit and comfort. Thus the proposed revised standard with its provisions for quantitative and qualitative fit testing, improved and clarified respirator selection, use, and maintenance, will increase the effectiveness of respirators worn in the workplace and significantly reduce the risks to employees to a greater degree than the present standard.

OSHA has quantified the risk and reduction of risk as part of the regulatory analysis and regulatory flexibility analysis, Section VI of the preamble. That analysis clearly shows that workers wearing respirators under the requirements of the current standard are exposed to a significant risk of chronic and acute health effects because of the inadequacies of the present standard. OSHA seeks comment on the issue of significant risk and how the proposed respirator standard revisions will affect that risk, along with any comment on the regulatory analysis performed by OSHA and all other issues related to significant risk.

IV. Background

A. Regulatory History

Congress created the Occupational Safety and Health Administration (OSHA) in 1970, and gave it the responsibility for promulgating standards to protect the health and safety of American workers. As directed by Congress in the Occupational Safety and Health Act, OSHA adopted existing Federal or national consensus standards, developed by various organizations such as the American Conference of Governmental Industrial Hygienists (ACGIH) and the American National Standard Institute (ANSI). The ANSI standard Z88.2–1969, "Practices for Respiratory Protection" (3), is the origin of the first six sections of OSHA's 29 CFR 1910.134, "Respiratory Protection" (4). The seventh section is a direct, complete inclusion of ANSI Standard K13.1–1969, "Identification of Gas Mask Canisters." Until the adoption of these standards by OSHA, most guidance on respiratory protective device use in hazardous environments was advisory rather than mandatory.

The construction industry standard for respiratory protection, 29 CFR 1926.103, was promulgated in April 1971. On February 9, 1979, 29 CFR 1910.134 was formally recognized as also being applicable to the construction industry (44 FR 8577) (4). OSHA is required under the OSH Act to seek the advice of an existing advisory committee when promulgating a rule which will affect an industry represented by the committee. In view of the application of the respirator protection standard to the construction industry, OSHA distributed copies of the draft of this proposed revised standard on September 20, 1985 to the Construction Advisory Committee for review and discussion at their next meeting in February 1986 so that the Construction Advisory Committee could prepare its official response. The response that was received from the committee was considered in revising the draft proposal as discussed later in this preamble.

The maritime standards were originally promulgated in the 1960's under a different codification in the CFR by agencies which preceded OSHA. The present code designations and their promulgation dates are, as follows: 29 CFR 1915.82, February 20, 1960 (25 FR 1543); 29 CFR 1916.82, January 22, 1963 (28 FR 547); 29 CFR 1917.82, March 27, 1964 (29 FR 4052); and 29 CFR 1918.102, February 20, 1960 (25 FR 1565) (4).

The current 29 CFR 1910.134 requires that the employer establish and implement a comprehensive respiratory protection program. The program is to contain written procedures and provide for proper cleaning, disinfection, storage, inspection and maintenance of the respirators. General provisions are set forth on fitting and training. Requirements are included for quality of breathing air and practices to ensure that it is not contaminated. Provisions for emergencies and for communication and rescue in atmospheres immediately dangerous to life or health are specified. A color code for gas mask cansisters is detailed and other provisions are included.

The current standard requires the employer to instruct and train employees "in the proper use of respirators and their limitations." The additional provisions of the proposal amplify the current requirements by specifying, for example, that the training program include instruction in procedures for inspection, donning and removal, checking the fit, and sufficient practice to enable the employee to become thoroughly familiar and confident with the use of the respirator. OSHA believes, based on its experience promulgating and enforcing respirator provisions in other health standards and § 1910.134, that such hands-on training can materially improve the effectiveness of respirator use.

Recent OSHA health standards have imposed respirator related requirements not found in 29 CFR 1910.134 (See section 1910.1018(h), arsenic; section 1910.1025(f), lead; section 1910.1029(g), coke oven emissions; and section 1910.1043(f), cotton dust). These requirements include the following provisions.

* Quantitative fit tests have been required semiannually, (arsenic, 1910.1018(h)(3)(ii); lead, 1910.1025(f)(3)(ii).

* Employees have been given the option of using powered air-purifying respirators (PAPR) upon request (arsenic, 1910.1018(h)(5)(iii); lead, 1910.1025(f)(2)(ii); coke oven emissions, 1910.1029(g)(2)(ii); cotton dust, 1910.1043(f)(2)(iv)).

* Employees have been permitted to change the filter elements of a respirator whenever an increase in breathing resistance is detected, (arsenic, 1910.1018(h)(4)(ii); lead, 1910.1025(f)(4)(ii); coke oven emissions, 1910.1029(g)(4)(ii); cotton dust, 1910.1043(f)(4)(ii)).

* Employees have been permitted to wash their faces and respirator facepieces to prevent skin irritation associated with using respirators, (arsenic, 1910.1018(h)(4)(iii); lead 1910.1025(f)(4)(iii); coke oven emissions, 1910.1029(g)(4)(iii); cotton dust 1910.1043(f)(4)(iii).

* Employers have been required to provide respirators that exhibit minimum facepiece leakage, (arsenic, 1910.1018(h)(3)(i); lead, 1910.1025(f)(3)(i); coke oven emissions, 1910.1029(g)(4)(i); cotton dust 1910.1043(f)(4)(i)).

* Referral of an employee to a physician trained in pulmonary medicine has been required for an employee who exhibits difficulty breathing either at fit testing or during routine respirator use (arsenic, 1910.1018(h)(3)(iv); lead, 1910.1025(f)(3)(iii)).

The current respirator standard (1910.134(b)(11)) states that respirators that are "approved or accepted shall be used when available." OSHA has chosen to recognize only those respirators approved by the National Institute for Occupational Safety and Health (NIOSH), and the Mine Safety and Health Administration (MSHA). The NIOSH and MSHA respirator performance requirements are given in Title 30, Code of Federal Regulations, Part 11. A revision of that standard is now being considered by NIOSH and MSHA.

Because of differences with the respirator requirements in other OSHA standards, changes in respirator methodology and technology, and the revision of referenced documents or related codes, OSHA published an Advance Notice of Proposed Rulemaking (ANPR) on May 14, 1982 (47 FR 20803). This notice sought information on the effectiveness of the current provisions, the need for revision, and the substance of what these revisions might be. Responses were received from 81 interested parties, and generally supported revising OSHA's respiratory protection provisions and provided suggestions for approaches the Agency might take (Ex. 15).

On September 17, 1985 OSHA announced the availability of a preliminary draft of the proposed respiratory protection standard revision for public comment (the preproposal draft standard press release). This preproposal draft standard reflected the public comments received from the May 1982 ANPR and OSHA's own analysis of changes needed in the standard to take into account the current state-of-the-art for respiratory protection. Responses were received from 56 interested parties (Ex. 36) and their comments have been reviewed in preparing this proposal.

B. Need for the Standard

This rulemaking addresses an existing standard, rather than addressing a new subject area, and seeks to correct the inadequacies of that existing standard. Since the OSHA standards on respiratory protection were adopted, research on the proper use of such equipment has resulted in new technology which improves protection for the wearers. The current standards do not reflect what is now accepted practice for implementation of comprehensive respiratory protection programs to protect employees. This is particularly true in the areas of fit testing and assignment of protection factors to respirators.

The wearing of respiratory protective devices to reduce exposure to airborne contaminants is widespread in industry. It has been estimated that 2.6 million workers wear respirators, either occasionally or routinely, in non-emergency work situations. In addition, over 59,000 facilities maintain respirators for emergency use (5, Ex. 34). Although in most situations it is preferred industrial hygiene practice to use engineering controls to reduce contaminant emissions at their source, there are operations where this type of control is not technologically or economically feasible or is otherwise inappropriate. There are many variables which affect the degree of protection afforded by these respiratory protective devices.

Indeed, the misuse of respirators can actually be hazardous to employee safety and health. Selection of the wrong equipment, one of the most frequent errors made in respiratory protection, will result in the employee being unknowingly vulnerable to the hazard and thus inhaling concentrations of the contaminant that may be harmful. This may result in a broad range of health effects caused by airborne contaminants, including silicosis, asbestosis, permanent lung damage and cancer. In the report by Rosenthal and Paull (Ex. 33–5) it is shown that, on the basis of OSHA's citation records, there is a high degree of correlation between inadequate respirator programs and overexposures to respirator wearers exposed to regulated substances. Respirators which are not maintained, inspected, and cleaned, can actually increase exposure, as well as cause dermatitis or skin irritation and place a greater strain on the respiratory system. Because the wearing of the respirator gives the employee a sense of security and presumed protection which may be false, an improper respirator program presents a high degree of hazard for the employee.

The devices themselves can only provide the protection they are designed for if they are properly selected for the task; if they are fitted to the wearer and are consistently donned and worn properly; and if they are maintained and cared for so they continue to provide the protection required for the work situation. These variables can only be controlled if a comprehensive respiratory protection program is developed and implemented in each workplace where respirators are used to protect employees from inhalation of airborne contaminants. OSHA has reviewed the present rulemaking record and the record of citations for respirator standard violations. On the basis of that review it is clear that to be effective such a program must use an integrated, systematic approach that will result in consistent and appropriate choices of respiratory equipment to be used; involvement of employees to ensure that they understand why respirators are being worn, and how they contribute to their effective use; and monitoring of the equipment and its use to ensure that respirator effectiveness is optimized.

There are many examples of how respirators may not provide the protection they were designed to provide in the absence of an effective respirator program with adequate employee training. When the hazardous substance is a dust, mist or fume there

are often conditions under which it is possible for the inside of the respirator to become contaminated with the hazardous substance. For example, the employee may have an itch on the cheek and scratch it with a dirty finger thus destroying the integrity of the respirator fit.

An employee may leave the respirator area, remove the respirator, and rest it on his or her chest. The inside of the respirator could then pick up the contaminant from the air or work clothes and later when the respirator is donned the employee will inhale the contaminant from within the respirator. If a respirator is not cleaned properly or if it is stored in a locker or on a ledge covered with the contaminant, the employee will again breathe in the contaminant from within the respirator.

An employee engaged in manual labor may dislodge the respirator with a tool or even a normal motion unless the respirator has been appropriately fit tested and the employee knows that a readjustment is necessary. An employee may be engaged in work which requires good vision or extensive communication. Without conscious thought the employee may push the respirator into a position that improves vision or make talking easier but which would result in a poor facepiece seal.

As discussed later in this preamble, several studies of the performance of respirators worn in the workplace have been submitted to the regulatory docket to show that in actual use, respirators can be effective. These studies of workplace protection factors (WPFs) are necessarily performed in workplaces which have good respiratory protection programs. Consequently though the studies on WPFs may provide a reasonable criterion for setting maximum protection factors, it is not the case that those levels of protection are always achieved even if employers have an adequate respirator program. In the case of a poor respirator program it should be apparent that these levels would seldom be achieved.

The complexity of the necessary program, and the extensive commitment of ongoing resources to maintain that program, are often not sufficiently considered when determining control measures to be used. As stated in one commonly used industrial hygiene text (6):

> There will always be a temptation to resort to respirators as a cheap substitute for a ventilation system. If this is done it is clear that management has not carefully considered the alternatives since reliance on and effective use of respirators is definitely not cheap.

As discussed above, OSHA's current standard in 29 CFR 1910.134 was largely adopted from, and references, the ANSI Z88.2–1969 standard on respiratory protection. ANSI issued a revised version of that standard in 1980 (ANSI Z88.2–1980) (Ex. 10). ANSI's intent in issuing this revision was to ensure that the standard did "reflect the current state of the art." ANSI accomplished this by expanding and adding to the standard provisions which address technological developments in respiratory protection since the 1969 standard was published. Techniques in fit testing and the use of protection factors are two areas which have been elaborated upon in the 1980 standard to help ensure more effective protection for respirator wearers.

This change highlights the need for revising the OSHA standard, particularly since § 1910.134(c) specifies that respirators are to be selected according to the 1969 ANSI standard and provides no additional guidance for employers. Moreover, it is necessary to change OSHA's standard to ensure that it too reflects current respiratory protection methodology in order to provide appropriate protection for employees.

The 1980 ANSI standard was a logical extension of the 1969 ANSI standard (and thus OSHA's) in many respects. It established requirements for a respiratory protection program so that respirator selection, fit, and use were standardized, thus controlling some of the variables which make respirators ineffective. The program was to include written standard operating procedures; assessment of the fitness of potential respirator wearers; selection of respirators; training; fit testing; maintenance; and program evaluation.

One regulatory alternative in this regard would have been to adopt the ANSI Z88.2–1980 standard, or to at least base the rulemaking largely on the latest ANSI standard as was done with the original OSHA standard. ANSI, however, was developing a major revision of its 1980 standard, recently finalized as ANSI Z88.2–1992. OSHA has given this latest ANSI standard detailed consideration in preparing this proposal. An OSHA standard based entirely on the 1980 ANSI standard would have been obsolete as soon as published. OSHA has therefore made the decision to pursue a rulemaking based on existing data and the record generated thus far by responses to the ANPR and the prepublication draft. The proposed standard has included provisions of the 1980 and 1992 ANSI standards where justified by the record. The reasons for provisions which differ from those in the ANSI standards are given in this preamble in the discussion of the content of the proposed standard. OSHA has chosen not to adopt the ANSI standard per se, but many of the provisions, as well as the general approach, are consistent with ANSI.

In the ANPR, OSHA asked if the ANSI Z88.2–1980 standard should be adopted. For the most part, respondents did not advocate that the Agency simply adopt the ANSI standard (Ex. 15–13, 15–30, 15–34, 15–40, 15–45, 15–56, 15–73, 15–80). However, a number of respondents did advocate that it be used as guidelines or a reference for the OSHA standard or that modifications to it might make it appropriate for adoption (Ex. 15–19, 15–31, 15–37, 15–43, 15–51, 15–67).

In the ANPR, OSHA requested comments on the need to revise § 1910.134, and 1980 ANSI standard notwithstanding. Only five respondents indicated that the standard should not be revised (Ex. 15–10, 15–35, 15–56, 15–75 (A and B), 15–77). The overwhelming majority of respondents, representing a wide range of organizations, stated that § 1910.134 needs to be revised to reflect current technology and to help ensure appropriate protection of employees (Ex. 15–11, 15–18, 15–20, 15–26, 15–30, 15–42, 15–50, 15–54, 15–62, 15–74, 15–76, 15–80).

For example, industry respondents such as the Chemical Manufacturers Association (CMA) expressed the view that (Ex. 15–22):

> The requirements of 1910.134 were adequate at the time they were adopted, but have been outdated by advances in respirator technology. The standard should be updated to reflect current conditions and to permit sufficient flexibility for companies to respond to continuing technological improvements. Present standards tend to suppress innovation and have a potential for harm by retarding the adoption of technological advances.

The Los Alamos National Laboratory (LANL), an institution which has conducted considerable research on respiratory protection, also supported the need to revise OSHA's current standard, and commented upon the appropriate approach to take (Ex. 15–79):

> Currently standards should be revised to reflect changes in respiratory protection capabilities, techniques, and equipment which have been developed over the past 10 years. ANSI Z88.2 (1980) provides the best basis for developing a new standard. In addition, the "Guide to Industrial Respiratory Protection" (published as Los Alamos report LA–6671–M, and Health, Education, and Welfare (HEW) Publication, National Institute for Occupational Safety and Health (NIOSH 76–189) provides detailed

information relative to the requirements for an adequate respirator program. It is not recommended that direct adoption of sections, of either of these documents, be the approach used by OSHA. Both documents are several years old, and the ANSI document constitutes a compromise between various interests involved in developing and adopting a consensus standard. Development of a revised standard will require a major effort by OSHA to identify, update, and expand those sections of ANSI Z88.2 (1980) which should be made part of the new OSHA standard.

Labor representatives also supported revising the standard, as represented by this statement of the United Steelworkers of America (Ex. 15–28):

> At the present time the respiratory protection standard is not effective in providing workers with any great degree of protection due to the inadequacies of the standard, lack of requirements for employers to follow so that all respiratory protection programs are uniform and equally protective, and ineffective enforcement due to the vagueness of the requirements.

Manufacturers of respiratory protective devices are also among those who support revising OSHA's current respiratory protection standards. For example, the Minnesota Mining and Manufacturing Company stated (Ex. 15–30):

> When 1910.134 was promulgated nearly a decade ago it reflected the state-of-the-art for a good respiratory protection program. The state-of-the-art for respiratory protection, however, has rapidly advanced since that time and although many of the elements included in the original standard retain their relevance and importance, other elements have been developed and more efficient means for achieving the goals of an effective respiratory protection program have been introduced * * *

There are two issues in particular which have evolved technologically since the current OSHA standards were adopted: Assignment of protection factors or maximum use concentrations for particular models or types of respirators; and the development of fit testing procedures.

With respect to assigned protection factors, OSHA has decided not to establish its own set of numbers but instead to defer to NIOSH in setting assigned protection factors for the various respirator classes. NIOSH will be developing assigned protection factors as part of its revised respirator certification standard, 42 CFR Part 84. Since NIOSH may not publish 42 CFR Part 84 before this OSHA respirator standard revision is finalized, OSHA will in the interim enforce the assigned protection factors listed in the NIOSH Respirator Decision Logic (RDL). The concept of protection factors and the decision to defer to NIOSH are discussed in more detail in a later section of this preamble.

Fit testing, the other area in which considerable advances have been made since the promulgation of OSHA's current standard, also varies among the substance-specific standards. The cotton dust standard (29 CFR 1910.1043) requires that the respirator used exhibit minimum facepiece leakage and be fitted properly. The coke oven emissions standard (29 CFR 1910.1029) requires annual quantitative fit testing, but has no protocol for fit testing. The lead standard (29 CFR 1910.1025) requires either qualitative or quantitative fit testing every six months and contains specific qualitative fit test protocols to be followed. Although the current respiratory protection standard refers to the necessity for proper fit, there are no procedures to follow or specific indications of how fit factors are to be taken into account in the assignment of respirators.

There are two types of fit testing that can be used for tight fitting facepiece respirators that rely on a facepiece-to-face seal to perform adequately. Qualitative fit testing involves the introduction of a test agent into the breathing zone of the respirator wearer which can be detected by its irritant properties, taste, or smell. If the wearer detects the characteristic effect of the test agent used, it indicates that the respirator is leaking and does not fit properly, and thus a different respirator is needed to protect that employee. Quantitative fit testing involves the generation of a known concentration of a test agent outside the facepiece, and a measurement of the concentration within the facepiece of the respirator. The ratio of these concentrations yields a number which indicates the protective capability of the device. This approach does not involve the subjective response of the wearer as does the qualitative fit test.

OSHA began including requirements for the use of quantitative fit testing in substance-specific standards starting in 1976 with the coke oven emissions standard. However, no procedures were provided. In the lead standard, OSHA conducted a separate rulemaking proceeding to address the appropriateness of QLFT. It was determined at that time that qualitative fit testing can be appropriate, but only under certain conditions. It was found, for example, that such fit testing can provide a reasonable degree of reliability only when specified protocols are followed. Thus the lead standard was revised to permit qualitative fit testing as well as quantitative fit testing to protect employees in atmospheres no greater than ten times the permissible exposure limit for lead, when exposed employees are wearing half mask negative pressure air-purifying respirators.

The overall problems with respect to QLFT protocols that came to the surface in the lead standard revisions, plus the fact that there was no specified QNFT protocol, made it apparent that these subjects needed to be addressed in the overall respiratory protection standard. Proper fit is so essential to maximizing functioning of respirators that OSHA must include in its requirements the latest findings of respirator research on means to assess and assure such fit.

In assessing the need to revise § 1910.134, OSHA reviewed the Agency's enforcement statistics related to this standard for a period of about ten years, from 1972 to 1982 (9). This standard is one of the most frequently cited health standards, which indicates both a lack of understanding as to what is required for compliance, and a lack of awareness as to the importance of establishing and implementing a comprehensive respiratory protection program. During the period reviewed, there were 22,662 violations of the standard recorded, of which 8,406 were serious violations (37%). Some 3,648 of the violations were for not establishing a program (1,752 of these were serious because overexposure to hazardous substances were involved). Other commonly cited provisions include development of standard operating procedures; training and fit testing; cleaning and disinfection of equipment; storage of equipment; and use of approved respirators.

Compliance should be enhanced by the provisions of the proposed standard. In those areas which are frequently cited, the new proposal provides additional guidance for employers to help ensure that they are aware of what is required to comply, and thus protect their employees adequately. OSHA expects that these revisions will improve the level of protection provided by the current standard: nothing in these revisions is intended to decrease protection provided under the current standard.

To summarize OSHA's position, the Agency has determined that promulgating a revised respiratory protection standard is necessary to ensure that employees wearing respirators in the workplace are doing so under conditions which adequately protect their health. This determination by OSHA is supported by the public in responses to the ANPR published by the Agency. It is also necessitated by

changes in respiratory protection methodology and subsequent revisions to the consensus standards upon which the current standard is based, thus making the current standard outdated. The determination of the need for the standard is also supported by OSHA's experiences in promulgating substance-specific standards with respiratory protection provisions in them, and in the Agency's enforcement experiences with the current standard.

Based on an evaluation of these considerations, OSHA has prepared this proposed standard and is hereby initiating the public rulemaking process.

C. Recognition of the Need for a Standard by Other Groups

The need for standardization in this area, particularly for consistent guidance and controlled practices, can also be demonstrated by the number and extent of voluntary standards that have been adopted, as well as by the existence of standards at all levels of government.

As has already been discussed, the primary voluntary consensus standard in this area was that developed by the American National Standards Institute as ANSI Z88.2–1980, entitled "Practices for Respiratory Protection" (Ex. 10). This standard was an updated version of the 1969 ANSI standard which was used as the primary basis of OSHA's current standard, § 1910.134. Following are some of the 1980 ANSI standard changes:

- Oxygen deficiency is more thoroughly discussed.
- Quantitative fit testing is now included and described.
- Qualitative fit testing is more fully described.
- The concept of protection factors is introduced and protection factors are assigned.

ANSI has also developed a new standard on physical qualifications for respirator use (ANSI Z88.6–1984) (Ex. 38–10).

The OSHA standard, based on the outdated 1969 ANSI standard, does not address these topics. The ANSI revisions reinforce OSHA's decision to revise its standard to address the same and other issues.

Other countries also recognized the need for standards governing the use of respirators. Of particular note is the consensus standard recently developed by the Canadian Standards Association (Z94.4–M1982, Selection, Care and Use of Respirators) (10). This document is a comprehensive treatment of the subject and, similar to OSHA's proposed standard, its emphasis is on the establishment and implementation of a comprehensive respiratory protection program. As stated in the preface to that standard:

> The primary aim of this Standard is to give detailed instruction in the selection of the proper respirator and its use and maintenance. The emphasis is on the implementation of a respiratory protection program developed in a logical progression of steps beginning with:
>
> (a) A very clear definition of the hazards that will be encountered and the degree of protection required;
>
> (b) The selection and fitting of the respirator;
>
> (c) The required training in the correct use and care of the respirator; and
>
> (d) The implementation of a maintenance program that will ensure that a high level of respiratory protection is maintained.

The Canadian consensus standard deals with several areas in more detail than OSHA's current standard, and some of the language used has been incorporated into this proposed standard, particularly in the areas of training and program evaluation.

Documents developed by U.S. military organizations also indicate the need for comprehensive respiratory protection programs. A military standard entitled "Respiratory Protection Program" (TB MED 223/AFOSH STD 161–1/DLAM 1000.2) has been developed for the use of the Air Force, Army, and the Defense Logistics Agency (15). This document is similar to OSHA's current standard (§ 1910.134), but includes sections which expand upon the requirements of that standard and provide additional guidance in critical areas. The military standard provides considerable direction on the selection of respirators, including the protection factor concept, that is not included in OSHA's current standard. It also provides additional information on fit testing and training. OSHA's proposed standard similarly recognizes the deficiencies of § 1910.134, and provides additional guidance to employers in these same areas as well as others.

It can be seen from this brief discussion that there is widespread agreement among safety and health professionals that adequate respiratory protection cannot be provided in the absence of specific procedures. The range of equipment choices available, the diversity of hazards against which they are to protect, the differences in work situations, and other variables increase the complexity of the decision making process in terms of selecting the appropriate respirators, and ensuring they fit, are worn properly, and are maintained as necessary. OSHA proposes to revise its current standard to ensure that appropriate procedures are implemented by employers, and thus increase the probability that protection to the extent technologically feasible for respirators will be provided for employees.

V. Certification/Approval Procedures

Section 1910.134 requires that only those respirators approved jointly by NIOSH and MSHA be used by the employer when they exist. The current respirator testing and approval regulation, 30 CFR 11, which authorized the Bureau of Mines (BM) and NIOSH to jointly approve respiratory protection devices was promulgated on March 25, 1972 at 37 FR 6244. On November 5, 1974 the Mine Enforcement Safety Administration (MESA) joined NIOSH in jointly approving respirators. Following the transfer of MESA to the Department of Labor, where it became the Mine Safety and Health Administration (MSHA), authority was transferred on March 24, 1978 to MSHA for joint approval with NIOSH of respirators. Most of the BM respiratory testing methods, while developed in the 1950's or earlier, were changed in the 1970's to reflect changes in testing technology.

NIOSH initiated revision of 30 CFR 11 in 1980. A public meeting was held in July 1980 to address the certification program. On August 27, 1987, NIOSH published a notice of proposed rulemaking (52 FR 32402) which would allow NIOSH to certify respirators under the new 42 CFR Part 84 regulations, replacing the current joint NIOSH/MSHA 30 CFR 11 certification regulations. The proposed NIOSH certification regulations contained new and revised requirements for testing and certification of respirators, and included a set of minimum assigned protection factors for various classes of respirators. Public hearings on the first draft NIOSH proposal were held in January, 1988. On the basis of the comments received, NIOSH is preparing a revised proposal for further public comment.

Numerous commenters to the ANPR addressed the issue of NIOSH respirator certification (Ex. 15–11, 15–27A, 15–58, 15–14, 15–43, 15–50) and most agreed that the certification program should be improved. Some suggested that OSHA assume the function of certification of respirators. OSHA believes it is advisable not to undertake operation of the certification program currently operated by NIOSH and MSHA. OSHA has neither the expertise nor equipment to perform respirator performance testing. OSHA intends that information generated in this proceeding will be made available to NIOSH to use in its revision of its respirator certification

standards, and that NIOSH will make its rulemaking record available to OSHA. OSHA believes that, for the present, the best course is to continue to require NIOSH respirator certification as it has in the past.

VI. Summary of the Preliminary Regulatory Impact Analysis and Regulatory Flexibility Analysis and Environmental Impact Assessment

Introduction

Executive Order 12866 requires that a regulatory impact assessment be conducted for any rule having an annual effect on the economy of $100 million or more, or adversely affecting in a material way the economy, sector of the economy, productivity, competition, jobs, or state, local or tribal governments. In addition, the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 (5 U.S.C. 601 et seq.)) requires the Occupational Safety and Health Administration (OSHA) to determine whether a proposed regulation will have a significant economic impact on a substantial number of small entities, and the National Environmental Policy (NEPA) of 1969 (42 U.S.C. 4321, et seq.) requires the agency to assess the environmental consequences of regulatory actions.

In order to properly assess potential impacts, in 1988 OSHA prepared a Preliminary Regulatory Impact and Regulatory Flexibility Analysis (PRIA) for the proposed revisions to the respiratory protection standard. This analysis includes a profile of the affected industries, the estimated number of workers who wear respirators, and the nonregulatory alternatives, technological feasibility, costs, benefits, and an overall economic impact of the proposed standard. The PRIA is available in the OSHA Docket Office. OSHA believes the basic data and conclusions are still correct. Inflation has increased costs but has generally increased profits and sales in reasonably similar proportions. This assessment is largely based upon the conclusions of the PRIA; cost numbers have been adjusted for inflation.

Data Sources

The primary sources of information used for this impact analysis are a report by Centaur Associates, Inc. entitled, "Preliminary Regulatory Impact Analysis of Alternative Respiratory Protection Standards" and a report by Centaur Associates, Inc. entitled, "Compliance Cost Analysis: Current and Proposed Respiratory Protection Standards", available in the docket. Most of the information contained in this report was collected from an in-depth sample survey of the current work practices in 2,300 manufacturing plants in which respirators are used. The results from the manufacturing sector were extrapolated to nonmanufacturing plants and construction firms.

A third source of data are the comments received by OSHA in response to the Advanced Notice of Proposed Rulemaking (ANPR). OSHA welcomes additional comments and all information supplied will be carefully reviewed and evaluated for incorporation into the Regulatory Impact Analysis (RIA) that will accompany the final rule.

Industries and Employees Affected

The data currently available to OSHA indicate that the proposed standard would affect approximately 3.6 million employees of whom 1.6 million are employed in the manufacturing sector, 1.5 million are employed in the nonmanufacturing sector, and 0.5 million are employed in the construction sector. Of the 3.0 million employees who wear respirators for routine or occasional work, 1.1 million use respirators routinely and 1.9 million use respirators occasionally. About 600,000 employees wear respirators for both routine and emergency use. Of these 600,000 employees, approximately 150,000 wear respirators only for emergencies. Respirators are used routinely or occasionally in about 606,200 establishments of which 123,200 are manufacturing plants, 360,100 are nonmanufacturing plants, and 122,900 are construction sites. Respirators are also used only for emergencies in another 51,800 establishments, of which 15,200 are manufacturing plants, 27,300 are nonmanufacturing plants, and 9,300 are construction sites. Each general industry and construction sector would be affected by this proposed standard because respirators are used in many different work activities in each of these sectors.

Nonregulatory Environment

In general, worker compensation systems designed to compensate employees for occupationally related illnesses have not had a significant impact upon the incidence of long-term chronic occupational illnesses. One reason is that it is extremely difficult to determine the cause of illness at the time the disease is diagnosed. The long latency period between the exposure and the onset of disease, and the mobility of employees among occupations and firms combine to make it difficult to establish a direct causal relationship between an occupational exposure and the resultant illness. The absence of a readily observable cause and effect relationship provides a disincentive for some firms to establish appropriate safety and health measures. In addition, the lack of information regarding health risks, inadequate training, or a misunderstanding of the function of a respirator may lead to employee exposure to harmful levels of hazardous substances. Thus, the nonregulatory environment does not guarantee employee safety because the economic incentives are absent, employees are improperly trained in respirator use, and employees do not have sufficient information on the resultant benefits of respirator use.

Technological Feasibility

The proposed respirator standard does not require the use of large-scale capital equipment. All of the provisions involve equipment, evaluations, and work practices that are widely used. Thus, on the basis of the information currently available, the proposed standard has been found to be technologically feasible. Additional information that is submitted will be carefully evaluated by OSHA before issuing the final rule.

Summary of Cost

OSHA derived its cost estimates by first examining the cost of coming into compliance with both the existing and proposed standards, using current work practices as its baseline. This estimate does not include the cost of purchasing the respirators; it includes only the cost of all the other activities required by the existing and proposed respiratory protection programs. The requirement to wear respirators comes from other standards or specific conditions—not from this standard. Consequently, respirator purchase has been costed in other standards which require their use. This standard requires improvements in the respirator program when other standards require their use and this analysis costs these additional program requirements.

OSHA estimates that the total annualized incremental cost of the proposed revisions to the respirator standard are $106.8 million. As shown in Table A, approximately half of this cost ($55.6) is estimated to fall on the nonmanufacturing sector, with the remainder in manufacturing ($38.2) and construction ($13.1). The largest incremental cost is attributable to enhanced requirements for qualitative fit testing ($58.5 million). Other enhanced requirements include

provisions dealing with disposable respirator practices ($16.7 million), respirator facepiece selection ($15.2 million), employee training ($14.4 million) and respirator use in IDLH atmospheres ($10.4 million).

In reviewing the original standard, some provisions were considered to impose costs on employers without providing safety, and have been modified. Cost savings would be derived from modified requirements regarding air quality in atmosphere-supplying respirators ($8 million) and eyeglass mounts ($0.4 million). These estimates are conservative, as they do not factor in savings to employers already in compliance with existing provisions.

While the proposed standard clarifies a number of existing requirements, several of them were judged in the PRIA not to actually impose a new burden on employers. However, the respirator survey found significant noncompliance with several provisions of the existing standard, and by extension, the proposed standard. Costs relating to compliance with these provisions is discussed in depth in the PRIA.

TABLE A.—ANNUALIZED COSTS OF PROPOSED REVISIONS TO RESPIRATOR STANDARD (MILLIONS $1992) [1]

Provision	Sector			
	Manufacturing	Nonmanufacturing	Construction	Total
Medical	$0.0	$0.0	$0.0	$0.0
Qualitative Fit Testing (with protocols)	17.3	33.0	8.1	58.5
Employee Training	5.7	6.6	2.1	14.4
Program Administrator Training	0.0	0.0	0.0	0.0
Written Procedures	0.0	0.0	0.0	0.0
Program Administration and Respirator Maintenance	0.0	0.0	0.0	0.0
Storage	0.0	0.0	0.0	0.0
Eyeglass Mounts	−0.2	−0.1	−0.0	−0.4
Poor Warning Properties	0.0	0.0	0.0	0.0
Respirator Use in IDLH [2] Atmospheres	6.6	3.2	0.7	10.4
Air Quality in Atmosphere-Supplying Respirators	−4.2	−3.1	−0.7	−8.0
Disposable Respirator Practices	9.4	5.6	1.7	16.7
Respirator Facepiece Selection	3.6	10.4	1.2	15.2
Total	38.2	55.6	13.1	106.8

[1] Represents incremental burden over existing standard; numbers may not add precisely due to rounding.
[2] Immediately dangerous to life and health.
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Benefits

The proper use of a respirator when augmented by an appropriate respiratory protection program can prevent fatalities and illnesses from both acute and chronic exposures to hazardous substances. Based on data found in the OSHA Integrated Management Information System (IMIS), OSHA determined that there is an annual average of 66,500 illnesses that are due to acute exposures to airborne hazardous substances. OSHA estimated that compliance with the existing standard could have prevented about 20 percent of these incidents, and that the proposed revisions to the existing standard could prevent an additional 5 to 10 percent. Thus, full compliance with proposed revisions to the existing standard could prevent between 3,325 and 6,650 illnesses due to acute exposures annually.

In addition, using an Office of Technology Assessment estimate that 5 percent of all cancers are occupationally related, OSHA estimated that there are annually between 9,085 and 15,660 new cancer cases, between 6,850 and 11,000 cancer deaths, due to chronic exposures to occupational airborne carcinogens. In addition, airborne exposure to hazardous substances such as silica are estimated to account for another 4,200 chronic illnesses annually. OSHA anticipates that full compliance with the existing standard would prevent about 10 percent of these cases, and that proposed revisions to the existing standard would prevent an additional 2.5 to 5 percent. Thus, after a period of time, between 227 and 783 new cancer cases, between 171 and 550 cancer fatalities, and between 105 and 210 chronic illnesses could be prevented each year by full compliance with the proposed revisions to the respirator standard.

OSHA requests public comment on these benefits estimates in general and the methodology used in making them. The agency requests comment on how much an effective respiratory protection program, as proposed, would reduce the level of occupational illness currently found. In addition, information and data are requested on current respirator use patterns as related to exposure (i.e. percentage of respirator users with potential exposures at levels up to 10 times the PEL; 50 times the PEL, etc.) and any anticipated impact this proposed standard would have on respirator use.

Economic Impact and Feasibility

In assessing the economic feasibility of the respirator standard, the Agency examined the costs of compliance of the standard, in relation to sales and profits in affected industries. This analysis was based on data in the 1986 Centaur report for manufacturing, and on industry profile information from OSHA's 1989 PPE survey and 1992 Dun and Bradstreet financial data.

OSHA assessed the potential economic impacts and has preliminarily determined that the standard is economically feasible for each of the major industry groups that will be affected. OSHA conducted its analysis at the two-digit SIC level. This has been OSHA's procedure for doing regulatory impact analyses for other proposed standards. OSHA preliminarily concludes that this is reflective of the actual impact on the average firm within each subsector. It does not appear that the affected groups will experience significant adverse economic impact as a result of the standard. However, if any interested person has information to show that the analysis at the two-digit level is not representative of the potential economic impact of the proposal, OSHA requests the following

information: reasons why the preliminary regulatory impact analysis is not reflective of the actual anticipated costs in any particular sector; specific information as to why the analysis at the two-digit level fails to adequately represent the economic impact; and specific information to help OSHA to better predict the impact on the sector in question. Such information should be included in the comments on the proposal.

As indicated in Table B, OSHA estimates that for all affected industries, incremental costs of compliance would amount to less than 0.1 percent of sales, meaning that less than a 0.1 percent increase in prices would be necessary to cover these costs. At this level, businesses should have no trouble passing these costs onto consumers, as it is unlikely consumers would notice the difference, in the face of other market fluctuations. Even if this were somehow not possible, in the worst case, any reduction in profits would be less than 1% in any industry. For these reasons, the Agency anticipates the standard should be economically feasible in all industries.

The Agency invites comment by any industries that anticipate problems with economic feasibility in complying with these revisions to the respirator standard.

Table B.—Cost of Revisions to Respirator Standard as a Percentage of Sales and Profits

SIC	Industry	Costs per establishment	Sales per establishment	Pre-tax profits per establishment	Costs/sales (percent)	Costs/profits (percent)
07	Agricultural Services	$73	$316,434	29,249	0.023	0.25
08	Forestry	116	613,039	73,941	.019	.16
13	Oil & Gas Extraction	117	14,732,157	1,406,260	.001	.01
15,16,17	Construction	107	895,587	42,998	.012	.25
22	Textile Mill Products	2,409	8,344,061	467,815	.029	.52
24	Lumber & Wood Products	151	3,152,807	186,290	.005	.08
25	Furniture & Fixtures	325	1,710,553	94,173	.019	.34
26	Paper & Allied Products	721	3,359,030	196,804	.021	.37
28	Chemicals & Allied Products	627	22,228,880	1,234,883	.003	.05
29	Petroleum Refining	173	2,235,435	169,352	.008	.10
30	Rubber & Misc. Plastic Products	253	29,274,209	2,759,402	.001	.01
32	Stone, Clay, Glass & Concrete	171	144,936,193	7,246,699	.000	.00
33	Primary Metal Industries	1,120	7,173,641	452,870	.016	.25
34	Fabricated Metal Products	167	6,805,024	436,597	.002	.04
35	Machinery (Except Electrical)	264	4,377,647	263,117	.006	.10
36	Electrical & Electronic Equipment	121	17,509,789	919,731	.001	.01
37	Transportation Equipment	653	4,557,703	269,325	.014	.24
38	Measuring & Controlling Instruments	74	7,397,676	508,126	.001	.01
39	Misc. Manufacturing Industries	142	10,705,268	605,548	.001	.02
41	Passenger Transportation	146	1,350,813	63,449	.011	.23
42	Motor Freight	81	1,268,289	56,371	.006	.14
48	Communications	151	16,162,621	2,816,217	.001	.01
49	Utilities	792	16,459,198	1,712,408	.005	.05
50	Durable Wholesale Trade	297	2,497,626	126,143	.012	.24
51	Nondurable Wholesale Trade	115	5,059,902	212,107	.002	.05
52	Hardware, Garden, Mobile Home Retail	225	994,229	45,694	.023	.49
55	Auto Dealers & Service Stations	61	1,957,405	59,316	.003	.10
75	Automotive Services	83	394,881	28,719	.021	.29
76	Misc. Repair	110	188,739	18,493	.058	.59

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Assistant Secretary preliminarily determined that the proposed standard would not be a significant burden upon a substantial number of small entities. There may, however, be a higher cost per respirator-wearing-employee for some small entities. In particular, larger plants that have in-house testing facilities and in-house medical facilities would be able to provide the necessary services at lower unit costs than could smaller companies. OSHA is soliciting information on this issue, and any comments received will be carefully reviewed and evaluated for incorporation into the RIA of the final rule.

Environmental Impact Assessment—Finding of No Significant Impact

The proposed rule and its alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, et seq.), the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and the Department of Labor's (DOL's) NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA determined that the proposed rule will have no significant environmental impact.

The focus of the proposed standard is on reducing risks to employees who must wear respiratory protection in order to reduce their exposures to hazardous airborne substances when effective engineering controls are not feasible, while they are being installed, or during emergencies. The proposed provisions include written respiratory protection programs and evaluation, medical evaluation, fit-testing procedures, guidance on the maintenance, care, and use of respirators, and training. The implementation of the respirator program would remove hazardous airborne particulates and contaminants from the breathing zone of the worker and not from the general ambient atmosphere in the work environment. In

general, the procedures and applications of the proposed provisions do not impact on air, water or soil quality, plant or animal life, the use of land, or other aspects of the environment and therefore are not anticipated to have any significant effect on the environment.

VII. Summary and Explanation of the Proposed Standard

In developing the proposed standard, OSHA received and analyzed all of the regulations, documents, and comments described above, as well as other information the Agency has obtained during the developmental process. This information can be found in the public record, Docket H–049. The material collected and reviewed generally supports OSHA's finding that in order to ensure adequate respiratory protection, employers requiring employees to wear respirators must develop and maintain an appropriate respiratory protection program.

Setting clear protective requirements for selecting, fitting, using, and maintaining respiratory protective devices will help employers to provide the appropriate protection for their employees, and thus reduce their exposure to hazardous chemicals.

This proposal is intended to replace OSHA's current respiratory protection standard for general industry, 29 CFR 1910.134, and the respiratory protection provisions in the OSHA construction standards, 29 CFR 1926, and maritime standards, 29 CFR 1915–1918. Although a performance standard orientation has been adopted, enforcement experience with the current standard has shown that the existing requirements do not provide sufficient specific information for employers to comply, particularly in the areas of respirator selection, medical surveillance, and fit testing. Therefore, this proposal is designed to provide employers with a clear description of the appropriate steps to follow to establish an effective respiratory protection program.

OSHA recognizes that there may be differing opinions regarding the particular provisions that should be included in such a comprehensive respiratory protection standard. The Agency is hereby soliciting information on alternative requirements to address the problems of inadequate or improper respiratory protection. The final standard adopted will incorporate whatever means are best for ensuring an effective respiratory protection program and which are supported by the public rulemaking record. The proposed standard continues the public rulemaking process by presenting the Agency's assessment of the best method to accomplish the development and maintenance of a respiratory protection program given our current state of knowledge.

The following summary and explanation is designed to clarify the intent of the proposed provisions, as well as to identify issues OSHA is aware of and would like to receive comments on. Comments are also invited on other relevant issues which are not specifically raised in this discussion. All such comments should clearly identify the provision of the standard to which they apply, as well as the position taken on that provision. It is most helpful, and makes the record more accessible, when comments are organized in the same order that the standard is written and are indexed to the particular provisions of the standard to which they refer. It should also be noted that on technical issues, substantiation should be presented as well as opinion on the appropriateness of a particular requirement. Such substantiation may take the form of anecdotal evidence of experience, scientific data, etc. Submission of substantive commments helps OSHA build a thorough record upon which to base the final standard. A complete record on all the issues will help ensure that the final standard is appropriately drawn to address the issue of respiratory protection.

(A) Scope and Application

The existing OSHA respirator standard contains a methods of compliance provision (§ 1910.134(a)(1)) which establishes a hierarchy of control techniques to be used for protecting employees from exposure to airborne contaminants, with engineering controls to be implemented first and respirators allowed only when engineering controls are not feasible or while they are being instituted.

This provision of the standard is not a subject of this rulemaking; only issues relevant to the content of a respirator use program are to be addressed at this time. OSHA is reviewing § 1910.134(a)(1) and similar hierarchy of controls provisions contained in § 1910.1000 in a separate rulemaking.

In the prepublication draft, OSHA asked whether to make the requirements for a respirator program apply whenever the employer either required or permitted the use of respirators. The requirement that the program be implemented whenever employees were permitted to wear respirators on their own was criticized by commenters (Ex. 36–11, 36–13, 36–38, 36–44, 36–47, 36–48, 36–51A) who felt that this provision was inappropriate and would serve to discourage permission to use respirators voluntarily and thus, in some situations, could lessen workplace protection. Upon consideration of these comments, OSHA is now proposing to retain the wording in paragraph (a)(2) of the current standard which requires that respirators be provided when such equipment is necessary to protect the health of the employee.

Paragraph (a)(2) actually addresses two issues—(1) when respirators are required to be used and (2) that of the need to implement a full respiratory protection program. Regarding when respirators are required to be used, OSHA interprets paragraph (a)(2) as clearly requiring their use in the absence of engineering controls whenever employee exposures would exceed an OSHA permissible exposure limit (PEL) or warrant a 5(a)(1) citation under the OSH Act. Under these conditions, the proposal would require respirators to be provided by the employer and a respiratory protection program that meets the full requirements of the respirator standard to be implemented. This interpretation continues OSHA's existing compliance policy covering the required use of respirators.

A respiratory protection program complying with the full provisions of this proposal would be required whenever an employer requires any employee to wear a respirator, regardless of the exposure level and whether the substance is regulated. The use of a respirator in itself could constitute a hazard and improper use of a respirator can also increase the exposure hazards and in some cases can make the exposures more dangerous than if the respirator had not been used in the first place.

However, OSHA requests comments on whether the respirator program, when required by the employer in the absence of a regulatory requirement of another standard, could be modified for certain respirator types, uses, or conditions, to still provide the needed protection. Comments with supporting data are requested on what specific provisions of the proposal could be reduced or eliminated in this case based on respirator type or environmental or workplace conditions, and under what specific circumstances the required provisions could be changed.

If a respirator is used by an employee but its use is not required by OSHA standards or statute, or by the employer which is known as a voluntary respirator use situation, then the requirements of the proposed standard although recommended, are not proposed to be mandatory.

OSHA is also seeking comment on the appropriateness of the scope of the respirator standard, and on whether the scope of the standard should go beyond required respirator use to include voluntary respirator use situations as well.

OSHA requests comments on whether there are certain low risk respirator use situations which could justify the reduction or elimination of certain provisions in the mandatory respirator program in order to provide additional compliance flexibility. How such lower risk situations could be defined, and which provisions could be modified or eliminated should be listed along with a discussion of how changing the provisions would effect potential risks of respirator use.

The proposal contains a threshold of five hours of respirator wear in any work week before a medical evaluation must be obtained. Is a five hour threshold appropriate, or should it be larger, and if so, what specific situations would serve to justify a larger time threshold? Should there be any time limit, or should any respirator use trigger medical provisions?

(B) Definitions

The proposed standard includes a number of definitions which are unique, and which should be consulted to properly understand the standard. The current respiratory protection standard has no definitions, which may have contributed to misunderstandings in knowing how to comply.

A number of the definitions deal with specific types of respiratory protective devices, or with components of those devices. For example, "air-purifying respirator", "disposable respirator", "filter", and "positive pressure respirator" are all defined in this paragraph. Most of these definitions are based on generally recognized sources, such as the current ANSI standard, or documents from the National Institute for Occupational Safety and Health. Others have been developed by OSHA for purposes of this standard. With the few exceptions discussed in the following paragraphs, the definitions are straight forward and self-explanatory. OSHA invites comment on the appropriateness of these definitions and invites the submission of alternatives. Some of the definitions require explanation as follows.

A definition for "hazardous exposure level" has been developed and included for the following purpose. In order to select a respirator which provides the proper degree of protection, it is necessary to know both the anticipated ambient airborne exposure level and the exposure that is acceptable in the breathing zone. One can then determine the extent to which the respirator must reduce the ambient exposure level. Thus in the respirator selection scheme, an exposure limit must be used to establish a goal to determine the degree of protection needed for employees exposed in a given work situation. Although this standard does not set specific exposure limits, a concept of exposure must be included in the selection criteria to be consistent with current practice.

Since OSHA has permissible exposure limits established for about 600 substances, and there are thousands of hazardous substances to which employees are exposed, other sources of hazard information must be used for substances not regulated by OSHA. This does not mean that OSHA is in effect establishing permissible exposure limits for these other substances. It just means that where employers decide to use respirators to control exposure, a target exposure level must be established to determine the appropriate respirator to use. Therefore, OSHA has defined the term "hazardous exposure level" for purposes of selecting respirators, as follows.

Where OSHA does have a PEL, it must be used. If there is no PEL for the substance, the employer must use the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) for the chemical if one exists.

If there is no PEL or TLV for the chemical, the employer must determine the "hazardous exposure level" based on available scientific information including the MSDS. In some situations, the suppliers of the chemicals may make recommendations for appropriate exposure levels based on their own experience. In any event, the employer must establish a protective goal, based on available information, in order to choose the appropriate respirator, and must be able to substantiate how that goal was chosen.

It should be noted that the OSHA PEL, ACGIH TLV, and other available exposure limits are required to be reported on the material safety data sheet generated by chemical manufacturers and importers under the requirements of OSHA's Hazard Communication Standard (29 CFR 1910.1200). This information should assist downstream employers in choosing respirators to protect their employees.

As stated in the scope paragraph, the standard is to apply when employees are required to wear respirators to reduce their exposures to airborne concentrations of "hazardous chemicals" in the workplace. For purposes of this standard, "hazardous chemical" is defined as a substance which meets the definition of "health hazard" under OSHA's Hazard Communication Standard (29 CFR 1910.1200). This approach helps to ensure that definitions of hazard are consistent in current OSHA standards; provides a broad scope of coverage for this standard; and incorporates a data base for employers in the form of material safety data sheets generated under the requirements of the Hazard Communication Standard.

The Hazard Communication Standard defines "health hazard" as a substance for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles, showing that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes substances which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes or mucous membranes.

OSHA notes that the definition of "hazardous chemical" is used here merely to target the broad range of substances which may entail respirator use. However the requirements of this proposed standard only apply when a regulated substance is being used or when an employer requires the use of a respirator for any reason. One term which is frequently used in regard to atmospheres which require respiratory protection is "immediately dangerous to life or health" or "IDLH." Such atmospheres require the most protective types of respirators for workers. Although the term is used frequently, there has been no one accepted definition of it. In the preproposal draft of the respirator standard, OSHA defined an IDLH atmosphere as one "where the concentration of oxygen or hazardous chemical(s) would cause a person without respiratory protection to be fatally injured or would cause irreversible or incapacitating effects on that person's health." In addition, the definition stated that in establishing the IDLH for a workplace situation, the employer was to consider "the maximum concentration of the hazardous chemical at which one could escape within ten minutes without any escape-impairing or immediate or delayed irreversible health effects" and "the minimum concentration of the hazardous chemical at which severe eye

or respiratory irritation or other reactions would inhibit escape without injury." This definition was derived from the IDLH definition in the Joint NIOSH/OSHA Respirator Decision Logic. An escape time of 30 minutes was considered in the Decision Logic as the maximum permissible exposure time for escape from an IDLH atmosphere. There has always been disagreement whether the maximum escape time should be reduced to 10 minutes as OSHA recommended in the preproposal draft, or whether some other time limit such as 15 or 30 minutes should be used. Since there is no clear evidence as to what the time limit should be and just how such a limit would be used in determining an IDLH atmosphere, OSHA is proposing a less specific, but clearly protective, IDLH definition that does not refer to a maximum escape time limit, as described below.

NIOSH revised its IDLH definition in the August 27, 1987 (52 FR 32413) proposed revision of the respiratory protective devices certification procedures to read:

"Immediately Dangerous to Life or Health" (IDLH): Respiratory exposures which:

(1) Pose an immediate threat of loss of life or of irreversible or delayed effects on health or;

(2) Eye exposures which would prevent escape from such an atmosphere.

The OSHA Hazardous Waste Operations and Emergency Response Standard, 29 CFR 1910.120, contains an IDLH definition that reads as follows:

"IDLH" or "Immediately dangerous to life or health" means an atmospheric concentration of any toxic, corrosive, or asphyxiant substance that poses an immediate threat to life or would cause irreversible or delayed adverse health effects or would interfere with an individual's ability to escape from a dangerous atmosphere.

The hazardous waste IDLH definition addresses all the issues covered in the NIOSH IDLH definition and more clearly addresses asphyxiant atmospheres. OSHA has therefore chosen to adopt the hazardous waste operations IDLH definition for this respiratory protection proposal which, in addition to being most appropriate, will also assure consistency between the various OSHA standards that address IDLH atmospheres. Comment is requested on this definition of immediately dangerous to life or health, and on its appropriateness for respiratory protection standards.

Since the warning properties of a gas or vapor are to be considered in the selection of an air-purifying respirator, OSHA has included a definition of what constitutes "adequate warning properties." The "adequate warning properties" referred to in regard to respiratory protection are "the detectable characteristics of a hazardous chemical, including odor, taste, and/or irritation effects which are detectable and persistent at concentrations at or below a hazardous exposure level and exposure at these low levels does not cause olfactory fatigue." This definition combines the definitions for warning properties and adequate warning properties from the preproposal draft.

The definitions of "oxygen deficient atmosphere" and "oxygen deficient IDLH atmosphere" have also been changed from the definitions in the preproposal draft. An oxygen deficient atmosphere is now defined as "an atmosphere with an oxygen content of less than 19.5% by volume at altitudes of 8000 feet or below." This definition retains the traditional 19.5% oxygen level as the point below which an oxygen deficient atmosphere exists. It is also consistent with the minimum oxygen content of Grade D breathing air. Above 8000 feet, an oxygen deficient atmosphere, one with an oxygen level below 19.5%, would also be considered an oxygen deficient IDLH atmosphere (see below) and the proposal treats it as such. Thus the definition for "oxygen deficient" does not address altitudes above 8000 feet. This change in definition will allow the use of air-purifying respirators in normal atmospheric air for altitudes up to 14,000 feet.

The oxygen deficient IDLH atmosphere definition has been changed to "an atmosphere with an oxygen content below 16% by volume at altitudes of 3000 feet or below, or below the oxygen levels specified in Table I for altitudes up to 8000 feet, or below 19.5% for altitudes above 8000 feet up to 14,000 feet." An oxygen content of 16% at 3000 feet of altitude corresponds to an oxygen partial pressure of 100 millimeters of mercury in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor. This oxygen partial pressure is level which the ANSI Z88.2–1980 respirator standard defines as "oxygen deficiency, immediately dangerous to life or health". However, rather than using the calculation formula from ANSI, this proposal provides an equivalent table of the oxygen percentages for oxygen deficient atmospheres and oxygen deficient IDLH atmospheres at various altitudes for simplicity of use. The table provides a side-by-side presentation of the oxygen deficient atmosphere and oxygen deficient IDLH atmosphere levels to avoid any confusion between the two, and removes the necessity of calculating the values from a formula.

At altitudes above 8000 feet up to 14,000 feet an oxygen deficient IDLH atmosphere would exist when the oxygen content in the workplace atmosphere falls below 19.5%. The respirator selection provision of the proposal require that an atmosphere-supplying respirator with auxiliary escape provision or an SCBA be used in such situations. These respirators supply the wearer with Grade D breathing air. Since the allowable oxygen content in Grade D breathing air can range from 19.5% to 23% oxygen, OSHA has chosen the 19.5% lowest allowable oxygen level for Grade D air as the level below which an oxygen deficient IDLH atmosphere would occur for altitudes above 8000 feet.

OSHA requests comments and specific data on the effects of reduced oxygen content in workplace atmospheres and on the appropriateness of the "oxygen deficient" atmosphere and "oxygen deficient IDLH" atmosphere definitions contained in the proposal. Alternatives to the OSHA proposed definitions should include the physiologic basis for any changes proposed for the oxygen levels used to determine these oxygen deficient atmospheres.

(C) Respiratory Protection Program

Once an employer has decided to use respiratory protection, a written respiratory protection program must be developed and implemented. This requirement is essentially the same as that in the existing respirator standard, 29 CFR 1910.134(b)(1), which requires that written standard operating procedures governing the selection and use of respirators be established. The purpose of this requirement is to ensure that employers establish a standardized procedure for selecting, using, and maintaining respirators for each workplace where respirators will be used.

The ANSI Z88.2–1980 standard for respiratory protection states that written standard operating procedures covering a complete respirator program shall be established and implemented (Ex. 10). This performance oriented requirement recognizes the need for a systematic respiratory protection program to provide for consistency in protection. The ANSI standard does not contain detailed instructions on the content of standard operating procedures, but it does describe elements of a minimally acceptable respirator program.

The current OSHA respirator standard requires written standard operating procedures covering selection, use, cleaning, maintenance, inspections, emergency use, training of supervisors and respirator wearers, and recordkeeping. As part of the preliminary regulatory impact analysis for this proposal, data were collected on current respirator practices and procedures in over 2300 manufacturing plants in 15 SIC codes. This sample was extrapolated to produce estimates of respirator-related practices for about 123,200 manufacturing plants with routine and occasional respirator use. Only 25.5% of these plants are estimated to have had written standard operating procedures, and only 7.9% had procedures that addressed all seven areas specified. Over 80% of the large plants (1000 or more employees) had written procedures, while in small plants (less than 50 employees) only about 22% had written procedures. The survey showed that the intent of the existing respirator standard as well as the areas to be addressed in standard operating procedures were not clear to employers.

In a review of violations of the OSHA respirator standard from 1977 to 1982, 13% of the citations were for lack of standard operating procedures (Ex. 33–5). This percentage of citations actually underrepresents the total number of cases where problems were found since it is OSHA policy not to issue citations when no overexposures were documented.

A review of the comments received in response to the ANPR showed wide general support for the requirement for written standard operating procedures. Only one comment by Western Electric Co. for AT&T (Ex. 15–51) recommended that the written program requirement be dropped. The commenter stated that while many users of respirators require written procedures for an effective protection program, OSHA should not be concerned about written procedures, but only about the overall effectiveness of the respirator program. There were several submissions that supported the existing written standard operating procedure requirement (Ex. 15–37, 15–42, 15–50, 15–56, 15–77) and recommended that OSHA make no significant changes. However, OSHA's compliance experience shows that there is a need to clarify the intent of the requirement and make it clear to employers what OSHA expects in a written respiratory protection program.

Several ANPR commenters felt OSHA should not include detailed specifications in the requirement for written standard operating procedures (Ex. 15–13, 15–22, 15–30, 15–55, 15–73, 15–75). Some felt the requirement should be written in performance language, with the specific contents of the procedures to be left to the employer (Ex. 15–26, 15–41, 15–44, 15–52, 15–70, 15–76). The ANSI Z88.2–1980 specifications were considered adequate and were recommended by still others (Ex. 15–14, 15–31, 15–33, 15–35, 15–46, 15–58). Certain commenters presented lists of recommended elements to be covered where appropriate in the procedures (Ex. 15–18, 15–19, 15–22, 15–34, 15–53, 15–81). These recommended areas for coverage in the written standard operating procedures varied slightly among the commenters, but the major areas of respirator inspection, cleaning, maintenance, selection, training, use, fit testing, recordkeeping and program evaluation were common to most of the lists. Others recommended OSHA use the program specification in the Los Alamos National Laboratory (LANL) respirator training program or in the NIOSH guide to respiratory protection (Ex. 15–27A, 15–81). The AIHA (Ex. 15–81) also stated that the standard operating procedures should be more specific in defining employer/employee responsibilities and the types of respirators required for specific jobs.

Written standard operating procedures are essential to an effective respiratory protection program. Developing and writing down standard operating procedures requires employers to think through just how all of the requirements of the respiratory protection standard will be met in their workplace. The current respirator standard requires that employers develop written standard operating procedures that include all information and guidance necessary for respirator selection, use, and care, along with written procedures covering safe use of respirators in dangerous atmospheres that might be encountered in normal operations or emergencies. The proposal in section (c) contains additional descriptions of the elements to be included in the written standard operating procedures to provide additional guidance for employers. The requirement is performance oriented since the proposal does not contain detailed specifications for the required written standard operating procedures. The list of elements to be covered is similar to those contained in the ANSI Z88.2–1980 standard, and includes many of the recommended elements presented by commenters to the preproposal draft (Ex. 15–18, 15–19, 15–22, 15–34, 15–53, 15–81). The specific contents of the procedures are left to the employer who can tailor them to match the many varied situations that can occur. Many of the elements will be common to all respiratory protection programs, such as respirator selection, care, use, training, and program evaluation. Some elements such as air quality with supplied air respirators are required only when those types of respirators are used.

The elements of the standard operating procedures are part of the mandatory provisions of the proposal. Listing the requirements in a non-mandatory appendix, as was suggested, would perpetuate a recognized problem area. The current standard fails to clearly identify the areas to be covered in the written standard operating procedures, and as a result only a quarter of the written procedures that were surveyed addressed all the needed elements (Ex. 33–5). Placing the elements in a non-mandatory appendix would encourage the continuance of current practice in writing standard operating procedures. The problem is not only poorly written procedures, but failure to address some of the necessary elements at all. Only by making the required elements mandatory and enforceable can an improvement in written standard operating procedures and thus an overall program be assured.

Employers are required by the proposal to designate a person qualified by training and/or experience in the proper selection, use, and maintenance of respirators to be responsible for implementing the respirator protection program, and for conducting the periodic evaluations of its effectiveness. This requirement is similar to that in the ANSI standard (Ex. 10) which requires that responsibility and authority for the respirator program be assigned to a single qualified person with sufficient knowledge of respirator protection to properly supervise the program. The OSHA standard is performance oriented since it allows the employer to choose the person best qualified for the assignment.

The training requirements of the respirator program supervisors was the subject of a question in the ANPR. Several ANPR commenters said that specifying the type of training required would be beyond the scope of the standard (Ex. 15–13, 15–35, 15–75, 15–75A, 15–75c). Others recommended OSHA adopt the performance language of the ANSI standard (Ex. 15–26, 15–31, 15–38). Still others recommended that the supervisor be under the direction of an industrial hygienist or safety professional (Ex. 15–55, 15–70, 15–76). Some wanted the level of training

required to be commensurate with the complexity of the program and the degree of risk. (Ex. 15–18, 15–37, 15–46, 15–47, 15–59). Most, however, recommended that OSHA require the supervisor to have knowledge of respirators equivalent to that obtained from taking the NIOSH occupational respiratory protection course. (Ex. 15–30, 15–33, 15–41, 15–42, 15–52, 15–53, 15–54, 15–58, 15–62, 15–71, 15–73).

Specifying in detail the type and extent of training required for program supervisors has not been done in this proposal. The level of training that would be appropriate for a workplace with limited respirator use would be quite different from that required at another workplace with extensive respirator use that includes IDLH atmospheres, highly toxic chemicals, or other complex respirator use operations. Therefore, OSHA has adopted a performance language provision for program supervisor training that is similar to the ANSI standard requirement. The level of training for the respirator program supervisor must be adequate to deal with the complexity of the respirator program. OSHA has not established any one training program, such as the NIOSH respirator course, as the level of training program supervisors must achieve. The NIOSH course covers many different respirator types and uses, and may provide too much information on certain types of respirators such as SCBAs for program supervisors who run simple programs, yet not provide enough information for respirator program supervisors with a highly complex respirator program. The program supervisor can also use the assistance of industrial hygienists, safety professionals, or other respirator experts to help run the respirator program. Therefore, the training requirements for respirator program supervisors have been written in performance language, to allow the training requirements to fit the needs of the respirator program.

A number of commenters on the preproposal draft addressed the issue of program administration. Only the American Textile Manufacturer's Institute (Ex. 36–18) felt the requirement that a person be designated to administer the respiratory protection program should be deleted. Other commenters supported the requirement (Ex. 36–14, 36–31, 36–36, 36–40, 36–44, 36–47). The training requirements for the program administrator was also the subject of comments. The Nuclear Regulatory Commission (Ex. 36–31) recommended that both training and 6 to 12 months field experience in using respirators should be required. Lawrence Durio (Ex. 36–36) recommended that the person responsible for the respirator protection program be a certified industrial hygienist or complete a NIOSH sponsored course in respiratory protection designed specifically for the training of respiratory protection program managers. Richard Boggs of ORC (Ex. 36–47) recommended that the qualifications of the administrator reflect the complexity of the respirator program. California/OSHA (Ex. 36–44) recommended that all program administers at least have demonstrable knowledge of the requirements of 1910.134 and where respirators may be used for entry into IDLH atmospheres, the program administrator must attend the NIOSH respirator course or equivalent. Donald Rapp of the Dow Chemical Company (Ex. 36–40) recommended that OSHA allow a committee as well as an individual to be the responsible party, since a committee is more likely to be responsible for the program than an individual in larger companies. ORC (Ex. 36–47) also recommended that OSHA allow responsibility to be vested in an individual or in a committee/department designated as the central authority.

To assure that the integrity of the respiratory protection program is maintained through the continuous oversight of one responsible individual, the proposal requires that a qualified person be designated as responsible for the management and administration of the program. That individual can work with a committee or assign responsibility for portions of the program to other personnel, but the overall responsibility for the operation of the program remains with the designated person. This approach promotes coordination of all facets of the program. The training requirement for the program administrator has been left performance oriented. With the varying complexity of respirator programs, specifying a uniform training requirement would be very difficult. The level of training required varies with the complexity of the respirator program. OSHA invites further comments on whether specific minimum training requirements for program administrators should be set, and on what the training should be.

Employers are required to keep the written respiratory protection program current. The preproposal draft required that the written respiratory protection program be maintained "in a current fashion." The Motor Vehicle Manufacturer's Association (Ex. 36–37) recommended that the phrase "in a current fashion" be deleted since requiring that the employer maintain the written program implies that it be maintained in a current fashion. In order to clarify the intent of the provision the phrase "in a current fashion" has been removed and the wording has been revised to require that the employer maintain a written respiratory protection program that reflects current workplace conditions and respirator use. As the workplace situation or respirator use changes, the program is to be revised. Also the program must be made available, upon request, to employees, designated representatives and to OSHA.

(D) Selection of Respirators

1. Introduction

The existing OSHA respiratory standard does not contain specific guidance for the selection of respirators. Instead, the standard requires that the selection of respirators be made according to the guidance of the American National Standard, Practices for Respirator Protection Z88.2–1969. The 1969 ANSI standard recommended appropriate respirators for use with various categories of contaminants, but did not attempt to set individual protection levels for each type of respirator. Although the ANSI standard was revised in 1980, the current ANSI committee (Ex. 36–55) considered the 1980 standard to be obsolete and was in the process of developing another revision with provisions that differ substantially from the 1980 version. A consensus on a revised 1992 ANSI standard was not reached by ANSI during the time of the original OSHA rulemaking comment periods. Therefore there were no substantive comments received by OSHA on the provisions of the revised 1992 ANSI respiratory protection standard. However, as discussed later, OSHA has reviewed the new ANSI standard and has given it thorough consideration in the preparation of the final OSHA proposed standard.

The joint NIOSH/OSHA respiratory decision logic, originally published in 1975, was an early attempt to develop a logic for respirator selection that could easily be followed and would enable an individual to pick the appropriate respirator consistently. OSHA believes that changes in respirator technology and new data on respirator fit and protection levels have rendered this early decision logic, as well as the 1980 ANSI standard obsolete, and rules for selection are essential to avoid the risk of using respirators which are incapable of providing the necessary protection.

The current OSHA standard lacks such rules, and an analysis of enforcement experience (Ex. 33–5) shows that as a result, the selection of inappropriate or unapproved respirators and failure to provide suitable respiratory protection accounted for 26% of the violations of the respirator standard cited during fiscal years 1977 to 1982.

The proposal requires employers to provide respiratory protection at no cost to employees. This is consistent with the provisions of the current respiratory protection standard, as well as with the OSH Act, to ensure that employers provide whatever controls are necessary to protect employees from hazards generated by the work operation.

Where elastomeric facepieces are to be used, the employer shall provide a selection of respirators from an assortment of at least three sizes for each type of facepiece from at least two manufacturers. Comments were received stating that the cost of maintaining three different sizes of two manufacturer's respirators would appear excessive if only one or two employees require a respirator (Ex. 36–32). Others indicated that the assortment should be required for the initial fit (Ex. 36–28, 36–36) but not for the annual retest since each fit test respirator must be cleaned before its next use. OSHA is maintaining in this proposal the requirement for an assortment of respirators for both the initial and annual fit tests. OSHA believes that nothing in the course of respirator use is more important than achieving the best possible fitting respirator and that this is only possible where an adequate selection is available. Availability of different sizes and types of respirators during retesting is especially critical where the employee's physical conditions may have changed as the result of a modest weight change or changed facial configuration due to surgery or dental work, which may affect respirator fit.

2. Workplace Conditions

The first step in selecting respirators for a particular workplace is to consider available information concerning workplace conditions and characteristics of the hazardous chemical. The proposal lists eleven such categories of information.

(i) *Nature of the hazard.* The nature of the hazard, whether it is in the form of a gas, dust, organic vapor, fume, mist, oxygen deficiency, or any combination of hazards needs to be taken into account.

(ii) *Physical and chemical properties of the air contaminant.* The physical and chemical properties that affect respirator selection such as particle size for dusts, vapor pressure, breakthrough times, and the ability of the filter material to remove, adsorb, or absorb the contaminant.

(iii) *The adverse health effects of the respiratory hazard.* In selecting a respirator any adverse physiological effects that may occur from exposure to the hazard, including effects that may occur due to respirator leaks or failure need to be considered.

(iv) *The relevant permissible exposure limit or recommended exposure limit.* The OSHA permissible exposure limit, or in its absence, any American Conference of Governmental Industrial Hygienists recommended Threshold Limit Value (TLV), NIOSH recommended exposure limit, or other exposure limit set by the employer must be considered in selecting the appropriate respirator.

(v) *The results of workplace sampling of airborne concentrations of contaminants.* Sampling and analysis of the workplace air determines what degree of exposure is occurring, and thus what degree of protection is required. Where such sampling and analysis have been done, the results are to be used as a point of comparison for the hazardous exposure level i.e. to determine how much the concentration must be lowered by the respirator to reduce employee exposure to a safe level.

(vi) *Nature of the work operation or process.* The type of job operation, the equipment or tools that will be used, and any motion or travel the job requires can influence the type of respirator selected. For example, in the case where respirators are used to protect employees who are spray painting or working at an open surface tank, the type of operation can affect the type of respirator selected, particularly if supplied air respirators, which require a connection to a clean air source, are used.

(vii) *Time period respirator is worn.* The employer must also consider the period of time during which the respirator will be used by employees during a work shift. Breakthrough times for different chemicals can vary greatly, and are dependent on the concentrations found in the workplace. A respirator that provides adequate protection for one chemical may be inadequate for another chemical with a different breakthrough time. In addition, employees wearing respirators for longer periods of time may need different types of respirators for more comfortable wear.

(viii) *Work activities and stress.* The work activities of employees while wearing respirators are also a factor. Heavy work that is physically draining may affect an employee's capability of wearing certain types of respirators.

Temperature and humidity conditions in the workplace may also affect the stress level associated with wearing a respirator as well as the effectiveness of respirator filters and cartridges. These types of factors must be assessed in selecting the appropriate equipment for a particular work situation.

(ix) *Fit testing.* The proposal includes requirements for fit testing. The results of these tests are to be used in the selection process. Some employees may be unable to achieve an adequate fit with certain respirator models or a particular type of respirator—such as half mask air-purifying respirators—so an alternative respirator model with an adequate fit or other type of respirator that provides adequate protection must be used. Fit test results must be used to determine when this is the case and what alternative respirator should be selected.

(x) *Warning properties.* The warning properties of a hazardous gas or vapor must also be considered when selecting a respirator. When using an air purifying respirator the odor, taste, or irritation effects of the substance present should have a threshold concentration low enough so that the substance can be detected before health effects can occur. Also, the detection threshold should be low enough that olfactory fatigue with subsequent loss of the warning properties of the chemical cannot occur. This subject is discussed in more detail under section 5 below.

(xi) *Physical characteristics, functional capabilities, and limitations of respirators.* The last category of information to be considered when selecting respiratory protection is the physical characteristics, functional capabilities, and limitations of the respiratory protection equipment itself. For example, airline respirators should not be used by mobile employees around moving machinery unless entanglement of airlines in equipment is easily avoided.

Once the employer has determined what respirator types are appropriate for the workplace, respirators must be selected from among those approved and certified according to 42 CFR Part 84 by the National Institute for Occupational Safety and Health (NIOSH) when such respirators exist.

3. Use of NIOSH/MSHA Certified Respirators

a. *Alternatives.* Alternatives to requiring that NIOSH/MSHA certified respirators be used are limited. Several

ANPR commenters stated that OSHA should allow the use of non-approved respirators for which scientifically valid test data are available (Ex. 15–11, 15–38, 15–45, 15–53, 15–54, 15–55, 15–56, 15–58, 15–81), where the respirators were tested by independent laboratories (Ex. 15–10, 15–53) or where the manufacturer has sound test data (Ex. 15–10, 15–19, 15–53, 15–62, 15–73). Others insisted that OSHA should not accept respirator certification from any source other than NIOSH/MSHA (Ex. 15–14, 15–34, 15–46, 15–48, 15–70, 15–75A, 15–77). OSHA regards all such suggestions as having serious flaws.

Independent certification laboratories for respirators do not yet exist. An extensive commitment of money and resources would be required by any private organization establishing such a testing system. Some believe that if OSHA allows certification of respirators by independent laboratories, this will encourage the development of such systems. However, it would be very difficult to write a provision allowing independent certification systems when none now exist. Developing the respirator test protocols such independent laboratories would use would involve a considerable level of effort and would duplicate the revision efforts already underway by NIOSH to revise the respirator certification standards. Moreover it would be necessary to establish a program to certify the testing laboratories as well. The Agency does not presently have the means to accomplish such assessments, and in fact, does not have the personnel or resources to become certifiers of respirators.

OSHA is therefore proposing to maintain the requirement that NIOSH approved respirators be used when such respirators exist. For OSHA compliance purposes, a respirator certification program is necessary in order to assure that respirators used in industry are capable of providing the needed protection. OSHA recognizes that there are problems with the existing NIOSH/MSHA certification program. Several of the comments OSHA received were related to problems with NIOSH/MSHA respirator certification, including the issue of modifications to respirators, interchanging of respirator parts and the use of respirators for which NIOSH has not yet granted approval. Since these problem areas are being addressed by NIOSH during its revision of the respirator certification program under the new 42 CFR 84, it is inappropriate for OSHA to try to correct problems with the present NIOSH/MSHA regulations in the revised OSHA respirator standard.

b. *Approval for modified respirators.* Several commenters suggested that OSHA should not automatically reject the use of approved respirators that have modifications (Ex. 15–10, 15–19, 15–22, 15–26, 15–31, 15–40, 15–41, 15–45, 15–46, 15–52, 15–54, 15–55, 15–56, 15–62, 15–75c). Modifications could include interchange of parts, canisters, air hoses, etc. These modifications would have to be evaluated, whether through testing to demonstrate comparable protection and reliability (Ex. 15–10, 15–22, 15–31, 15–38, 15–46, 15–50, 15–52, 15–53, 15–54, 15–55, 15–62, 15–73, 15–75c, 15–81), by requiring that modifications be done under the auspices of NIOSH (Ex. 15–18, 15–33, 15–38, 15–76), or by allowing minor modifications if approved by a certified industrial hygienist (Ex. 15–73). OSHA believes that NIOSH is the appropriate Agency to consider this issue and that such consideration should be part of the certification process.

OSHA also believes that the proposed 42 CFR Part 84 is the proper forum in which to resolve any problems with respirator modifications. Therefore, this proposal does not change OSHA's general policy of rejecting modifications to approved respirators.

OSHA invites comment on the question of whether to require NIOSH approval for the respirators selected, and on alternatives to this requirement, including practical considerations of compliance and enforcement.

c. *Use of non-approved respirators.* Several commenters on the preproposal draft recommended that OSHA establish procedures for permitting the use of non-approved respirators. (Ex. 36–22, 36–28, 36–29, 36–30, 36–36, 36–41, 36–44, 36–45, 36–47, 36–51A, 36–52, 36–53). As was pointed out, there are types of respiratory protection, such as supplied air suits for which no NIOSH/MSHA approval schedule currently exists (Ex. 36–28, 36–29, 36–36, 36–52, 36–53). California OSHA (Ex. 36–44) recommended that OSHA add wording that would give OSHA the ability to approve respirators that do not have a NIOSH/MSHA approval schedule. The Industrial Safety Equipment Association (Ex. 36–45) stated that OSHA should allow the use of non-approved respirators if data are available to show that they operate satisfactorily. The AIHA (Ex. 36–41) also recommended that if an employer can demonstrate effective, safe utilization of a device, then its use should be permitted. The American Petroleum Institute (Ex. 36–51A) requested that OSHA permit the use of non-approved respirators when OSHA accepts these devices based on a case-by-case evaluation of evidence provided by the employer or manufacturer. They also stated that this method had worked well in the past for acrylonitrile, mercury, fluorides and vinyl chloride.

While it is true that OSHA has in the past approved the use of certain unapproved respirators, this approval has generally been as the result of a thorough review of the respirators capabilities as part of a substance specific standard. OSHA does not have the personnel or facilities to perform respirator testing, and has no present plans to set itself up as a respirator approval agency. Therefore, this proposed respirator standard does not contain language which would formalize a procedure for approving respirators. OSHA invites comment on whether and how such an approval procedure should be added to the standard.

4. Assigned Protection Factors

The proposal requires that respirators be selected in accordance with the respirator selection tables in the NIOSH proposed revision of the tests and requirements for certification of respiratory protective devices (42 CFR Part 84). The protection factor concept has developed over the years since OSHA adopted its current standards. It is a recognition of the fact that different types of equipment provide different degrees of protection, and equipment limitations must be considered in selecting respirators.

Three commenters in response to the preproposal draft recommended that OSHA allow the use of other selection guidelines in addition to those in the preproposal draft Appendix A. Motorola (Ex. 36–22) stated that there was great controversy over the assigned protection factors, and in order to maintain a performance standard approach OSHA should allow the use of not only the respirator selection tables but the ANSI Z 88.2 selection tables, or other guidelines published and peer reviewed by other consensus groups or professional associations. Homestake Mining (Ex. 36–30) had a similar recommendation, maintaining that it would allow the employer to use the latest and best information for respirator selection. They also recommended that a provision be added to require that employers demonstrate and support their rationale for using values other than those in the respirator selection tables. The AIHA (Ex. 36–41) also recommended a similar approach to respirator selection guidelines.

OSHA believes that the foregoing suggestions are inadequate. Although the new 1992 ANSI recommendations

have now been published, it is not sufficient for OSHA to reference the ANSI recommended protection factors because ANSI has provided no discussion of the basis for its recommendations. Moreover, some of the provisions of the ANSI standard appear to contradict specific information which OSHA considers reliable. In particular, the ANSI recommended protection factors disagree substantially with recommendations by NIOSH. Only if ANSI were to supply detailed discussion as to how its protection factors were derived—including reference to and complete description of specific studies used to derive those APFs—would OSHA be able to evaluate the merits of the latest ANSI recommendations. Moreover, allowing employers to select respirators on the basis of different guidelines, with different APF values, can only bring confusion as to how to comply with the standard.

OSHA considered establishing assigned protection factor tables based on existing studies in which performance factors were measured both in laboratories and in workplaces. The quality of available data, however, was seen to vary substantially from one type of respirator to another depending on how much emphasis had been placed on a particular type of respirator by the organization doing the testing. Moreover, the results of studies which had been done for a particular purpose may not necessarily be able to be extrapolated legitimately for use in drawing other conclusions.

As an example of the widely varying results and quality of available data, the following is a brief review of studies pertaining to negative pressure air-purifying respirators. Similar weaknesses in available data exist for other types of respirators as well.

Negative Pressure Air-Purifying Respirators

Lenhart and Campbell of NIOSH (Ex. 27–2) did workplace performance testing in 1984 in a primary lead smelter for half mask negative pressure air-purifying respirators. The resulting report stated that 98% of the workplace protection factors (WPFs) would be at or above 10, 90% above 30, and 75% above 100. It concluded that "an assigned protection factor of 10 is appropriate for the half mask negative pressure air-purifying respirators evaluated in this study" (Ex. 27–2, p. 181). Each individual who participated in the study had first achieved a quantitative fit factor of at least 250 with the half mask respirator in the fit test booth. For this reason the authors emphasized that the study's results may overestimate the WPFs that would be achieved by a general worker population that had not achieved quantitative fit test results of at least 250.

Skaggs and Loibl of the Los Alamos National Laboratory (Ex. 38–3) examined the performance of half mask and full facepiece respirators under simulated work conditions in a controlled environmental chamber. Three different temperatures (0°c, 20°c, 32°c) and two humidities (15% and 85%) were examined. Half mask and full facepiece respirators were worn by test subjects performing work type exercises such as shoveling oiled gravel, walking up and down stairs, pounding nails, moving cinder blocks, and pounding with a sledge hammer. During the prefit respirator fit testing for the half mask, fit factors ranging from a low of 32 to as high as 20,000 were measured. Fit factors measured during the simulated work exercises ranged from 16 to 20,000. However, only one of the 49 test subjects who obtained fit factors during the prefit testing of 100 or greater with the half mask failed to achieve fit factors of at least 50 during the simulated work exercises. For the full facepiece respirator the prefit fit factors ranged from 110 to 20,000 and the simulated work fit factors ranged between 21 and 20,000. For the 54 test subjects who achieved fit factors of 500 or greater with the full facepiece respirator during prefit testing, only one filed to achieve a fit factor of 100 or greater during the simulated work fit tests.

In the case of full facepiece respirators tested with QNFT, studies performed by the Los Alamos National Laboratory (LANL) in 1972 (Ex. 24–2) resulted in a recommendation that full facepiece respirators be allowed a protection factor of 50. The recommendation was based on QNFT performed in a test booth on wearers who had been pre-screened in each case with a qualitative test using irritant smoke. Most of the respirators tested achieved fit factors into the thousands but one respirator only achieved fit factors of less than 100. On the bases of that one respirator the decision was made by LANL to restrict their recommendation to 50. However, Edward Hyatt, the author of the study, in his subsequent response to the ANPR, (Ex. 15–27), and in a later comment on a variance application in 1984 (Ex. 24–11), recommended that negative full facepiece respirators be assigned a protection factor of 100 provided a fit factor of 1000 could be obtained in the test booth. It was understood (although not stated in his response) that his reason for revising his recommendation was that the one respirator which performed so poorly in the original tests had been taken off the market.

In November, 1983 researchers from the Lawrence Livermore National Laboratory published a paper (Ex. 24–9) on reproducibility of fit using QNFT. One element of the research described in the paper was the measurement of fits of two brands of full facepiece respirators as well as fits of half mask respirators of the same two manufacturers. There are two important aspects of the measurements. First, the poorest fitting of the full facepiece respirators was more than five times better than the best fitting half masks respirators. Second; the lowest fit factor of the full facepiece models was 1,063. Nevertheless, the range of respirators was very limited.

In October 1984, DuPont submitted to the OSHA asbestos standard docket an unpublished study of workplace protection factors (WPF) for disposable half mask respirators, and half mask air-purifying respirators using either dust/fume/mist filters or high efficiency filters (Ex. 38–7). The study concluded that all the respirators tested could reliably provide protection factors of 10, except that one of the disposable respirators tested could only provide a protection factor of 5. The lower protection provided by the last disposable respirator was attributed to penetration of asbestos fibers through the filter media. OSHA considers this study to be inadequate in establishing protection factors for several reasons. First, asbestos is not typical, in geometry or migration properties, of the broad range of dusts and mists that are encountered in workplaces. To assign a general protection factor based on the almost unique properties of asbestos would be highly inappropriate. In addition, this particular study was conducted under special conditions in which the respirators were used in a wet environment whose effect on fit is difficult to evaluate and whose effect on penetration would be different for asbestos than for most other contaminants. In addition the study did not follow NIOSH analytical guidelines for sampling and counting asbestos fibers. For example, NIOSH recommends that reliable analysis requires that at least 10 fibers be counted for 100 fields. However, in the DuPont study, 89% of the analyzable tests (71 out of 80) and filters with in-mask fiber counts for less than 10 per 100 fields.

The 3M Corporation also submitted an unpublished protection factor study

for disposable respirators used in the presence of asbestos fibers at the Shiloh Brake Corporation (Ex. 40). Once again, asbestos fibers, for the reasons given above, are not sufficiently representative of dusts and mist in most workplaces for use in establishing general protection factors.

Another unpublished study cited in the record was performed by the Chemical Manufacturers Association (CMA) at a cadmium pigment production facility (Ex. 38–22). The entire submission, however, consisted of four paragraphs of description accompanied by two computer graphs showing results. There is no discussion of how the tests were conducted or any description which would enable one to evaluate the validity of the study or to duplicate the testing. OSHA considers this submission to be inadequate for meaningful review.

In yet another unpublished study, the 3M Corporation has submitted results of measurements of protection factors of disposable dust/mist respirators in the presence of aluminum, titanium, and silicon particulates (Ex. 41A) The study, which was conducted in October, 1986, failed to include basic information on concentrations and particle size distributions. In July, 1988 3M returned to the same site to measure particle size distribution and in August, 1989 submitted the results to the record (Ex. 41B). OSHA believes that, to be valid, all supporting measurements of a study must be made at the time the primary measurement is made. It is virtually impossible to assure that all relevant ambient conditions will be identical almost two years later to what they were at the time of the original test. Moreover, the data submitted by the 3M Corporation in August, 1989 had serious anomalies which were unaccounted for in the accompanying discussion. For example, the mass distribution in the stages of various impactors could be accounted for only by circumstances which would be very unusual. Some impactors had few or no particles of any size. Others had only very large particles and very small particles. In the latter case, the report referred to the possibility of a bimodal distribution, but supplied no physical reasons based on actual workplace conditions to account for such a distribution.

In general, unpublished studies such as those cited above are difficult to evaluate since significant details are often absent in the discussions and there has been no peer review of the assumptions, methods, and plausibility of results.

By contrast, a published workplace protection factor study by NIOSH (Ex. 38–2) of the performance of disposable dust mist respirators provides results showing lower protection factors which cannot be ignored. The study determined the effectiveness of a disposable dust/mist respirator against overexposure to nuisance particulate dust (Ex. 38–2). A total of 25 paired samples were taken, each consisting of a measurement inside the probed respirator and one at the lapel. Seven workers and two NIOSH industrial hygienists were sampled. Quantitative facepiece fit testing was performed to check for gross leakage. NIOSH calculated that "95% of workplace protection factors would be expected to be at or above 3, 87% at or above 5, 70% above 10, and only 7% would be expected to be above 100." Nevertheless, despite the fact that the data seemed to predict a protection factor of 3 at the 95% confidence level, NIOSH concluded that an "assigned protection factor of 5 for disposable half mask respirators is not discredited by the results of this study." However, it involved only seven subjects and thus the range of facial sizes and structures involved were limited.

The foregoing studies pertaining to negative pressure air-purifying respirators demonstrate the wide variability in applicability of such studies in the determination of assigned protection factors. Therefore, OSHA decided that these available studies as well as those in other respirator categories are inadequate for a well founded assignment of protection factors.

In view of this apparent inadequacy, OSHA has determined that in order to establish assigned protection factors, there must be a program to conduct experimental evaluations of respirator performance. Therefore, OSHA and NIOSH have agreed that the assignment of protection factors should be made by NIOSH. It is OSHA's intention in this rulemaking that protection factors shall be assigned by NIOSH in its ongoing rulemaking for its certification program. (The first phase of this rulemaking was published in the **Federal Register** as a proposed rule at 59 FR 26850 on Tuesday, May 24, 1994 as 42 CFR Part 84.) When NIOSH completes its rulemaking process of assigned protection factors, OSHA will issue a technical amendment to this respiratory protection standard referring to the NIOSH final regulation. OSHA does not intend to have notice and comment on its technical amendment because NIOSH will have notice and comment in its rulemaking. In the period before NIOSH has completed promulgating 42 CFR Part 84, OSHA will, in the interim, require that respirators be selected in accordance with the protection factors assigned by NIOSH in the current NIOSH Respirator Decision Logic (Ex. 38–20).

The NIOSH protection factor values are not intended to replace protection factor values which, in individual substance specific OSHA standards, are more stringent. Thus, the OSHA provision which defers to the NIOSH protection factor tables is not to be interpreted, for example, as overriding the OSHA asbestos standard which does not permit the use of disposable respirators at all. Nor does this provision preclude OSHA's prerogative to assign more conservative protection factors under circumstances demonstrated in the records of future substance specific rulemakings.

Finally, it is OSHA's understanding that respirators certified under 30 CFR Part 11, depending on the type, will continue to be NIOSH certified for a period of time after the effective date of 42 CFR Part 84. This "sunset" provision will continue to allow existing certifications while respirators that meet the new requirements of 42 CFR Part 84 are developed and certified. Following the sunset period for each type of respirator, only those certifications granted under 42 CFR Part 84 will be valid. During the sunset period, OSHA will require that protection be assigned as prescribed in 42 CFR Part 84 for respirators previously certified under 30 CFR Part 11. The new NIOSH regulation will also provide assigned protection factor values for respirators certified under the new requirements.

5. Warning Properties

The question of whether OSHA should permit the use of air-purifying respirators where substances have inadequate warning properties has been of serious concern for several years. Some commenters to the ANPR felt that air-purifying respirators should only be used for chemicals that have adequate warning properties (Ex. 15–33, 15–34, 15–46, 15–48, 15–70). Others felt that respirator use should not be restricted based on poor warning properties, but that OSHA should identify a control mechanism that would allow their use (Ex. 15–18, 15–19, 15–22, 15–26, 15–50, 15–54, 15–55, 15–58, 15–62, 15–66, 15–73). Several commenters felt it should not be necessary for a chemical always to present distinct warning properties (Ex. 15–27A, 15–31, 15–38, 15–41, 15–44, 15–45, 15–47). For example, reliance on an industrial hygienist's professional judgment, along with an evaluation as described in the OSHA Industrial Hygiene Field Operations Manual (now

called the Industrial Hygiene Technical Manual), was recommended by the American Iron and Steel Institute (Ex. 15–37). Others stated that if the contaminant concentration was monitored and the absorption capabilities of the respirator cartridge for that chemical are known, the service life of the cartridge can be safely calculated (Ex. 15–17, 15–53). The use of a monitoring device that would give sound and visual signals was recommended as an alternative to requiring that air-purifying respirators be used only for chemicals with adequate warning properties (Ex. 15–10).

OSHA currently does not allow air-purifying respirators to be used when a gas or vapor has inadequate warning properties, except in the case of a few designated chemicals for which specific standards were promulgated, such as vinyl chloride, ethylene oxide and acrylonitrile. The departures from the prohibition on using air-purifying respirators for substances with poor warning properties were established in each case as part of an overall rulemaking for each chemical, which included a careful examination of industry exposure levels and respirator use factors.

Allowing such use would require an examination of the toxicity of the chemical, its odor threshold, the health consequences of particular exposure levels, breakthrough time for the chemical for the type of respirator that will be used, how long the respirator will be used during the workshift, and the concentrations of the chemical that are found in the workplace. Calculating the service life of a particular respirator cartridge or canister for a chemical with poor warning properties would be possible using these facts and an appropriate safety factor. This service life calculation may be difficult where workplace exposure levels vary greatly throughout the day and from day to day. Using continuous monitoring devices with alarms, as was suggested by some of the commenters, is another possibility. Continuous monitoring is complicated, expensive, and would require a case-by-case review of each plant situation to determine the ability of the monitoring system. Therefore, this proposal has not considered the use of continuous monitoring devices when determining where respirators can be used.

Motorola (Ex. 36–22) recommended that OSHA allow the use of air-purifying respirators for chemicals with poor warning properties if the respirator had a reliable end of service life indicator or an air-purifying cartridge and/or filter change schedule had been implemented, and the use of supplied air respirators would hamper an operation or increase risk. If the employer could not demonstrate the acceptability of the respirator according to these conditions, supplied air respirators would be required. Homestake Mining (Ex. 36–30) also recommended the same conditions along with the requirement for biological monitoring to demonstrate respirator effectiveness, where applicable. DuPont (Ex. 36–38) also recommended that air-purifying respirators be allowed for chemicals with poor warning properties when supplied air respirators cannot be used, with the conditions that a reliable end of service life indicator and appropriate cartridge change schedule be used. The AIHA (Ex. 36–44), Richard Boggs of ORC (Ex. 36–47), and Thomas Nelson of the ANSI Z 88.2 respirator committee (Ex. 36–55) described similar conditions for the use of air-purifying respirators for chemicals with poor warning properties. Mr. Nelson also wanted to limit their use to concentrations of the contaminant less than 10 times the PEL or TLV.

The ANSI Z 88.2–1992 respiratory protection standard in section 7.2.2.2 (m) would allow the use of an air purifying respirator for a gas or vapor with poor warning properties only when (1) the air purifying respirator has a reliable end of service life indicator that will warn the user prior to contaminant breakthrough, or (2) a cartridge change schedule is implemented based on cartridge service data including desorption studies (unless cartridges are changed daily), expected concentration, pattern of use, and duration of exposure have been established, and the chemical does not have a ceiling limit.

OSHA agrees that there are circumstances under which it may be safe or necessary to use air-purifying respirators despite the absence of adequate warning properties. In doing so, however, two factors must be considered: breakthrough of the cartridge and face seal leakage. Cartridge breakthrough can be addressed by use of end-of-service-life indicators that are approved by NIOSH or by implementation of a filter change schedule based on documented service life data, exposure levels and exposure durations. Face seal leakage is not addressed directly except by requiring fit testing. Therefore, OSHA is proposing that the use of air-purifying respirators in the absence of adequate warning properties be restricted to situations where the odor, taste, or irritation threshold is not more than three times the hazardous exposure level. Since the least effective respirator with a chemical cartridge in the proposed NIOSH 42 CFR Part 84 respirator selection tables has an Assigned Protection Factor of 10, then if the level at which the warning property exists is within three times the hazardous exposure level, OSHA believes that a sufficient margin of safety will be provided, since even a partial breakthrough is unlikely to reduce the protection factor from 10 down to three under the foregoing restrictions on use.

6. Oxygen Deficient and Oxygen Deficient IDLH Atmospheres

This proposal requires that only atmosphere-supplying respirators be used in oxygen deficient atmospheres. In oxygen deficient IDLH atmospheres either a full facepiece pressure demand SCBA or a combination full facepiece pressure demand supplied air respirator with auxiliary self-contained air supply must be used. A critical issue is the definition of what constitutes oxygen deficient and oxygen deficient IDLH atmospheres.

Table I of paragraph (d) presents in tabular form the oxygen percentages below which the terms oxygen deficient and oxygen deficient IDLH atmosphere apply—as a function of altitude above sea level.

By referring to the information in this table, an employer can readily pick out the appropriate type of respirator required at various altitudes and oxygen levels. OSHA chose to use an equivalent table of oxygen levels for simplicity, rather than incorporating a calculation formula as ANSI did in its Z88.2–1980 standard, like the table in the ANSI Z88.2–1992 standard on the combined effects of altitude and reduced percentage of oxygen.

Numerous comments were submitted in response to both the preproposal draft and the ANPR on the definition of oxygen deficient and oxygen deficient IDLH atmospheres (Ex. 15–14, 15–19, 15–26, 15–27A, 15–31, 15–33, 15–35, 15–37, 15–38, 15–46, 15–52, 15–53, 15–55, 15–58, 15–62, 15–70, 36–13, 36–17, 36–18, 36–22, 36–26, 36–27, 36–29, 36–30, 36–31, 36–32, 36–34, 36–38, 36–39, 36–40, 36–41, 36–44, 36–47, 36–52, 36–53, 36–54, 36–55). All suggestions were based on the concept of a minimum value for oxygen partial pressure in the upper portion of the lungs. Most commenters agreed with the ANSI Z88.2–1980 partial pressure value of 100 mm Hg below which an oxygen deficient IDLH atmosphere exists. There was, however, disagreement as to the oxygen partial pressure at which an

oxygen deficient atmosphere is considered to exist.

Oxygen Deficient Atmospheres

The Los Alamos National Laboratory (LANL) recommended the use of an oxygen partial pressure of 125 mm Hg, which corresponds to a 16.5% oxygen level at sea level, as the point below which an oxygen deficient atmosphere exists for altitudes up to 7,000 feet (Ex. 36–52). Above 7,000 feet LANL recommended that any reduction in ambient air oxygen content (20.95%) be considered oxygen deficient. California OSHA (Ex. 36–44) recommended oxygen levels below 19.5% for altitudes from 0 to 5,000 feet, 20.5% for altitudes between 5,001 and 9,000 feet, and 20.95% for altitudes above 9000 feet be considered as oxygen deficiencies.

The ANSI Z88.2–1992 standard radically lowered the recommendation for oxygen-deficiency non-IDLH atmospheres to one with an oxygen partial pressure ranging between 95 mm Hg pp O_2 (12.5% oxygen at sea level atmospheric pressure) to 122 mm Hg (16% oxygen at sea level). Under these conditions a supplied air respirator is required. Where oxygen levels are 95 mm Hg or less, an oxygen-deficiency IDLH atmosphere would exist, and would require the use of a positive pressure SCBA or a combination supplied air respirator with SCBA. However, where oxygen levels are above 16% supplied air respiratory protection would not have to be used for protection against oxygen deficiency.

For confined spaces, the ANSI Z88.2–1992 standard would consider any reduction in oxygen level below 20.9% an IDLH atmosphere unless the source of the oxygen reduction is understood and controlled. However, it would permit entry into a confined space that contains between 16% and 20.9% oxygen (at sea level) without any respiratory protection if extraordinary precautions are taken to assure that the worker would not encounter any poorly ventilated areas. OSHA considers any location with an oxygen level that is reduced below 19.5% to be an oxygen deficient atmosphere requiring the use of at least a supplied air respirator as a minimum.

An incident recently occurred that illustrates the problem with the ANSI oxygen deficiency definition. Two well cleaners died in the confined space of a shallow well. They had no fans to ventilate the well, and only crude homemade equipment for lowering someone into the well. After being lowered into the well, the first cleaner complained of lightheadedness. His partner was lowered into the well to attempt a rescue. The crude retrieval equipment broke under the weight of the two cleaners. Both were overcome by the low oxygen levels and died of asphyxiation and drowning. The oxygen level in the well was 17%, as measured by the firefighters who removed the bodies. By reducing the oxygen deficient IDLH level to 16% and permitting entry without respiratory protection at oxygen levels between 16% and 19.5%, the ANSI standard would permit such dangerous practices. The need for extraordinary precautions, as ANSI recommends, will not be recognized by many who choose only to see that the oxygen deficiency levels have been reduced.

NIOSH approves air-purifying respirators for use only in atmospheres containing 19.5% oxygen. Moreover, Grade D breathing air is and has been considered the acceptable standard for such air and Grade D breathing air contains, by definition, a minimum of 19.5% oxygen. Since OSHA requires that NIOSH approved respirators be used, and that grade D breathing air be used for supplied air respirators, OSHA is proposing the 19.5% oxygen level as the point below which an oxygen deficient atmosphere exists. Oxygen partial pressure decreases as altitude increases. At 8,000 feet a 19.5% oxygen level still corresponds to an oxygen partial pressure above 100 mm Hg, the level where an oxygen deficient IDLH atmosphere would begin. Therefore, for altitudes up to 8,000 feet any decrease in oxygen level below 19.5% is considered an oxygen deficient atmosphere and the use of atmosphere-supplying respirators would be required. For altitudes above 8,000 feet, an oxygen level below 19.5% would constitute an oxygen deficient IDLH atmosphere. Column 2 of Table I presents the percent oxygen levels below which an oxygen deficient atmosphere exists for altitudes from sea level to 8,000 feet. Comments are requested on the values in the table.

Oxygen Deficient IDLH Atmospheres

Many commenters felt that the ANSI Z88.2–1980 definition of an oxygen deficiency-IDLH atmosphere was satisfactory (Ex. 15–14, 15–19, 15–26, 15–27A, 15–31, 15–33, 15–35, 15–37, 15–38, 15–46, 15–52, 15–53, 15–55, 15–58, 15–62, 15–70, 15–71). ANSI in its 1980 standard (Ex. 10) defines an oxygen deficiency-IDLH atmosphere as one which causes an oxygen partial pressure of 100 millimeters of mercury (mm Hg) column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor. This corresponds to an oxygen content of from 14% at sea level to 20.95% at 14,000 feet. The oxygen content is adjusted using a formula to account for the effects of changing altitude. AMAX (Ex. 15–55) felt the ANSI oxygen deficiency requirements (and thus the Los Alamos position as well) were overly restrictive since they would require people working at altitudes above 10,000 feet to wear supplied air respirators, and their employees have successfully used air-purifying respirators at these high altitudes for many years.

The Los Alamos National Laboratory (Ex. 36–52), and California OSHA (Ex. 36–44), agreed that the 100 mm Hg oxygen partial pressure level was the appropriate criterion for defining an oxygen deficient IDLH atmosphere, but only for altitudes from sea level to 10,000 feet. For altitudes from 10,000 feet to 14,000 feet they recommended that OSHA use 20.95% oxygen as the level below which an oxygen deficient IDLH atmosphere exists since people who are physiologically acclimated can live and work above 10,000 feet without adverse effects and the standard should account for this reality. The current ANSI Z88.2 Respirator Committee (Ex. 36–55) has concluded that for altitudes below 14,000 feet, work should be permitted without protection for oxygen deficiency when the oxygen content of ambient air (20.95%) is not reduced

The foregoing comments are all in agreement that, up to 8,000 feet the oxygen concentration equivalent of an oxygen partial pressure of 100 mm of Hg in the upper portion of the lungs is appropriate for a threshold IDLH level. This is equivalent at sea level to an oxygen concentration of 14%. However, NIOSH has pointed out (Ex. 25–4) that in the presence of an oxygen concentration of less than 16% at sea level one can experience impaired attention, thinking and coordination. At 14% or below, NIOSH states the possibility of faulty judgment, poor muscular coordination, rapid fatigue that could cause permanent heart damage, and intermittent respiration. In an IDLH or escape situation all of the described effects could place a worker in serious jeopardy. Therefore, OSHA believes that an oxygen concentration of 16% or below at sea level should require the extra precautions that go with IDLH atmospheres. The AMAX comment that its employees have suffered no consequences of not having used supplied air respirators at greater than 10,000 feet is believed by OSHA to signify that they have not worked in atmospheres with less than 19.5% oxygen.

The ANSI Z 88.2–1992 standard defines an oxygen deficiency IDLH atmosphere to be one with an oxygen partial pressure of 95 mm Hg or less (12.5% oxygen at sea level). The oxygen deficiency may be caused by either a reduction in the normal 20.9% oxygen content, by reduced total atmospheric pressure to 450 mm Hg (8.6 psi), equivalent to 14,000 feet elevation, or any combination of reduced percentage of oxygen and reduced pressure. The ANSI rationale as stated in Appendix A.5 for these low levels is that the 12.5% oxygen content corresponds to an oxygen partial pressure of 48 mm Hg in the alveoli of the lungs, with the alveolar blood 83% saturated with oxygen. At higher alveolar oxygen partial pressures (60 to 100 mm Hg), as the ANSI appendix points out, only slight changes in hemoglobin oxygen saturation are seen. Much larger changes occur in the blood oxygen levels as the alveoli oxygen levels fall from 60 down to 30 mm Hg. By choosing such a low oxygen partial pressure for the start of an oxygen deficient IDLH atmosphere, ANSI has effectively removed any safety margin from its standard. An acclimatized individual may be able to effectively operate at the equivalent of 14,000 foot altitude. However, individuals normally used to the 20.9% oxygen present in the outside air or supplied by their respirator are not acclimatized. They could be seriously and rapidly debilitated by the quick drop in oxygen partial pressure such a 12.5% oxygen deficiency IDLH level represents if their respirator should fail. The safety margins in the ANSI Z 88.2–1992 oxygen deficiency IDLH and non IDLH definitions have been reduced to their bare minimums. OSHA has chosen to reject these less protective ANSI oxygen deficiency definitions in favor of the more forgiving levels it is proposing to adopt.

OSHA is proposing a value of 16% oxygen by volume as the level below which an oxygen deficient IDLH atmosphere exists for altitudes from sea level to 3,000 feet. For altitudes from 3,001 feet up to 8,000 feet, percent oxygen levels have been calculated that correspond to a value of 100 mm Hg oxygen partial pressure. At altitudes above 8,000 feet and up to 14,000 feet, OSHA is proposing that an oxygen level below 19.5% would be considered an oxygen deficient IDLH atmosphere. This agrees with the ANSI Z 88.2–1980 oxygen deficiency-IDLH level of 100 mm Hg, which corresponds to the point where the oxygen content of the alveolar blood is 90% saturated with oxygen and below which symptoms of hypoxia occur. Although OSHA is accepting the claim that work can be performed by acclimated persons at altitudes above 10,000 feet when the ambient air oxygen percentage is not reduced, comments and data are requested that will support or contradict this conclusion. To avoid possible confusion, OSHA has not used a formula for calculating the oxygen deficient IDLH levels as ANSI did, but instead presents in Column 3 of Table I in paragraph (d) a list of the percent oxygen levels for altitudes from sea level to 14,000 feet.

TABLE I.—OXYGEN PERCENTAGES CONSTITUTING OXYGEN DEFICIENT AND OXYGEN DEFICIENT IDLH ATMOSPHERES

Column 1 altitude above sea level (in feet)	Column 2 percent oxygen below which an oxygen deficient atmosphere exists	Column 3 percent oxygen below which an oxygen deficient IDLH atmosphere exists
0 to 3000	19.5	16.0
3001 to 4000	19.5	16.4
4001 to 5000	19.5	17.1
5001 to 6000	19.5	17.8
6001 to 7000	19.5	18.5
7001 to 8000	19.5	19.3
Above 8000 to 14,000	(1)	19.5

[1] For altitudes above 8000 feet, an oxygen deficient IDLH atmosphere exists when the oxygen level falls below 19.5%

(E) *Medical Evaluation.* Most who responded to the ANPR, although divided in their responses to many of the questions on medical surveillance, were in general agreement that the provision in the present standard is inadequate and that there should be initial and follow up evaluations of some sort. In particular, there was a consensus that it is not safe to wait for specific complaints or problems to arise before conducting such evaluations (Ex. 15–10, 15–26, 15–27A, 15–31, 15–45, 15–46, 15–48, 15–49, 15–53, 15–54, 15–55, 15–63, 15–70, 15–75, 15–76).

Experience in industry shows that most healthy workers do not have problems wearing a respirator when it is properly chosen and fitted (1, 2, 6). The most commonly found problems are claustrophobia—which may be an intolerance of feeling enclosed or may give rise to a subjective feeling of breathing difficulty. Other common problems are chronic rhinitis, catarrh, and nasal allergies where it is necessary to remove the respirator frequently to deal with nasal discharge. Some individuals with chronic sinusitis may have breathing difficulties wearing a respirator.

Most other difficulties relate to the cardiorespiratory system. The wearing of a negative pressure respirator does increase the resistance to inspiration. The problem is reduced with powered air-purifying respirators and with positive pressure atmosphere-supplying respirators. Exhalation resistance with modern negative pressure respirators does not significantly increase expiratory effort. The types of cardiorespiratory problems which may increase the individual's breathing problems when wearing a respirator are chronic obstruction, respiratory disease, emphysema, asthma in some cases, and moderate to severe pneumoconiosis.

Cardiac or cardiorespiratory diseases that may affect respirator wear include coronary thrombosis, any type of congestive heart disease or decompensations cor pulmonale, other ischemic heart disease and some cases of hypertension.

The amount of difficulty will clearly depend on the degree of cardiorespiratory inadequacy and also on the amount of physical effort required by the work. Some people who may have difficulty wearing a negative pressure respirator should be able to manage well with a positive pressure type respirator.

The decision about the fitness of the individual to wear a respirator is clearly a judgment that can only be made by the physician taking into account the state of the individual's health as well as the physical requirements of the job.

The preproposal draft would have required that employers refer employees for medical evaluations if they would be routinely wearing a respirator for more than one hour per work shift, or five hours per week. This provision would eliminate medical surveillance for employees who wear respirators only infrequently, while ensuring that those who must rely on respirators for longer periods of time would be appropriately evaluated.

The preproposal draft provision exempting occasional respirator users from the medical evaluation requirements was the subject of many comments. Some commenters felt there could be problems with interpreting the exemption (Ex. 36–32), or that the exemption would be difficult to enforce with employers claiming exemptions for employees, and the employees claiming they should have the evaluation (Ex. 36–8). Dow Chemical (Ex. 36–40) stated that the exemption would be a tough administration problem. AMAX Inc. (Ex. 36–27) stated that the exemption limits were excessive and burdensome

to industry. The Ethyl Corporation (Ex. 36–11) felt the exemption limits were too rigid and stated that a more appropriate time limit might be 10 to 13 hours per week or 25% to 33% of working hours. The Amoco Corporation (Ex. 36–35) supported the flexibility that the occasional users exemption showed and the American Textile Manufacturer's Institute (Ex. 36–18) felt medical evaluations should be provided for all individuals who wear respirators for more than "pass through" activities. Dow Chemical (Ex. 36–40) recommended that any employee required to wear respiratory protection for any reason be provided a medical evaluation, which may or may not include a medical examination.

The Mine Safety and Health Administration (MSHA) (Ex. 36–34) felt the exemption did not focus on the individuals at risk such as those wearing an SCBA in confined spaces for repairs. The AIHA (Ex. 36–41) and DuPont (Ex. 36–38) also pointed to the problem of SCBA wearers who perform heavy work for short periods of time without having been medically evaluated. California OSHA (Ex. 36–44) recommended that the occasional use exemption not apply to SCBA wearers. The Lawrence Livermore National Laboratory (Ex. 36–26) felt that the occasional use exemption would eliminate physical evaluations for emergency response activities and other short use, high risk jobs.

OSHA is removing the draft requirement that a medical evaluation be made available to any worker using a respirator more than one hour per work shift. This provision would have required an evaluation if the respirator were to be worn for one stretch of 61 minutes even if that were the only time it was worn. OSHA believes that such a requirement is unreasonable and that repeated use of the respirator will be covered by the five hour per week provision. Therefore, the proposal now requires that a written opinion be obtained from a physician that each employee who needs to wear a respirator for five hours or more during any work week is fit to wear one. However, in view of questions that have been raised, OSHA invites comments on the duration of respirator use that should constitute a threshold for the medical evaluation requirement. OSHA recognizes that problems may occur with interpretation or enforcement of the occasional use exemption and solicits comments on projected problems. OSHA emphasizes that the occasional use exemption is intended to apply only to short time respirator wearers, not those who wear respirators on a routine basis.

Medical Evaluation Procedures

Although OSHA believes that a medical evaluation is important, there appears to be considerable difference of opinion as to what circumstances should trigger a physical examination, what the physical examination should consist of, who is to administer such an examination, and what the specific criteria should be for passing or failing the examination with respect to fitness for wearing a respirator. Because there is no definitive information either in the record or, as far as OSHA can tell, in the open literature as to how to resolve these issues OSHA is raising for comment three alternative versions of the medical evaluation provision. The first, which is represented by proposed regulatory text, would require that the employer obtain a doctor's written opinion on the employee's ability to wear a respirator. The nature of the medical evaluation performed would be left up to the physician to determine. The second alternative would require the performing of a medical evaluation consisting of a medical history and medical examination, from which a physician's opinion on respirator use would be written. The third alternative would require that a health questionnaire be administered to all respirator wearers, with a medical evaluation being performed on those whose answers to any of the questions on the questionnaire show the need for such an evaluation, or who wear an SCBA for emergency or rescue operations. After reviewing the questionnaires and any medical evaluation performed, a physician's written opinion on respirator use would then be prepared.

OSHA is seeking comment on each of the three alternatives and on the specific elements that make up the required procedures of each alternative. The comments that will be received to this proposal, along with OSHA's review of other medical evaluation information, will be used to develop a single medical evaluation procedure for the final standard. Therefore, commenters should detail why they prefer one of the three alternatives in this proposal above the others, and specifically address which required elements should be contained in the medical evaluation procedures. A more detailed discussion of each of the three alternatives follows.

Alternative 1—Written Physician's Opinion

The first alternative of the medical evaluation procedures is part of the proposed standard as paragraph (e). It would require that, for every employee who wears a respirator more than five hours during any work week, a written opinion be obtained from a licensed physician as to the fitness of the employee to wear a respirator based on the type of respirator used, the workplace conditions and the employee's physical condition. Information regarding respirator type and workplace conditions would be required to be supplied to the physician by the employer. The decisions as to whether a physical examination is necessary, and if so its content, is left to the judgment of the physician. OSHA is proposing suggested elements of a physical examination in an appendix to guide the physician should he or she choose to perform such an examination. In addition, this proposal requires that an annual review, which in the physician's judgment may not entail an examination, be conducted by a physician.

Possible regulatory language for the other two alternatives of the medical evaluation section are presented as follows. Although they are not included in the text of the standard, OSHA will consider all three alternatives in its deliberations leading to a final standard.

Alternative 2—Medical History and Examination

The second alternative for a medical evaluation provision is a requirement for a mandatory medical history and medical examination. The preproposal draft standard contained this alternative, but OSHA has modified it in response to comments received. As in alternative 1, guidance for the elements of the evaluation would be supplied by nonmandatory Appendix C.

These recommended elements are basically the same as were specified as mandatory in the prepublication draft and are similar to those recommended by ANSI in its standard on physical qualifications for personnel using respirators, ANSI Z88.6–1984 (Ex. 38–10).

The preproposal draft would have required that a medical history be taken and a medical examination be conducted for each respirator user with exemptions for nonroutine users. Also included were mandatory elements to be reviewed during the performance of the medical history and medical examination. Several commenters recommended that OSHA adopt a more performance oriented approach for the medical evaluation provisions while listing in a nonmandatory appendix what the physician should consider

during the examination (Ex. 36–18, 36–22, 36–38, 36–40, 36–41, 36–50, 36–55).

Comment is requested on the individual elements that make up the medical history and medical examination recommended provisions listed in Appendix C. OSHA also requests comment on whether it should set specific medical trigger levels for elements of the medical examination, and if so, what these trigger levels should be.

A mandatory requirement for pulmonary function testing was opposed by commenters on the grounds that it is not clear that pulmonary function testing would provide information that would not already be apparent to the physician from performing a normal physical exam. It was also pointed out that there are no specific pulmonary function test values that are considered to be clearly suitable thresholds for ability to wear a respirator (Ex. 36–3, 36–22, 36–30, 36–32, 36–34, 36–47, 36–55). The discussion in Appendix C on pulmonary function testing states that spirometry including FEV_1 and FVC, while not required should be performed. The recommendation for screening spirometry contains a set of values for FVC and FEV_1 which have been adopted from the ANSI Z88.6 recommended standard. These values, a FVC of less than 80 percent or a FEV_1 of less than 70 percent, represent levels at which restrictions on respirator use should be considered.

A study of clinical pulmonary function and industrial respirator wear by Raven, Moss, Page, Garmon, and Skaggs (Ex. 38–8) recommended that a standard clinical pulmonary function test, the 15 second maximum voluntary ventilation ($MVV_{.25}$), may be the test of choice for determining worker capability to wear a respirator. A "conservative" score on this test, along with other clinical data from the medical evaluation would form the basis for screening respirator wearers. OSHA requests information and comment on the use of the ($MVV_{.25}$) as a screening test for respirator use, and whether it should be added to the nonmandatory recommendation for FEV_1 and FVC testing.

Appendix C also contains recommendations for elements to be covered in the medical history. The provision in the preproposal draft stating that psychological problems or symptoms be noted in the medical history has been removed. Rebecca Eklund of Freeport McMoran Inc. (Ex. 36–28) pointed out that the psychological conditions requirement was too inclusive since there are many psychological conditions which in no way affect the wearing of a respirator. Because the medical examination covers psychological conditions relevant to wearing respirators, such as claustrophobia or severe anxiety, the recommendation that psychological problems be noted in the medical history is redundant and therefore has been dropped.

Comments were also received on the preproposal draft requirement that tolerance to tachycardia (i.e. excessively rapid heartbeat) be noted. OSHA notes that the recommendation that tolerance to tachycardia due to inhaling heated air be noted is part of the ANSI Z88.6 physical qualifications for respirator wearers, and for that reason was included in the preproposal draft. Closed circuit SCBA units, also known as rebreathers, supply air to the wearer at elevated temperatures of 120° F or greater. A possible physiologic response to breathing heated air is tachycardia. Commenters stated that tachycardia produced by heated air was called difficult to validate (Ex. 36–8), was not necessary to note since few respirators produce heated air (Ex. 36–29), difficult to assess and attribute to heated air (Ex. 36–32), not generally accepted by the medical profession as a problem (Ex. 36–37), challenged any problem with breathing heated air (Ex. 36–47), and questioned the necessity to impose the restriction since only rebreather respirators produce heated air (Ex. 36–52).

OSHA agrees with the commenters that few closed circuit SCBAs are in use, and that checking every respirator user for tolerance to tachycardia is not necessary. Therefore, the recommendation for noting tolerance to tachycardia due to inhaling heated air has been removed. OSHA requests any information on problems that have occurred with tachycardia for wearers of closed circuit SCBAs, and comment on whether this recommendation should be included (either as a mandatory requirement or in Appendix C only) for those who will be using closed circuit SCBAs.

The suggested elements of the medical examination itself, where one is performed, have also been modified and placed in Appendix C. The recommendation for the physician to assess facial conditions that may interfere with respirator fit has been dropped. As Alan Hack of the Los Alamos National Laboratory stated, most physicians will not be familiar enough with respirator facepieces to be able to make such an evaluation (Ex. 36–29). Also, any decision on respirator facepiece fit would more properly be made when selecting the best fitting respirators during fit testing.

The need for assessing hearing ability was also questioned by commenters on the preproposal draft. Several commenters recommended the elimination of the hearing assessment provision since it is irrelevant to the wearing of a respirator (Ex. 36–8, 36–13, 36–27, 36–29, 36–47, 36–52). California OSHA (Ex. 36–44) stated that hearing ability should not be a consideration except perhaps where a worker wears a continuous flow airline respirator with hood or helmet that covers the head. The ability to hear is certainly important during IDLH entry, but this is a concern regardless of respirator use. The American Association of Occupational Health Nurses (Ex. 36–8) and Alan Hack (Ex. 36–29) pointed out that nonaudible alarms such as visual or vibration alarms could be used along with the buddy system for such situations. Monsanto (Ex. 36–32) questioned what level would constitute an acceptable hearing ability. ORC (Ex. 36–47) and California OSHA (Ex. 36–44) also questioned whether OSHA was requiring audiometric testing.

Having considered the foregoing comments, OSHA believes that the second alternative should retain a recommendation for performing a hearing assessment nonmandatory Appendix C. There are situations where the wearing of a respirator, particularly one with a full helmet or hood, can significantly reduce hearing and the ability to respond to emergency alarms or warning devices. However, OSHA recognizes that the problem of hearing ability in the workplace is peripheral to the ability to wear a respirator. Therefore, OSHA seeks further comment on the necessity of assessing hearing ability when wearing respirators and on the appropriateness of this recommendation to the respirator standard. The assessment of hearing ability to assure communication and response to instructions and alarms does not require, in the standard, audiometric testing. For most respirator wearers a simple oral assessment of hearing ability would be sufficient.

With respect to the question of perforated tympanic membranes, Shell Oil (Ex. 36–50) submitted a report by Dr. Thomas Milby which reviewed the issue of potential employee exposure to hydrogen sulfide via the route of damaged tympanic membranes. The report stated that there was no valid information in the scientific literature supporting that perforated eardrums would produce an increased risk of contamination for workers. Calculations were performed for the Shell report

which showed, in a worst case analysis, ambient air concentrations of H_2S would have to reach some 158 ppm before the worst case loss of an ear drum would permit exposure at the PEL of 10 ppm. Shell also included a study by Richard Ronk and Mary Kay White of NIOSH (Ex. 38–11) which concluded that workers with perforated eardrums should not be excluded from working in hydrogen sulfide atmospheres. They stated that in no reasonable case can the presence of a tympanic membrane defect significantly affect respiratory protection. California OSHA (Ex. 36–44) cited the NIOSH study as showing that tympanic membrane perforation was not a problem. Other commenters also recommended that this provision be dropped since it is not specifically a respirator related problem (Ex. 36–3, 36–18, 36–35, 36–47, 36–52).

In light of the scientific review of tympanic membrane perforation submitted by Shell Oil, and the report by NIOSH which also reports no significant exposure from perforated eardrums, the recommendation for checking for perforated tympanic membranes has not been included in this proposal. OSHA requests any information and data regarding problems with respirator use associated with tympanic membrane defects, and any evidence for the need for checking for perforated eardrums for respirator wearers.

The American Association of Occupational Health Nurses (Ex. 36–8), commenting on the preproposal draft provision requiring assessment of the endocrine system, pointed out that such problems should have been noted as a previously diagnosed disease during the medical history. They also stated that assessing the endocrine system for all respirator wearers would be costly and time consuming. If a history of diabetes or other endocrine disease was detected, than evaluations could be done on a case by case basis. Other commenters said that physicians would be reluctant to accept liability for signing off on such an assessment and that the evaluations should be restricted to the employee's pulmonary function and cardiovascular system (Ex. 36–10) and should eliminate the endocrine test as not relevant to the wearing of respirators (Ex. 36–13). Alan Hack (Ex. 36–29) and the Los Alamos National Laboratory (Ex. 36–52) stated that "Workers so afflicted [with endocrine conditions which result in sudden loss of consciousness] will be restricted from many employment tasks that do not require use of respirators. Such restrictions should not be applied specifically to respirator wearers." Dow Chemical (Ex. 36–40) stated that the physical manifestations of endocrine system disease would be found during the neurologic examination.

OSHA believes that endocrine conditions such as diabetes should be considered by the physician when determining whether a respirator can be worn. Previously diagnosed endocrine conditions should be picked up during the taking of the medical history. However, undiagnosed endocrine system problems can still exist. The respirator use evaluation may be the only physical examination the employee has had for some time, and a diabetic condition could have developed. The extent of the assessment suggested, from looking for signs of disease during the physical exam to more extensive testing of those with signs of disease, is at the discretion of the physician. Any general work limitations or restrictions that apply to other work activities of an individual due to endocrine disorders should also be considered when determining whether a respirator can be used. OSHA does not recommend any specific tests for endocrine conditions, leaving the determination to the physician's judgment. Because the potential for sudden loss of consciousness or response capability is something that should be considered when determining an individual's ability to wear a respirator, the proposal includes the endocrine system assessment recommendation, as derived from the ANSI Z88.6 standard, in Appendix C. OSHA requests further comment on the need for assessing the endocrine system, and on determining which endocrine system conditions would preclude the use of respirators.

The preproposal draft also contained a requirement that an exercise stress test be performed for employees who use SCBA's or rebreather type respirators. The American Association of Occupational Health Nurses (Ex. 36–8) stated that exercise stress testing would be expensive and difficult to obtain for fire departments and small companies. Brown and Root (Ex. 36–10) maintained that an exercise stress test would be costly (approximately $240) and, if not standardized, would mean very little in determining whether an SCBA or rebreather respirator can be worn. Other commenters stated that OSHA should not require a routine cardiovascular stress test, but require one only if requested by the physician (Ex. 36–35, 36–40, 36–47). They also opposed the use of electrocardiograms on a routine basis, claiming that false positives require expensive follow-up testing. Also the nature of the tests required for exercise stress was not specified by OSHA, and an example of an exercise stress test was requested. SOCMA (Ex. 36–48) commented that exercise stress tests cost between $250 and $300, and urged OSHA to consider other testing that would yield similar data in a more cost effective manner, using a performance approach. The Motor Vehicle Manufacturer's Association (Ex. 36–37) recommended the provision be deleted and a simple pulse rate count be substituted.

The exercise stress testing provision was derived from the maximum exercise stress test recommended by the ANSI Z88.6 physical qualification standard. The ANSI standard stated that individuals with apparent ischemic disease or who cannot perform well on a treadmill due to respiratory, musculoskeletal, or other physical problems should not use SCBAs or be assigned to emergency response teams. OSHA recognizes that exercise stress tests can be expensive, and that criteria for evaluating specific conditions that would disqualify workers have not yet been developed. Moreover, the requirement in the preproposal draft for stress testing would have applied only to a small group of respirator wearers, and even then it would be difficult to determine whether such a test was really appropriate. OSHA concedes that such problems would appear to render inappropriate a mandatory requirement for stress testing. Therefore, determining whether an employees' health condition precludes the wearing of an SCBA or assignment to an emergency response team has been left to the physician. However, Appendix C recommends exercise stress testing for workers who were an SCBA or rebreather respirator device under strenuous work conditions or in emergencies.

OSHA is seeking further comment on the appropriateness of the exercise stress test, the most cost effective method of performing such testing and alternative methods of determining an individuals physical ability to wear SCBAs and rebreather respirators.

OSHA is seeking general comment on which recommendations should be retained as part of Appendix C, and whether certain provisions such as pulmonary function testing and exercise stress testing should be kept in the nonmandatory appendix or made mandatory provisions of the standard. Additional comment is also sought on whether OSHA should add to the nonmandatory appendix a section which further describes health conditions that should be considered during the medical evaluation. The proposal lists specific areas to be investigated but does not attempt to develop a list of medical conditions and

diseases that may preclude the use of respirators. OSHA requests comment on whether such information would be of use for evaluating the ability to wear respirators and which medical conditions and diseases should be on such a list.

The proposal contains an exemption from the required initial medical evaluation when adequate medical records show that an employee has successfully taken a medical examination, or received a written opinion from a physician within the past year, on the basis of which the employee was determined to be fit to use the same type of respirator under similar use conditions. This exemption will help avoid the expense of duplicate medical examinations for transient workers who have already passed an initial medical evaluation for respirator use on one job and later moved on to work for another employer.

The preproposal draft contained a provision requiring review of the employee's medical status when an employee experienced difficulty in breathing while using a negative pressure or demand respirator. Alan Hack (Ex. 36–29) and Los Alamos (Ex. 36–52) recommended that a review occur when an individual experiences difficulty with any respirator, not limited to negative pressure devices. Homestake Mining (Ex. 36–30) also recommended a review following breathing difficulty with any respirator. OSHA agrees that breathing difficulty while wearing any type of respirator requires a medical status review, and the language of this alternative has been changed accordingly.

The final departure from the ANSI Z88.6 physical qualification recommendations is the requirement in this alternative that the employee's medical status be reviewed annually or at any time the employee experiences difficult breathing while being fitted for or using a respirator. Although the latter requirement is implied by ANSI, the annual review is not. By such an annual review, OSHA is not necessarily requiring a physical examination. The objective of this provision is to provide a mechanism which necessitates routine review of any difficulty an employee may be experiencing. Other then being performed by or under the supervision of a physician, the specific nature of this annual review is left to the physician to determine. OSHA invites comments as to the appropriateness of this provision.

AMAX Inc. (Ex. 36–27) citing experience with the OSHA lead standard, stated that an annual review of medical status was not required and review should be required only when requested by the employee. Air Products and Chemicals Inc. agreed. (Ex. 36–13). OSHA requests comment on this approach.

In the preproposal draft, OSHA included guidelines for medical examinations suggesting that they be given every five years for employees under forty, every two years for those from forty to fifty years of age, and every year for those above fifty. ANSI in its Z88.6–1984 standard recommended examinations every 5 years for those below age 35, every 2 years up to age 45, and annually thereafter. The NIOSH Respirator Decision Logic suggests examinations every 5 years for those under 35 years of age, every 2 years for those from 35 to 45, and every 1 to 2 years for those above 45, under most working conditions requiring respirators. Under strenuous work conditions with an SCBA, NIOSH suggested exams every 3 years for those under 35, every 18 months for those from 35 to 45, and annually for those above 45 (Ex. 38–20).

OSHA requests comment on whether an annual review of medical status is needed, or whether a sliding scale of examination dates, such as recommended by NIOSH or ANSI, could be substituted for the annual medical review.

Commenters questioned the preproposal draft requirement that the medical evaluation be performed by a licensed physician. Many commenters pointed out that there were portions of the medical evaluation that could be performed by other health professionals such as occupational health nurses and physicians assistants, or nurse practitioners, certified audiometric technicians, and pulmonary function testing technicians (Ex. 36–8, 36–10, 36–13, 36–18, 36–21, 36–22, 36–30, 36–32, 36–35, 36–37, 36–40, 36–41, 36–51A, 36–53, 36–55). OSHA has revised the language for this alternative to permit other health professionals to perform whatever medical evaluation procedures the physician chooses to delegate to them. OSHA requests comments on this issue and on the extent of the role that should be given to these health professionals.

In requiring a medical evaluation, OSHA has proposed in this alternative that an examination be given to respirator wearers regardless of the type of respirator used or the conditions under which it will be used. Commenters have suggested that not all types of respirators place the same physical demands upon wearers, and that the medical evaluation criteria could be reduced for certain low resistance respirators. John Barr of Air Products and Chemicals (Ex. 36–13) stated that positive pressure respirators place no significant burdens on wearers, and that disposable dust masks have no discernable effect upon respiration. He suggested that OSHA exempt such respirators from the need for a qualifying medical exam.

OSHA requests comments on whether the medical evaluation provisions should be less extensive for less burdensome respirators, such as positive pressure respirators or single use dust masks, and if so, what provisions could be reduced or eliminated. More generally, comment is sought on whether the medical evaluation provisions should be modified to accommodate particular respirator work conditions, and if so, what those modifications should be.

OSHA requests information and data on the breathing resistance levels of respirators for wearers, and whether a medical determination could be made to select a breathing resistance level which poses no problem for respirator wearers.

OSHA's suggested regulatory language for the second alternative medical evaluation procedure reads as follows:

(e) Medical evaluation.

(1) The employer shall provide a medical evaluation for each employee required to wear a respirator for more than five hours during any work week. The medical evaluation shall be performed by a licensed physician or by a health professional operating under the physicians supervision and shall include completion of a medical history and performance of a medical examination. In advance of the medical evaluation the employer shall provide the examining professional with information concerning:

(i) The type of respiratory protection to be used;

(ii) The substances the employee will be exposed to;

(iii) Description of the work effort required;

(iv) Duration and frequency of usage;

(v) The type of work performed, including any special responsibilities that affect the safety of others such as fire fighting or rescue work;

(vi) Any special environmental conditions (such as heat or confined space entry); and

(vii) Additional requirements for protective clothing and equipment.

(2) Upon completion of the examination, the employer shall obtain from the examining physician a written opinion which states whether the employee is fit to wear a respirator and recommends any limitations on respirator use. A copy of this written

opinion shall be provided to the examined employee.

(3) In the case of new employees, employers may accept an already existing medical examination or written opinion from a physician provided it was conducted within a year of the date of employment, covered the same type of respirator under similar use conditions, and meets the requirements of (e)(1).

(4) The employer shall have the employee's medical status reviewed by, or under the supervision of, a licensed physician annually and at any time the employee experiences unusual difficulty breathing while being fitted for or while using a respirator. The employer shall have the responsible licensed physician provide a written opinion resulting from the review as required under (e)(2).

Alternative 3—Questionnaire

A third alternative for medical evaluation would require that a medical questionnaire be used to survey respirator users and to identify those who require physical examinations on the basis of their medical history (Ex. 15–8, 15–22, 15–34, 15–41, 15–42, 15–44, 15–45, 15–47, 15–68, 15–62). The specific nature of this questionnaire and its accompanying procedures was not always clearly presented by the commenters, but the health evaluation provisions in the Organization Resources Counselors, Inc. (ORC) recommended respiratory protection program (Ex. 36–47) was suggested as a model medical evaluation procedure (Ex. 36–3, 36–22, 36–35, 36–38, 36–40, 36–41, 36–47, 36–50, 36–51A).

The program recommended by ORC requires that a screening questionnaire be administered by a health professional or trained person for each respirator wearer, prior to fit testing. Anyone who gives a "yes" answer to a question on the questionnaire, or who wears an SCBA for emergency or rescue operations would receive a medical evaluation, performed by or under the direction of a physician. The procedures to be used for the medical evaluation would be left to the judgment of the health professional performing the evaluation. The employer and employee would be notified of any restrictions on respirator wear that are identified by the health evaluation. The ORC recommended program included a nonmandatory appendix containing sample questionnaires and suggestions for medical examinations of individuals who answered yes to the screening questions.

Other commenters who stated that automatic medical exams for all respirator wearers were not necessary (Ex. 36–3, 36–13, 36–21, 36–22, 36–30, 36–35, 36–38, 36–40, 36–41, 36–47, 36–50, 36–51A) also supported a medical questionnaire to screen the respirator user population so that only those whose medical condition warrants a medical exam would get one. The commenters stated that the questionnaire could be administered quickly, and the unnecessary expense of medical exams for healthy respirator users would be avoided.

OSHA has suggested in this alternative that the question of who should administer the medical questionnaire and determine which respirator users should be referred for a medical exam be resolved by adopting the recommended procedure in the ORC respiratory protection program. Either a health professional or a person trained in administering the questionnaire by a physician would have this responsibility. This would place this critical part of the medical evaluation under a trained individual acting under the direction of the physician who has the ultimate responsibility for approving respirator use. OSHA requests comments on the administration of the medical questionnaire and on the appropriate individuals for performing this requirement.

Employees who are assigned to emergency or rescue operations with SCBA respirators would still be required under alternative 3 to have a medical examination. These individuals are placed in highly stressful environments while wearing a heavy SCBA, which places an added burden on their physical condition. A questionnaire would not serve adequately as a screening procedure for these respirator wearers, and therefore OSHA would follow the ORC recommendation for alternative 3 and require that a medical exam be performed. The extent of that examination would be left up to the physician to determine. OSHA asks for comments on the need for performing a medical exam for these SCBA wearers, and on appropriate medical procedures to be used to evaluate their ability to perform adequately during emergency or rescue operations.

As examples of medical questionnaires, OSHA has included in Appendix C the ANSI Z88.6 medical questionnaire for respirator use, as well as the three sample questionnaires from the ORC Recommended Respiratory Protection Program. OSHA has placed these questionnaires in this nonmandatory appendix in order to seek comment on the appropriateness of using such questionnaires and on which provisions in these samples are appropriate for determining an individual's ability to wear a respirator. OSHA also requests any alternative questionnaires that are used in industry.

The proposed regulatory language that has been developed for this third alternative of the medical evaluation procedures reads as follows:

(e) Medical evaluation

(1) The employer shall provide a medical evaluation before respirator use starts for each employee required to wear a respirator.

(i) The medical evaluation shall consist of the completion of a screening medical questionnaire for all respirator users.

(ii) A medical examination shall be administered to any employee whose answers to any of the questions on the questionnaire show the need for such an examination.

(iii) A medical examination shall be administered to any employee who is assigned to emergency or rescue operations while wearing an SCBA.

(iv) The questionnaire shall be administered by a health professional or a person trained in its administration by a licensed physician.

(v) Any medical examination administered shall be performed by a licensed physician or health professional under the direction of the physician. If a medical examination is given, the employer shall obtain from the examining physician a written opinion which states whether the employee has any detected medical condition which would place the employee's health at increased risk or material impairment for respirator use and any recommended limitations upon the use of respirators.

(vi) A copy of this written opinion shall be provided to the examined employee. In advance of the medical examination the employer shall provide the examining professional with information concerning:

(A) The type of respiratory protection to be used;

(B) The substances the employee will be exposed to;

(C) Description of the work effort required;

(D) Duration and frequency of usage;

(E) The type of work performed, including any special responsibilities that affect the safety of others such as fire fighting or rescue work;

(F) Any special environmental conditions (such as heat or confined space entry); and

(G) Additional requirements for protective clothing and equipment.

(2) In the case of new employees, employers may accept an already existing medical examination or written

opinion from a physician provided it was conducted within a year of the date of employment, covered the same type of respirator under similar use conditions, and meets the requirements of (e)(1).

(3) The employer shall have the employee's medical status reviewed by, or under the supervision of, a licensed physician annually and at any time the employee experiences unusual difficulty breathing while being fitted for or while using a respirator. The employer shall have the responsible licensed physician provide a written opinion resulting from the review as required under (e)(1).

Other Issues

Medical Removal Protection

In some substance specific standards (e.g. cotton dust 29 CFR 1910.1043 and asbestos 29 CFR 1910.1001) OSHA has required economic protection for employees who, for medical reasons, cannot wear required respirators. California OSHA (Ex. 36–44) and the United Steel Workers of America (Ex. 36–46) recommended that OSHA request any data on the instances and types of cases where employees have been determined not to be able to wear a respirator and what happened to these workers under current respirator programs. Determining the prevalence of such rejections and the fates of those who were rejected could be useful in determining the need of employers to supply alternative respirators or the need for OSHA to require that employers provide alternative jobs for those who cannot wear a particular type of respirator. Therefore, OSHA requests the submission of any data or information regarding instances and details of cases where workers were found to be unable to wear respirators and how this determination affected the worker's job responsibilities. OSHA would also like to receive any available information on the frequency with which such situations occur, or alternatively on how many such cases are known to have happened.

Since the inability to wear a respirator, or failing to pass a medical evaluation, could result in employees losing their jobs, some commenters recommended that OSHA should add provisions to help employees in these situations. Medical removal protection, the requirement that employers provide employees who are unable to wear respirators with alternative assignments at the same seniority and pay, was recommended by several commenters (Ex. 36–14, 36–26, 36–44, 36–46). Giving employees who fail to pass the initial medical evaluation the right to a second opinion, similar to the provision for physician review in the lead standard (29 CFR 1910.1025(j)(3)) was suggested by other commenters (Ex. 36–44, 36–46). Adding a requirement that the employer provide an alternate type of respirator such as a PAPR or supplied air respirator in cases where an employee cannot use a negative pressure air-purifying respirator due to medical restrictions was recommended by California OSHA (Ex. 36–44). Although such provisions were included in recent OSHA standards such as cotton dust (29 CFR 1910.1043(f)(2)(iii), (f)(2)(iv), (h)(5)(i)(c)) and asbestos (29 CFR 1910.1001(g)(2)(ii)) OSHA does not feel that sufficient information has been submitted upon which such provisions could be included in this proposal for general application to all workplaces. Therefore, additional information and data are requested which address these issues.

(F) Fit Testing Procedures

Although it has long been recognized that respirators must fit properly in order to provide protection, it has only been within the last few years that systematic approaches for assessing and assuring fit have been developed. As a result of continuing research, a number of fit testing protocols have been developed and tested (Ex. 2, 8). In addition, because of the variability of face size characteristics among individuals, different sizes of facepieces are now available, in contrast to the recent past when a "one size fits all" approach was generally taken.

In general there are two categories of fit testing—qualitative and quantitative. Qualitative fit testing involves the introduction of a gas, vapor, or aerosol challenge agent into an area around the respirator wearer. A determination is then made as to whether the respirator wearer can detect the presence of the challenge agent through subjective means such as odor, taste, or nasal irritation. If the presence is detected, the respirator fit is considered to be inadequate.

In a quantitative respirator fit test the respirator is worn in a stable test atmosphere containing a suitable challenge agent. The adequacy of the fit is determined by measuring the actual levels of the challenge agent, both outside and inside the facepiece of the respirator.

The current standard sets out no specific protocols for fit testing although it does require training which provides an opportunity to have the respirator "fitted properly". It also requires employees to be trained to check the fit each time the respirator is put on without specifying how the check is to be performed or even what type of check is acceptable. Experience and research over the past ten years have demonstrated that this is insufficient, as set forth in the following discussion.

Even when fit testing is performed, it may be inadequate. In the past, some manufacturers included their own qualitative fit testing protocols as part of the manufacturers instructions to the user. Numerous commenters complained that NIOSH or OSHA should check the manufacturers instructions for adequacy and consistency (Ex. 15–14, 15–16, 15–36, 15–41, 15–46, 15–47, 15–48, 15–50, 15–52, 15–75A, 15–79), since employers often use or attempt to use such instructions to fit respirators to their employees faces. Since fit testing is often done by the employer, commenters also suggested that the simplicity of the protocol be stressed.

Commenters to the ANPR suggested that a standardized protocol be developed which is oriented toward the hazard or level of exposure when determining the qualitative efficacy of a respirator (Ex. 15–10, 15–48, 15–64). In addition, it was suggested that the type of odor or irritant used should also be standardized (Ex. 15–54, 15–58, 15–70, 15–71, 15–76). Correlation of the testing done qualitatively and quantitatively would also aid in assuring that respirators being worn are effective (Ex. 15–17B, 34–8). The proposed standard attempts to standardize the protocol and also simplify the procedures.

OSHA has recognized the need for fit testing in the development of recent substance specific rulemakings. Quantitative fit tests were required in such standards as acrylonitrile (29 CFR 1910.1045) and lead (29 CFR 1910.1025). However, specific protocols were not provided in any of these substance specific standards. Later, questions arose regarding the feasibility of the requirement for quantitative fit testing in the lead standard (29 CFR 1910.1025). As a result OSHA conducted a specific rulemaking for the fit testing provisions of the lead standard. It was consequently determined that qualitative fit testing could be used with half mask negative pressure respirators, provided that one of three specified protocols was followed, and provided that lead concentrations do not exceed ten times the permissible exposure limit (47 FR 51110).

These specified qualitative fit testing (QLFT) protocols use isoamyl acetate, irritant smoke, or saccharin as the test

agents. OSHA believes, based on the record of the lead supplemental rulemaking (47 FR 51110), that the three QLFT protocols accepted for use in the lead standard are generally appropriate for use with negative pressure half mask respirators and has therefore incorporated them.

This proposal would require that fit testing be performed where air-purifying respirators as well as tight fitting atmosphere-supplying respirators are used. Either qualitative fit testing or quantitative fit testing may be conducted for quarter facepiece, half mask, or full facepiece respirators. The proposal details the procedures for qualitative and quantitative fit tests in Appendix A. Commenters (Ex. 36–38) on the preproposal draft stated that the protocol exercise regimens and other elements common to both qualitative and quantitative fit testing were not consistent. Therefore the common elements of the protocols in Appendix A have been standardized in this proposal in order to provide consistency.

It is recognized that one purpose of revising the existing respiratory protection standard is to allow for changes in respiratory protection technology. Numerous comments were made suggesting that limiting the qualitative and quantitative tests to certain specified methods would freeze technology at the present state and would not allow for future changes nor provide any incentive to develop new test methods or test agents (Ex. 36–22, 36–32, 36–35, 36–51, 36–53). OSHA agrees and would like to develop more performance oriented criteria by which new or modified fit test procedures can be evaluated. Such criteria must guarantee a high level of certainty that the fit test will in fact select the best fitting respirator and give maximum assurance of reliable fit. Performance oriented criteria that will enable reliable new fit tests to be developed and implemented do not, to OSHA's knowledge, exist at the present time. OSHA seeks comment so that it can build a provision into the standard that encourages and permits improvements in fit test technology. Such comment should include specifications for validation procedures and for what organizations can be designated as credible validation performers.

In the absence of performance oriented criteria for determining the reliability of fit tests, OSHA is proposing to allow the use of qualitative or quantitative fit tests other than the methods specified in Appendix A provided they are validated to provide equivalent or better reliability.

When a qualitative fit test is properly administered for a half mask, quarter mask, or full facepiece negative pressure air-purifying respirator in accordance with the protocols in Appendix A, OSHA proposes to allow the respirator to be used in concentrations up to a maximum of ten times the established permissible exposure limit.

Quantitative fit testing (QNFT), a more recent development, measures the efficacy of a respirator by actually measuring and comparing the contaminant level inside and outside a respirator facepiece. As with qualitative fit testing, commenters stated that manufacturers' QNFT protocols differ greatly (Ex. 15–22, 15–26, 15–30, 15–44). Many objected that different test agents were used (Ex. 15–44, 15–55, 15–58, 15–79). Some manufacturers protocols only test the respirator once instead of using the average of several tests. OSHA in reviewing these comments agreed that the QNFT procedure should be standardized and for this reason includes a protocol in the proposed standard.

Either qualitative or quantitative fit testing may be used for quarter facepiece, half mask, or full facepiece respirators. However, OSHA has only limited data on the applicability of the qualitative fit test protocols for either quarter facepiece or full facepiece respirators. Therefore, although this proposal does allow the use of quarter facepiece and full facepiece respirators which pass the QLFT in atmospheres up to ten times the established exposure limit, OSHA invites interested parties to submit data which demonstrate how well the QLFT protocols can detect poor fits for full facepiece and quarter facepiece respirators.

If the employer chooses to use quantitative fit testing, a full facepiece respirator may be used up to a maximum of its assigned protection factor of 50 as shown in Table I of paragraph (d), provided that the fit factor obtained during quantitative fit testing is at least 500.

The proposal requires fit testing of tight fitting atmosphere-supplying and powered air-purifying respirators. It is recognized that demand type atmosphere-supplying respirators have negative air pressure inside the facepiece compared to the air pressure outside the respirator upon inhalation. The efficacy of these respirators therefore relies to a large degree on the integrity of the facepiece to face fit. Therefore it is clearly appropriate to require fit testing of demand or negative pressure tight fitting atmosphere-supplying respirators. Comments were also received regarding positive pressure tight fitting atmosphere-supplying respirators (Ex. 36–26, 36–45, 36–44). Such comments suggested that it is appropriate to require the fit testing of positive pressure devices since it has been determined that positive pressure respirators do not always maintain positive pressure. Further, the possible adverse effects of the negative pressure spikes can be minimized by providing positive pressure respirator users with good fitting facepieces. Therefore, it has been suggested that quantitative fit testing should be required for positive pressure equipment (Ex. 36–26). Accordingly, OSHA is proposing that tight fitting atmosphere-supplying respirators utilizing quarter facepiece, half mask, and full facepiece masks be fit tested either by a qualitative or quantitative fit test. The proposal specifies that only the mask needs to be tested, not the entire respirator unit. Since the testing of entire atmosphere-supplying respirator units may require even more specialized QNFT equipment, and since the fit of the facepiece itself is the basic consideration, only the mask is required to be tested. It is recognized that most respirator facepieces (i.e brand, model, size) are available in air-purifying models as well as atmosphere-supplying units.

The fit test is to be performed on the same brand, size, and model of an air-purifying respirator. Once a fit is achieved with a particular mask, a NIOSH approved atmosphere-supplying respirator which utilizes the same type of mask as used in the test (i.e., brand, size, model) is to be selected for use by the employee. The respirator may then be used with an assignment protection factor as noted in Table II.

OSHA is proposing that fit testing be performed before an employee first starts wearing a respirator in the work environment and at least annually thereafter. Semiannual respirator fit testing is required currently in certain OSHA substance specific standards such as lead, inorganic arsenic, acrylonitrile, and asbestos. In the preproposal draft respirator standard, OSHA proposed that fit testing be performed annually. Testing respirator fit on an annual basis was considered more appropriate for a general respirator use standard rather than the semiannual fit testing required in some substance specific OSHA standards. Commenters on the preproposal draft standard agreed with the annual testing requirement (Ex. 36–8, 36–11, 36–26, 36–30, 36–31, 36–44, 36–45, 36–47). Others disagreed. Michael Stewart of the Boeing Company (Ex. 36–24) commented that fit testing should not be required at a fixed,

arbitrary frequency since changes which affect a proper respirator seal occur at random. He proposed that OSHA require fit testing whenever an employee experiences difficulty in obtaining an adequate face seal during a routinely performed positive/negative fit check. However, a study of the negative pressure fit check has shown (Ex. 24–21) that this fit check would pass respirator wearers with inadequate fits, particularly those that require protection factors above 10. Therefore, the use of positive/negative facepiece fit checks to determine when a fit test should be given would be an inadequate substitute for annual fit testing. The Monsanto Company (Ex. 36–32), Amoco Corporation (Ex. 36–35) and the Dow Chemical Company (Ex. 36–40) stated that annual fit testing was not necessary and it was their experience that fit testing every second year was adequate. It is OSHA's belief, however, that fit testing not only determines respirator fit, but also provides an opportunity to check on comfort and problems with respirator wear, and reinforces respirator training by having wearers review the proper methods of donning and wearing the respirator. Moreover, a two year interval between fit tests has not been shown to provide adequate assurance that necessary respirator fit factors will be maintained in the workplace. OSHA encourages these companies and others to provide any supporting data or specific experiences they have that would support an alternative to annual fit testing. OSHA invites comments from all interested parties on the annual fit testing requirement and on alternative fit testing frequencies. OSHA also requests any experience from fit testing programs on how frequently the annual fit test results in the changing of the previously assigned respirator for a new model or size.

The point was raised that either contractors or corporate staff members often have sole responsibility to conduct quantitative fit testing at local facilities and that a problem is created when new hires enter the work force after the annual fit test has been completed at the facility (Ex. 36–11). OSHA is proposing that where assigned protection factors higher than ten are necessary, requiring quantitative fit testing, an employer may utilize a qualitative fit test to select respirators for new employees provided that a quantitative fit test is administered within thirty days. This is allowed only when the employer is relying on an outside party to conduct quantitative fit testing. OSHA is also asking for comments on whether this provision should be broadened to cover other situations, such as when the QNFT equipment is out of service for repairs, where the thirty day exemption would prove useful.

It is generally recognized that facial configuration, and ultimately respirator fit, can be affected by factors such as weight gain or loss, and can change with time. Comments were submitted requesting that specific criteria be provided on the conditions which would require a retest, such as a set amount of weight change (Ex. 36–13, 36–28). To clarify the issue the current proposal states that retesting is required as necessary, such as when visual observations are noted regarding an employee's condition which could affect respirator fit. Further it is stated that such conditions may be facial scarring, cosmetic surgery, or an obvious change in body weight. OSHA believes that it is not possible to provide specific quantifiable criteria for the extent of such changes and that it is unavoidable that the employer will need to exercise judgment in deciding when a non-scheduled fit test is necessary.

Once fitted the employee shall be given the opportunity to wear the respirator for two weeks. If the respirator becomes unacceptably uncomfortable the employee must be given an opportunity to select a different respirator facepiece and be retested. Employers relying on contractors to conduct fit testing may wish to have the employee successfully fitted in two different respirators. This would prevent having the contractor return to the facility to retest an employee whose respirator became uncomfortable.

Appendix A

Appendix A applies to both qualitative and quantitative fit testing of quarter facepiece, half mask, and full facepiece respirators. The appendix identifies three established qualitative fit test protocols and one quantitative fit test protocol utilizing one of two test agents.

A protocol for the TSI Portacount fit testing method has not been included as an established quantitative fit test protocol at this time. The use of the Portacount is currently acceptable under a compliance interpretation which treats its use as a *de minimis* violation of the substance specific standards which require the use of an aerosol generation system for quantitative fit testing. As part of this rulemaking a protocol for the Portacount will be reviewed and, if appropriate, the existing substance specific standards fit test provisions will be revised to permit its use. OSHA invites the submission of other fit test protocols for public comment and OSHA approval before inclusion as established fit test methods.

In addition Appendix A contains two sets of "minimum criteria for a valid fit test". One set of criteria applies to qualitative fit tests which utilize a "non-established" test agent or method. The second set applies to quantitative fit tests which use a "non-established" test agent or test method. The purpose of including these criteria is to allow and encourage the development of new qualitative and quantitative fit test methods and/or media. This is in response to numerous comments stating that any new standard should be flexible enough to allow new methods, test agents, and respirator test technology to be developed (Ex. 36–22, 36–32, 36–35, 36–51A, 36–53). OSHA requests comments as to the appropriateness and adequacy of the proposed Minimum Criteria.

New test methods and/or agents may be accepted by OSHA after their use is proposed in a Notice of Proposed Rulemaking, and comments are requested, according to a notice and comment rulemaking procedure pursuant to the Administrative Procedure Act, 5 U.S.C. 553. OSHA believes that this procedure, authorized by the OSH Act in the last sentence of section 6(b)(7) will allow relevant public comment to be submitted for OSHA's evaluation without the need for public hearings. Since the protocols which will be adopted in this standard will have been subjected to rulemaking, additional protocols too, should be examined in a public proceeding. However, requiring full 6(b) rulemaking, with public hearings, would in OSHA's view, unduly delay decision making on the validity of new fit testing protocols and would be unnecessary. OSHA believes that this procedure strikes an appropriate balance between the need to accommodate technological advances in fit testing, and the need to obtain input from affected employers and employees.

Both the qualitative and quantitative validation criteria for new fit test methods require that the fit test data submitted for approval demonstrate statistically that the fit test method would be as protective. These requirements set a strict performance criteria for new test methods. While these criteria have generally been used in the past in evaluating test data it is not clear that these performance levels are the most appropriate ones to be used for evaluating new fit tests. Some of the existing qualitative fit test methods that are generally accepted do not meet these performance levels. The irritant smoke

(Ex. 24–12) and saccharin (Ex. 24–20) QLFT protocols identified 92 percent of users with poor fits at the 95% confidence level. The isoamyl acetate QLFT protocol identified 93% of the poor respirator fits (Ex. 24–19). As an alternative, it has been suggested that OSHA allow the use of new fit test methods that are proven to meet or exceed the performance levels of the currently accepted methods. OSHA requests comments, data, and information on the appropriate performance levels that should be required for new fit test methods, and on whether the 95% of users/95% confidence level requirements contained in the validation criteria for new fit test methods should be retained or revised.

The question of whether OSHA should propose standard test aerosol particle sizes to be used in validating new qualitative fit test methods has been raised. For validation testing of respirators equipped with high efficiency particulate air (HEPA) filters a polydisperse test aerosol with a mass median aerodynamic diameter of 0.6 micrometers with a geometric standard deviation of less than 2 was considered by OSHA. For testing respirators equipped with non-HEPA filters a polydisperse test aerosol with a mass median aerodynamic diameter of 2.0 micrometers and a geometric standard deviation of less than 2 was suggested. These are the particle size ranges for silica dust that NIOSH uses for HEPA and dust/mist filter certification. Whether these particular aerosol sizes are the most appropriate ones to be specified for use in validating new qualitative fit test methods is uncertain. In the proposal OSHA has not established a standard test aerosol particle size. With respect to qualitative fit testing, OSHA invites comments and questions as to the size of aerosols acceptable for use in qualitative fit test protocols, whether OSHA should establish standard test aerosol sizes for validation testing, and if so, what the appropriate sizes should be.

It should be remembered that, regarding the minimum criteria for validation of a new fit test procedure, the test subjects of interest, and the only ones that enter into the statistical analysis, are those who have poor respirator fits. The statistics must be based on the ability of the new test procedure to detect an already established poorly fitting respirator. It must be kept in mind that the validation of a fit test measures the performance of the fit test and not of the respirator. The objective of the validation testing is to assure that the new test procedure provides results which are at least as reliable as those of the existing protocols.

The validation of new fit testing procedures has to be a carefully controlled measurement procedure using test instrumentation with an accuracy that exceeds that found in standard quantitative fit testing. The validation testing that has been done on the existing fit test procedures were performed using laboratory grade instrumentation. As a matter of caution, it is recommended that those performing validation testing for new fit test procedures submit to OSHA the test parameters of the instrumentation that will be used in advance, before extensive testing is done. OSHA invites comments to specify more precisely the performance parameters that should be established for valid comparison measurements. The section in this proposal that describes minimum criteria for validation of new QNFT protocols requires that instrumentation achieve sufficient accuracy and precision, but does not specify values for these parameters. Therefore, OSHA requests comments on appropriate values for accuracy and precision of validation instrumentation including sampling systems, detectors and processors. OSHA is aware that the ANSI Z88 respirator committee is working on minimum criteria for fit test instrumentation. If during the rulemaking process ANSI finalizes its recommendations, OSHA will give them serious consideration with respect to the minimum criteria.

New Fit Testing Technology

The minimum criteria for fit testing also contains a section that deals with minimum criteria for new technology. It contains provisions which are general in nature, since without knowing what the new fit testing technology will be it is not possible to develop specific criteria. Fit testing methods using new technology will have to be approved by OSHA on a case by case basis, taking into account the specific nature of the new technology. OSHA requests comments on how new technology for fit testing should be evaluated, and what ground rules for minimum criteria OSHA should establish concerning its use.

OSHA is aware that there are other fit testing methods under development that do not rely on particle counting, such as the controlled negative pressure fit test or fit tests that use a gas as the fit test agent. Other novel fit test methods using different technologies may be developed in the future. OSHA intends to allow for the possible acceptance of these novel fit test methods. However, there has to be a way to guarantee that any new fit test method is at least as effective as the existing particulate methods in screening out poor respirator fits. The proposed criteria in Appendix A for new fit test methods related to particle counting fit test methods, and may not be appropriate for other technologies. OSHA, therefore, would like suggestions on what criteria would be appropriate for accepting or rejecting fit test methods based on non-conventional principles.

Fit Test Exercises

Complaints were also registered on the issue that the fit test protocols specified in the prepublication draft proposal were not consistent in that the exercise regimens, length of test exercises and type of exercises were not consistent among the qualitative fit test methods and that there were corresponding differences between the qualitative and quantitative fit test protocols (Ex. 36–38). For example, the isoamyl acetate method consisted of seven exercises; the saccharin protocol, five exercises; the irritant fume protocol, six exercises; and the quantitative fit test protocol, eight exercises. Therefore the initial section of Appendix A contains uniform requirements applicable to both qualitative and quantitative fit tests. Except for minor modifications, the uniform requirements are the same as those identified in the OSHA lead standard (29 CFR 1910.1025) as a result of the rulemaking on its fit testing provisions. Only those areas where substantive changes were made and where comment has been received are addressed below.

In the course of the fit test the test subject is to seat the respirator by moving the head from side-to-side and up and down, slowly while taking a few deep slow breaths. This represents a change from the selection protocol in the lead standard, since the lead standard protocol requires the head to be moved "rapidly" from side to side and up and down. The Los Alamos National Laboratory commented that there is uncertainty regarding the ability of rapid head movement to seat a respirator, and also indicated that it may actually make the fit worse (Ex. 36–52). Therefore OSHA has revised the proposal regarding this aspect by removing the word "rapidly".

The employer is to maintain a record of the fit test administered to an employee. The fit test record is to include the date and type of test, test agent, employee information, and type of respirator. When QNFT is administered a record of the test

recording (i.e. strip chart, computer integration, etc.) is to be maintained. The fit test records are to be maintained until the next fit test is administered. A record is necessary to enable OSHA to determine compliance by verifying that an employee has been fit tested before first starting respirator use and at least annually thereafter; that the tested employee passed the qualitative fit test, or achieved a sufficiently high fit factor to pass the quantitative fit test for the assigned protection factor required; that the quantitative fit test was correctly performed and the fit factor calculated properly; and that the respirator model and size as determined during fit testing are the same as being used by that employee in the workplace.

Initially OSHA proposed that a fit test card be furnished to the employee. The card was to contain information regarding the size and type of respirator fitted and the date of the test. Comment was made (Ex. 36–39) that the requirement for a fit test card created an additional recordkeeping burden. Therefore the requirement has been deleted in the current proposal.

An alternative to the required fit test recordkeeping would be to allow the employer to sign a certification that fit testing has been performed and not require that any fit test records be maintained. This certification would state that fit testing had been performed and provide the date of the certification, the employee identifier of the person certified, and the signature or initials of the responsible individual making the certification. Since a certification is not considered a record for recordkeeping purposes, and the fit test records generated during the fit test would not have to be maintained, the recordkeeping burden of the proposed standard would be reduced. However, the replacement of the requirement for retaining the fit test records by a certification requirement would have an impact on the performance of an inspection. Inspectors would have to rely on secondary sources such as interviews of employees and fit test operators to confirm compliance with the specific fit test requirements of the standard. OSHA requests comments on the burden associated with maintaining fit test records and on the feasibility of fit test certification as an alternative to the recordkeeping currently required in the proposal.

The test subject is to perform eight exercises. Seven of the exercises are to be performed for one minute while the grimace exercise is to be performed for 15 seconds. The test exercises are: normal breathing, deep breathing, turning head side to side, moving head up and down, talking out loud, grimace, bending over or jogging in place if the test unit is not large enough for the test subject to bend at the waist, and normal breathing.

Comment was received stating that requiring the test subject to bend at the waist would in effect eliminate the use of the waist length hood or shower curtain type fit test hood (Ex. 36–27, 36–52). Therefore, this proposal allows jogging to be performed in lieu of bending at the waist when the size of the fit test enclosure will not allow the test subject to bend at the waist.

Objections were also raised over requiring the test subject to read, particularly the rainbow passage (Ex. 36–8, 36–27, 36–28, 36–32, 36–36, 36–39, 36–49). Statements were made that some employees cannot read well. Therefore, the proposal now requires that the employee either talk out loud or read from a prepared text.

One comment stated that OSHA has made numerous changes to accepted protocols without verifying the effect of the changes on test performance (Ex. 36–38). It states further that the isoamyl acetate (IAA) and saccharin procedures originally presented in the lead standard would take only 3 minutes, but that the proposal changed this to 10 minutes without verifying that the concentration in the test chamber could be maintained for the duration of the test.

OSHA does not regard the foregoing as valid. The QLFT test validated and adopted in the lead standard as a result of rulemaking has 6 exercises (IAA). Five of the exercises are to be performed for one minute and the "talking" exercise is to be performed for "several" minutes. Thus the total test time would be 7 to 8 minutes. In this proposal OSHA is requiring eight exercises of which seven are to be performed for one minute and one exercise for 15 seconds, for a total time of 7 minutes and 15 seconds. Thus the total time required in this proposed standard is essentially the same length as the IAA QLFT protocol in the 29 CFR 1910.1025 lead standard. Any differences in required time are clearly minimal. Since the length of the two tests are the same, OSHA has concluded that the IAA concentration at the end of the proposed protocol would be the same as if it were performed under the QLFT IAA protocol contained in the lead standard.

Qualitative Fit Test Protocols

Isoamyl acetate protocol

With the exception of the test exercises described above, the IAA test protocol included in the proposal is the same as the IAA protocol adopted under the lead standard (29 CFR 1910.1025). Comment was received stating that the odor threshold screening test can be performed in the same room in which the fit test is conducted, provided that ventilation is adequate (Ex. 26–18), or when only a few people at a time are tested (Ex. 36–8), and that two rooms on separate ventilation systems may not be available and are unnecessary. However, in none of these comments was the specific issue of olfactory fatigue addressed.

In the proposal OSHA is requiring the odor threshold screening test and fit test to be conducted in separate rooms and that the rooms not be connected to the same recirculating ventilation system. In the rulemaking in the lead standard on qualitative fit testing OSHA, in response to the recognition of one of the shortcomings of the IAA test (i.e., olfactory fatigue), deemed it appropriate that separate rooms and ventilation systems be required for the IAA fit testing and odor threshold screening test (47 FR 51114). Since nothing in the foregoing comments responded to the olfactory fatigue concern, OSHA is maintaining the requirement for separate rooms and ventilation systems.

Saccharin Solution Aerosol Protocol

The saccharin solution aerosol protocol in the proposal is essentially identical to that contained in the lead standard (29 CFR 1910.1025 Appendix D II). Comments were received suggesting that OSHA not allow the use of saccharin as a test agent since it is a suspect carcinogen (Ex. 36–28, 36–36) and that it is listed in the National Toxicology Program's Third Annual Report on Carcinogens (Ex. 36–34). However, the saccharin fit test protocol is the only QLFT protocol that has been validated for use with disposable dust/mist respirators. Eliminating the saccharin protocol would result in prohibiting the use of disposable dust/mist respirators, since they could not be fit tested. Although OSHA acknowledges that saccharin is a suspect carcinogen, it is highly unlikely that an annual exposure of 10 minutes, during most of which time a respirator is worn, could constitute any measurable risk. OSHA considers such an exposure to be de minimis. Therefore, for the present time OSHA will allow the use of saccharin as a test agent for respirators in the absence of an acceptable alternative for testing disposable dust respirators. In this respect saccharin differs from DEHP, a test agent used in QNFT, for which acceptable substitutes exist. OSHA in this proposal is encouraging the development of new test agents and test

methods as a replacement for the use of saccharin by including provisions which would allow such new protocols and test agents to be used.

Irritant Fume Protocol

Comment was received on the irritant fume protocol stating correctly that the irritant fume and IAA protocols had inadvertently been combined in the prepublication draft and that the cartridges required for the respirator are incorrect, i.e., high efficiency organic vapor-acid gas, (Ex. 26–18, 36–28, 36–45, 36–52). The prepublication draft of this proposal inadvertently contained the above referenced requirements which were contained in the amendment to the lead standard. The lead standard was corrected at a later date (3–3–83). The correction required only high efficiency filters and deleted all references to the use of IAA in the irritant fume protocol. These corrections are accordingly reflected in the current proposal.

Objections were raised over requiring the use of a low flow air pump set to deliver 200 milliliters per minute. Statements were made that an aspirator bulb should be acceptable unless justification is provided for requiring a low flow air pump (Ex. 36–27, 36–28). OSHA is maintaining in the proposal the provision requiring the use of the low flow air pump. The purpose of the pump is twofold: to provide the challenge agent at a constant and stable rate; and to prevent a large amount of irritant from being released at one time. Use of an aspirator bulb will not provide delivery of the test agent at a stable, constant rate. Further, the use of an aspirator bulb can easily result in a large amount of irritant smoke being inadvertently released at one time.

Quantitative Fit Test (QNFT)

Under the QNFT provisions the employer is to assign to one party such as a staff member or contractor the duty of implementing the QNFT program. The person assigned is to be knowledgeable about the instrumentation, calibration, use and administration of the tests. Further the employer is responsible for ensuring that the QNFT equipment is kept and maintained in such a way that it will operate at its original specifications, including maintaining the aerosol size and concentration in the test environment. OSHA is requesting comment on appropriate means/methods which should be used to ensure that the QNFT unit is producing aerosol with the particle size distribution and concentration for which the unit was originally designed.

The quantitative fit test is to be conducted according to procedures which are widely recognized and accepted in the industrial hygiene community. It is performed in a test environment containing a challenge agent such as a hood, portable booth, or chamber. Measurement of the challenge agent concentration is made inside the respirator and inside the ambient test chamber environment by appropriate detection methods such as forward light scattering photometry or flame photometry. During the test the respirators are to be fitted with high efficiency filters, or otherwise fitted with filters that offer 99.97% efficiency against 0.3 micron aerosols according to the NIOSH definition of high efficiency as stated in 30 CFR Part 11 or 42 CFR Part 84. Therefore virtually any measurable leakage will be the result of leaks between the respirator sealing surface and the respirator wearers face. If challenge agents other than particulates are used, the sorbent/filters must offer a similar degree of collection efficiency against the challenge agent.

Challenge Agents

In the ANPR OSHA requested comment on what test agents are suitable for QNFT. The ANPR also raised the question of whether it should be allowable to use substances identified as suspected carcinogens and if allowable, what basis should be used to determine that the probable dose is acceptable or unacceptable. Although it is generally recognized that QNFT fit testing equipment using test agents such as di-2-ethylhexyl phthalate (DEHP, commonly referred to as DOP), corn oil, and sodium chloride are commercially available at the present time, OSHA was and is interested in exploring all possible test agents for use in QNFT. On the issue of suitable test agents for QNFT, OSHA received a variety of comments. Some commenters suggested that the agency accept any agent demonstrated to be effective (Ex. 15–30), relatively nontoxic, easily detectable, and relatively stable (Ex. 15–13). Others provided lists of agents such as sodium chloride, di-2-ethylhexyl phthalate, di-2-ethylhexyl sebacate (DEHS), corn oil, mineral oil, and 1% ethylene in air (Ex. 15–15). Another list submitted consisted of sodium chloride, di-2-ethylhexyl phthalate, di-2-ethylhexyl sebacate, corn oil and mineral oil (Ex. 15–58). Others provided one or two test agents: sodium chloride and corn oil (Ex. 15–55); DOP and corn oil (Ex. 15–37); corn oil and vanilla extract (Ex. 15–10); sodium chloride (Ex. 15–44); or corn oil (Ex. 15–26, 15–47, 15–50). In response to the question of appropriate test agents it was suggested that "The essential characteristics for an acceptable solid or liquid aerosol agent for QNFT are described in ANSI Z88.2–1980 and/or the LANL basic protocol". The Dow Chemical Company stated that there are many suitable test agents for QNFT (Ex. 15–19). It said that within Dow, Freon 12 was used extensively and that to be suitable the agent should be readily detectable at low concentrations. Dow later stated replacement of their units would be expensive and unnecessary, should Freon 12 be excluded as a test agent under this proposal (Ex. 36–40).

The second question of whether it should be allowable to use test agents identified as carcinogens was prompted by animal studies concerning DEHP which were positive for carcinogenicity. Several commenters declared that suspect carcinogens in general should not be allowed to be used (Ex. 15–34, 15–44, 15–48, 15–50, 15–55, 15–58, 15–70). The St. Joe Lead Company (Ex. 15–44) stated: "In general, they should not be used. The problem is not so much that one could determine the doses well below any dose of concern, but rather that the concept of a health related test utilizing a known carcinogen would tend to undermine the positive psychological value of concern of the employer for the worker's health." Comment was received stating that there is insufficient toxicological evidence to eliminate materials such as DEHS or PEG as test agents and that gases should not be precluded (Ex. 36–52). Any test agent should be allowed as long as the employer can assure that employees are not exposed to hazardous concentrations.

Other comments ranged from declaring that substances known to be human carcinogens should not be used as fit test agents (Ex. 15–22, 15–26) to stating that suspect carcinogens may be used depending on potency, concentration, exposure and other safety factors (Ex. 15–22). In the information submitted by NIOSH (Ex. 16) which was incorporated into a later document entitled "Alternatives to Di-2-Ethylhexyl Phthalate (DOP) Respirator Quantitative Fit Testing" (Ex. 24–10), it was stated that di-2-ethylhexyl phthalate (DEHP) or DOP was recently found to be carcinogenic in two rodent species by the National Toxicology Program. NIOSH reviewed the evidence for carcinogenic potential and overall toxicity of DEHP as it is used in quantitative fit testing, and concluded that DEHP should be replaced. The carcinogenic risk was estimated to be minimal for the respirator wearer under normal conditions. However, NIOSH pointed out that two critical exposure

factors must be considered in QNFT; (1) Exposures to the DEHP aerosol can vary for the respirator wearer being tested if QNFT is improperly conducted; (2) Field practitioners administering QNFT, especially those using portable testing equipment, where aerosol ventilation is difficult to control can be subjected to routine and varying exposures. NIOSH tested several agents as possible substitutes for DEHP in existing QNFT equipment which was originally made for DEHP aerosol. Test results revealed that refined corn oil, di-2-ethylhexyl sebacate (DEHS), and dimethecone all exhibited polydisperse aerosol particle characteristics essentially equivalent to those generated with DEHP. Further tests showed that both refined corn oil and DEHS aerosols were highly suited for conducting QNFT. Finally, reports describing the toxicity and health effects of each agent were reviewed. The review revealed that extensive tests conducted on refined corn oil show that its toxicity is very low and that it has not demonstrated carcinogenic potential during its use as a control agent in carcinogenic bioassays. NIOSH concluded that a refined corn oil aerosol is the best option to replace DEHP in quantitative fit testing.

Monsanto (Ex. 15–26) made reference to the NIOSH work which prompted Monsanto to switch from DEHP to corn oil as the prescribed challenge agent. After considering the data, OSHA has concluded that corn oil or sodium chloride aerosol systems are most appropriate for quantitative fit testing and the proposal so specifies in the QNFT protocol. OSHA cites the positive carcinogenic findings of DEHP in two rodent species by NTP (Ex. 24–10) as sufficient evidence to preclude its use in QNFT when suitable substitutes are commercially available. Corn oil has exhibited essentially equivalent polydisperse aerosol particle characteristics to that of DEHP, and it can be used in existing systems designed for DEHP with only slightly more maintenance required (Ex. 24–10). Comment was received stating that corn oil does require more maintenance and urged OSHA and NIOSH to expedite the search for other suitable test agents (Ex. 36–39).

Other test agents have been suggested such as DEHS, ethylene, vanilla extract, freon-12, and mineral oil. OSHA does not intend to exclude these test agents. However, there are insufficient data on their suitability. For example, questions have been raised on the suitability of DEHS since its metabolic fate may be similar to that of DEHP. Mineral oil was suggested as a suitable test agent but has been observed to remain in the lung for prolonged periods (Ex. 24–10).

OSHA invites comments on the suitability of other test agents such as mineral oil, freon-12, ethylene, and di-2-ethylhexyl sebacate (DEHS). OSHA will consider evidence on the suitability and reliability of other test agents and the detection systems associated with other test agents. Information on the toxicity of the agent, sensitivity and limits of detection of the system, and other pertinent data will also be useful.

Test Chamber

The proposal requires that the test chamber be large enough to permit the person being tested to freely perform the QNFT exercise regimen without disturbing the challenge agent concentration, and that the chamber effectively contains the challenge agent in uniform concentration. Uniform stable challenge agent concentration is important since the ambient challenge concentration is measured from a single point, i.e. normally a sample hose suspended from the ceiling of the test chamber/hood and connected to the aerosol detection system. Therefore, the proposal requires that a stable ambient challenge agent concentration be achieved prior to the commencement of the test exercise regimen. As long as the concentration is uniform throughout the chamber, the concentration at the respirator will be substantially the same as the concentration at the location where the ambient chamber concentration is measured. Since the results of the QNFT will be determined by calculating the concentration of the challenge agent in the respirator in relation to the average ambient chamber concentration, a large change in the test chamber challenge concentration during the course of the test would result in unreliable results.

Fit Factor Estimation

The challenge agent detection system must be coupled to a strip chart record, integrator, or computer which creates a record of the test in order to enable the calculation of the fit factor following the test. The time interval between an event such as side to side head movement and its being recorded should be minimal. This is consistent with the systems used by Los Alamos National Laboratory as well as commercially available systems. In the ANPR, OSHA requested comments on two related questions: (1) Should QNFT demonstrate the variation of contaminant concentration inside the respirator during the breathing cycle, and (2) to be an adequate test, should QNFT evaluate respirator performance for each test exercise performed by the test subject? Some responses indicated that the QNFT should be able to demonstrate the variation of contaminant concentration inside the respirator during the breathing cycle (Ex. 15–19, 15–46, 15–48, 15–50, 15–54, 15–58). It was stated by one commenter that "a chart recorder should be considered as mandatory since this would be an extremely difficult process to follow by using only a dial indicator", (Ex. 15–50). It was suggested that the peak penetration averaging method contained in ANSI Z88.2 1980 is the most acceptable method for determining respirator fit and in order to achieve this, the QNFT must be capable of demonstrating the peaks of penetration associated with the breathing cycle (Ex. 15–58).

Others disagreed (Ex. 15–15, 15–26, 15–27, 15–31, 15–55). In particular, National Draeger Inc. (Ex. 15–15) pointed out a currently available quantitative fit test system utilizes a 1% ethylene-in-air test gas. By measuring the ethylene concentration inside the respirator with a detector tube, a fit factor for the respirator is calculated. This system for quantitative fit testing does not provide an instantaneous breath-by-breath measurement that has to be averaged, but measures the maximum ethylene penetration into the respirator, which National Draeger felt was appropriate.

In response to the question raised on whether the QNFT should evaluate respirator performance for each test exercise, some commenters indicated that each a determination of efficiency is not necessary (Ex. 15–31, 15–48, 15–50, 15–62, 15–73). It was stated on one submission that there is no need to determine the respirator efficiency for each test exercise performed since in actual practice the protection achieved in the workplace is not accurately predicted by QNFT (Ex. 15–73). Other comments suggested that the respirator efficiency for each test exercise should be determined. In the data submitted by the Office of the Assistant Secretary of Defense (Ex. 15–54) it was suggested that "QNFT should be able to distinguish the respirator efficiency for each test exercise. The exercise should identify which movement(s) allow for facepiece leakage and at what level the leakage occurs." The Industrial Safety Equipment Association suggested that "not having the ability to distinguish respirator efficiency for each set of exercises could result in an overstated assigned protection factor" (Ex. 15–58). The American National Standard Practices for Respiratory Protection (ANSI Z88.2–1980) recommends that the instrument used to measure the

penetration of the test agent into the respirator be connected to a fast-response recorder which records the penetration values continuously (Ex. 10). Quantitative fit test methods developed by the Los Alamos National Laboratory use a detection and recording system which detects the test agent penetration into the respirator facepiece during the breathing cycle (Ex. 2, 27–12, 24–18). Notations are made on the record at the beginning and end of each test exercise and the penetration for each exercise is determined. Comment was received following the prepublication version of the proposed standard which also stated that the standard should allow the use of other instruments such as computers or integrators which would allow integration of the aerosol penetration inside the respirator (Ex. 36–34, 36–45, 36–52).

Having considered the comments and suggestions OSHA is proposing that either a strip chart recorder be used to provide a graphic display of the fit test or that an integrator or computer be used which provides a determination of the aerosol penetration into the respirator for each test exercise performed. The detection system shall be capable of detecting the challenge agent during the breathing cycle, i.e., inspiration and expiration. This will permit the determination of the penetration of the test agent during the breathing cycle.

Comments were requested on the methods used to calculate the aerosol penetration into the respirator. Suggestions were made to allow: the use of integrator (Ex. 36–29, 36–45, 36–52); the maximum peak penetration method (Ex. 36–28, 36–36) and the average peak penetration method (Ex. 36–28, 36–36). Upon examination of these various methods OSHA has decided to allow any of the three methods to be used provided that a determination of the test agent penetration is made for each test exercise.

OSHA is proposing that the fit factor derived from QNFT be calculated by dividing the average challenge agent concentration inside the chamber, (i.e. the ambient concentration) by the average challenge agent concentration inside the respirator. The average ambient concentration is derived from the measurement of the challenge agent concentration in the test environment (outside the respirator) at the beginning and end of the test. The average challenge agent concentration inside the respirator is determined from the aerosol penetration for each test exercise by using one of the three approved methods to calculate the aerosol penetration.

The test aerosol penetration measured for the grimace exercise is not to be used in calculating the average challenge agent concentration inside the respirator. The purpose of the grimace exercise is to determine whether the respirator being fit tested will reseat itself on the face after the respirator seal is broken during the grimace exercise. With a properly fitting respirator the test instrumentation will record a rise in challenge agent concentration inside the mask during the grimace exercise and a drop in challenge agent concentration when the respirator reseats itself. If the respirator fails to reseat itself following the grimace exercise, the subsequent bending over and normal breathing exercises will show excessive leakage of challenge agent into the mask and result in failing the fit test. Since even a properly fitting respirator may show increased challenge agent penetration during the grimace exercise, the penetration measured during the grimace exercise is not used in calculating the fit factor.

OSHA invites comments on the proposed method based upon experience with the calculation of fit factors obtained from QNFT.

As stated previously OSHA is proposing that there be a clear association between the event taking place in the test environment and its being recorded. This is critical for the proper calculation of aerosol penetration for a specific test exercise and ultimately determining the fit factor. It is the short duration leaks that can occur during and as a result of a particular fit test exercise that indicate poor respirator fit. These penetration peaks are used to determine the fit factor. An inability to resolve these penetration peaks could result in the fit factor being overstated, since by averaging all the test exercise penetration levels the high penetration levels that occurred with one test exercise would be obscured. Also the grimace exercise is designed to cause a leak in the facepiece fit to determine if the respirator will reseal. An inability to clearly associate the event in the test environment with its recording would invalidate this test exercise and make correct calculating of the fit factor impossible.

Several factors can affect the time interval between an event and its being recorded, such as sample hose diameter, sampling rate, and length of sampling hose. Response time will increase with an increase in length of sampling line and/or increase in diameter of sampling line. Therefore the length of the sampling lines and their inside diameter should be as small as possible. Inside diameters of ⅛ inch or less have been commonly used (Ex. 2). Sampling rates generally vary from 1 to 2 liters per minute (Ex. 24–7, 6), depending on the detection system used. The tubing used for sampling the test chamber challenge agent concentration and the tubing used for testing the challenge agent concentration inside the respirator must be of the same length and inside diameter. This will result in an equivalent aerosol loss in the sampling lines due to aerosol deposition in each sample line.

In order to minimize potential contamination of the atmosphere in the room where tests are being conducted, and to minimize exposure of the QNFT test operator to the challenge agent, as well as to prevent interference with the detection system from room air contaminated with the challenge agent, the proposed protocol requires that any air exhausted from the test booth/chamber must pass through a high-efficiency filter (or sorbent).

Since the relative humidity in the test chamber may affect the particle size of sodium chloride aerosols the protocol further requires that the relative humidity be kept below 50 percent (Ex. 25–3 p. 40). This is consistent with manufacturer's instructions for sodium chloride units.

It is imperative that the respirator used in QNFT be in proper working order. A respirator which may fit an individual better than others could be rejected if there is leakage due to problems resulting from improper maintenance such as sticking exhalation valves, leakage around the probe port, leakage around hose connections, or missing gaskets. Therefore the proposal requires that all respirators used in QNFT be inspected for defects and cleanliness. Such inspection must include checking the condition of the facepiece body for cracking and holes or tears in the rubber, checking the inhalation and exhalation valve assemblies for cracks and/or tears in valve material, checking for foreign material between the valve and valve seats, proper installation of the valve body in the facepiece, and warped or wrinkled valves. Respirators with such conditions cannot be used for fit testing. This is consistent with practices as published by the Los Alamos National Laboratory (Ex. 25–3 p. 37, 25–4 p. 34).

An additional requirement is that either a positive or negative pressure fit check be conducted to ensure that the respirator facepiece is properly adjusted prior to starting QNFT testing. The test protocol in the preproposal draft also

required that a screening QLFT be conducted after the respirator was worn for a brief time. Comments were received stating that a mandatory screening QLFT is unnecessary (Ex. 36–52). The purpose of the screening QLFT was to minimize the QNFT test time by quickly identifying poorly fitting respirators (with gross leakage) prior to the commencement of the QNFT. The screening QLFT suggested was an abbreviated IAA or irritant fume QLFT. The test agent was briefly introduced into the air near the facepiece seal area. If the agent was detected then a different respirator was tried. This screening QLFT requirement would reduce QNFT test time for employers, since poorly fitting respirators that would normally fail a QNFT would fail the screening QLFT first. However, a mandatory screening QLFT complicates the testing procedure, and poorly fitting respirators would be detected during the fit checks before starting the QNFT, or by exceeding the maximum peak leakage rate allowed during QNFT. Screening QLFT is recommended to reduce expensive testing time, but does not need to be mandatory, and therefore this requirement has been dropped.

Prior to the commencement of the QNFT a stable challenge test agent concentration must be achieved. The concentration of some test environments such as small booths or waist type hoods may be diluted significantly when the test subject enters the booth. Normally the ambient challenge agent concentration will stabilize within 2 to 5 minutes. ANSI Z88.2–1980 addressed this issue by requiring that the design of the chamber and equipment used to generate the test atmosphere should ensure that the concentration inside the chamber does not vary more than 5% during a test (Ex. 10). OSHA is proposing that the test system be checked to verify that a stable chamber concentration (±10%) has been achieved prior to the QNFT and at the end of the test. It has been OSHA's experience that a ±10% variation in test agent concentration stability has little appreciable effect. OSHA requests comments on any problems with test agent concentration stability and on the appropriate percent variation that should be allowed.

OSHA is further proposing that in order to successfully complete a QNFT the test subject must complete three separate tests with the same respirator. Respirator research has demonstrated that variation occur in the fit factors achieved with repeated fit tests on the same individual with the same respirator. No wearer can expect to duplicate the exact same fit with a particular respirator as the respirator is removed and donned repeatedly. If only one fit test is performed, there is no guarantee that the level of fit measured during that one test will be achieved with repeated wearings. Therefore, OSHA is requiring that three tests be performed, with the lowest fit factor obtained being used to determine whether the minimum required fit factor is exceeded. Using the lowest of the three values, OSHA feels, is the most protective approach to make sure that the respirator will not be used in an atmosphere which might require a higher fit factor than that respirator can consistently give. OSHA requests comments on the three quantitative fit test requirement and any data on alternative ways of measuring continued protection levels for individual respirator wearers.

OSHA had initially proposed that the results of the three tests must be within 10% of each other. However, response to that aspect indicated that obtaining three results within 10% were not feasible and the suggestion was made that OSHA should reevaluate that requirement (Ex. 36–22, 36–29, 36–38, 36–39, 36–41, 36–45). Comment was also received stating that three tests were unnecessary (Ex. 36–34).

OSHA in the current proposal has deleted the requirement for test results to be within a 10% range since consistently obtaining tests with a 10% range may not be feasible. However, the requirement for performing three fit tests is being maintained.

The results of all three tests must be above the minimum fit factor needed for that class of tight fitting air-purifying respirator. The required fit factors are established by applying a safety factor of 10 to the NIOSH APFs. For example, quarter and half mask air-purifying respirators with a NIOSH APF of 10 would need to achieve at least a fit factor of 100; and full facepiece air-purifying respirators with a NIOSH APF of 50 would require a minimum fit factor of 500. Finally the lowest of the three values must be used as representing the fit test results.

OSHA has proposed a safety factor of 10 because of variability in the fit testing procedures themselves, and to account for other variables such as changes in facepiece fit when the respirator is worn in the workplace as opposed to during fit testing. A safety factor of 10 accounts for these variations, and is current practice.

Adjustments in the respirator are not to be made during the QNFT. Any facepiece fit adjustments must be made before starting the exercise regimen. This is consistent with existing practices (Ex. 25–3 p. 38) and is intended to prevent manipulation of the respirator in order to achieve high fit factors.

The fit test is to be terminated whenever any single peak penetration exceeds two percent for half masks and quarter facepiece respirators and one percent for full facepiece respirators. Such leaks correspond to fit factors of 50 for half masks and 100 for full facepiece respirators and indicate an unacceptably poor respirator fit. Once the test is terminated the respirator may be refitted or adjusted and the subject retested. If any of the subsequent three required QNFT tests that are performed after the respirator has been refitted or adjusted are terminated because of excessive penetration, then the respirator is considered to have an unacceptable fit and a different respirator must be selected and tested.

(G) Use of Respirators

Once the respirator has been properly selected and fitted, its protection efficiency must be maintained by proper use. The employer is required to ensure that respirators are used properly in the workplace, and to include specific procedures for doing so in the written plan for compliance. This requirement is written in performance language, with the specific content of the written procedures left for the employer to establish.

One area of particular concern involves atmospheres where oxygen deficiency or the concentrations of a hazardous chemical are unknown and/or potentially immediately dangerous to the life of health (IDLH) of employees. Care must be exercised in these situations since failure of the respirator to provide the appropriate protection may result in serious injury or death. Therefore, the employer is required to establish specific written procedures for the use of respirators in IDLH atmospheres including four specific use limitations.

The first provision requires that employees wear only positive pressure SCBAs or combination supplied air respirators with auxiliary air supply in IDLH atmospheres. Negative-pressure air-purifying respirators are subject to face seal leakage, and depend on a filtering or adsorption mechanism for protection. The positive pressure supplied air respirators allowed in IDLH atmospheres supply air from an uncontaminated source, have less of a problem with face seal leakage and have no filter penetration problems. Two types of such positive pressure respirators are listed in the respirator selection tables in paragraphs (d) of the

proposed standard for use in IDLH atmospheres; the positive pressure SCBA and a positive pressure supplied respirator with auxiliary self-contained air supply. They are the only respirators to be used in IDLH work conditions to ensure that the employee has the greatest degree of protection possible.

The second IDLH provision requires a "buddy" system where employees are required to work in IDLH atmospheres. There must be at least one additional person present, in communications with the worker(s) in the IDLH area but located where he or she will be outside the IDLH atmosphere and thus would be able to provide or call for emergency assistance if necessary. The third provision specifies that retrieval equipment must be supplied or equivalent provisions for rescue be made for those entering the IDLH atmosphere. The fourth provision states that a positive pressure self-contained breathing apparatus must be provided for the person(s) responsible for emergency assistance. These provisions are essentially the same as those that are in OSHA's current standards.

A more general issue involves tight fitting facepiece respirators which rely on a good facepiece to face seal in order to achieve effective protection. Therefore, the employer could not allow employees to wear such respirators with conditions which prevent such a seal. Facial hair such as a growth of beard or sideburns, absence of dentures, or a skull cap that projects under the facepiece seal are examples of such conditions. Many ANPR commenters stated that OSHA should prohibit facial hair that interferes with the facepiece seal (Ex. 15–11, 15–18, 15–26, 15–27A, 15–30, 15–33, 15–35, 15–36, 15–41, 15–52, 15–58, 15–62, 15–73, 15–77). Others stated that beards should be allowed with respirators that do not rely on adequate face seals for protection such as supplied air hoods, helmets, or suits. (Ex. 15–14, 15–31, 15–34, 15–46, 15–47, 15–48, 15–54, 15–55, 15–79, 15–81). Research performed with half mask and full facepiece respirators on the effects of facial hair on facepiece seal show that fit cannot be assured if hair is present. (Ex. 3, 13, 15–50, 23–2, 23–3).

Two ANPR commenters recommended that OSHA allow beards when the results of a fit test indicate that a satisfactory seal has been obtained (Ex. 15–38, 15–42). A report of a study by Fergin (23–1) on carbon setters with beards which tested the protection factors of several types of disposable respirators stated that acceptable performance was achieved and that there was no significant difference in respirator performance for employees with or without beards under pot room conditions. Fergin stated that ". . . where acceptable protection factors can be demonstrated for subjects with facial hair, the no-beard rule should be waived from a regulatory viewpoint for such proven cases." However, the ability to obtain a fit factor for a bearded respirator wearer does not mean that the worker can reliably be expected to achieve that same protection level each time the respirator is used. Beards grow and change daily, even hourly. Each time a respirator is donned there is fit variability. Such variability in face seal is greatly increased for bearded workers. This large variability in fit means that a reliable seal cannot reasonably be expected. OSHA believes that the evidence supports the contention that a reliable seal cannot be achieved where facial hair interferes with the seal of tight fitting respirators.

In commenting on the preproposal draft the Association of Western Pulp and Paper Workers (Ex. 36–2) opposed the facial hair policy proposed by OSHA and recommended that OSHA prohibit blanket no beard policies of employers. The International Chemical Workers Union (Ex. 36–14) recommended that the standard specify respiratory types that could be used with facial hair. Amoco Corporation (Ex. 36–35) requested that more definitive language be added to allow employers clearer guidelines to enforce facial hair policies. Allied Corporation (Ex. 36–49) also wanted a stronger statement prohibiting facial hair. The Nuclear Regulatory Commission (Ex. 36–31) and the Industrial Safety Equipment Association (Ex. 36–45) agreed with OSHA's proposed prohibition on beards when wearing tight fitting facepiece respirators. The Organization Resources Counselors (Ex. 36–47) and 3M (Ex. 36–54) stated that the prohibition on facial hair that interferes with the facepiece seal should also include positive pressure respirators that depend upon a tight facepiece to face seal.

The draft provision prohibiting conditions such as beards that interfere with the seal of tight fitting respirators has been modified after consideration of these comments. Additional wording has been added to clarify that the provision covers not only negative pressure respirators that require a tight seal but pressure demand and positive pressure respirators as well. The provision covers only tight fitting respirators and is not meant to be a blanket prohibition on beards with respirators. There are other types of respiratory equipment such as hoods, helmets and suits which can be worn by employees with beards since they do not rely upon a tight facepiece fit. Also the wording in the examples has been changed to read "facial hair that interferes with the facepiece seal" rather than a growth of beard or sideburns since it is interference with the facepiece seal that OSHA prohibits, not the presence of facial hair. OSHA invites comments on this issue and the wording of the proposed provision of the standard, and whether OSHA should require that employers provide respirators which do not rely upon a tight facepiece fit in such circumstances.

Corrective glasses or goggles must also be worn in such a way that they do not interfere with the seal of the facepiece to the face. Although the employer is free to choose any option to comply with this, OSHA suggests that full facepiece respirators be worn where either corrective glasses or eye protection are required since corrective lenses can be mounted into the full facepiece respirators. In addition, the full facepiece may be more comfortable, and less cumbersome, than wearing a half mask and chemical goggles which seal to the face as well.

OSHA's current respirator standard does not allow contact lenses to be worn with respiratory protection. In reviewing this requirement, the main justification has been that with full facepiece respirators, if a contaminant got into the employee's eye, the involuntary response would be to remove the mask to attend to the eye, thus removing the respiratory protection. A second possible problem with contact lenses is that the dry air inside a positive pressure SCBA facepiece could dry out the contact lenses. It has also been suggested that contaminants that get into the facepiece can become lodged under the contact lens, be held against the eye, and enter into the bloodstream. While these possible problem areas have been proposed for contact lenses, OSHA has not found evidence of such problems occurring in the workplace. With the improvements that have occurred with contact lens technology, particularly in soft contact lenses, people who are able to wear contact lenses comfortably in everyday life should be able to wear contact lenses with a respirator.

OSHA funded a survey on the use of contact lenses by fire fighters which was conducted by the Lawrence National Livermore Laboratory (Ex. 38–9). Of the 403 fire fighters who regularly wore contact lenses with SCBA, only 6 responded that contact lens created a problem such as a contact lens being out of place or a particle under the lens causing the respirator facepiece to be

removed in an environment where the facepiece would normally be worn. The wearing of conventional eyeglasses inside the respirator facepiece, as is required by the current OSHA standard, had a proportionately higher number of problems. The study concluded that the prohibition on wearing contact lenses with a full facepiece respirator should be withdrawn.

The Oil, Chemical and Atomic Workers Union (Ex. 36–23) supported removing the prohibition on the use of contact lenses with respirators. Alan Hack of the Los Alamos National Laboratory (Ex. 36–29) cited the Lawrence Livermore contact lens study and the lack of adverse experience with contacts as reasons for permitting their use. The Nuclear Regulatory Commission (Ex. 36–31) agreed that the contact lens prohibition needed to be examined and hoped the Lawrence Livermore survey on contact lenses would not contradict their use with respirators. MSHA (Ex. 36–34) stated that contact lenses should not be used with respirators until further data has been developed to indicate their safety with the movement of chemicals through the lens, since many of the new contact lenses allow passage of air and water through the lens. Earle Shoub (Ex. 36–17) stated that if OSHA is determined to permit the use of contact lenses under a full facepiece respirator, this permission should not extend to IDLH atmospheres.

OSHA believes the Lawrence Livermore contact lens study of fire fighters supports removing the prohibition on the use of contact lenses with respirators. No evidence shows that wearing contact lenses with respirators increases safety hazards. Therefore, OSHA is proposing to remove the prohibition in the current standard on the use of contact lenses with respirators. OSHA requests any comments or information as to the appropriateness of using contact lenses with respirators, and any problems that have occurred with the use of contact lenses in the workplace.

In dealing with skin irritation and contamination, the proposal would require the employer to permit employees to leave the respirator use area as a necessary to wash their faces and respirator facepieces. The preproposal draft provision permitted employees to leave the work area is necessary to wash their faces and respirators. Several commenters asked that the phrase "work area" be changed to "respirator area" (Ex. 36–22, 36–30, 36–40, 36–41), since employees can wash their faces and respirators at appropriate cleaning sites located outside the respirator use area without necessarily having to leave the work area. The Motor Vehicle Manufacturers Association (Ex. 36–37) recommended changing the wording of the provision from "as necessary" to "if necessary" since excessive washing of the skin may aggravate an irritated skin by removing protective oils. Richard Boggs of ORC (Ex. 36–47) recommended that this requirement be dropped since it was a labor relations issue and not all conditions of respirator use result in situations where such a requirement would make sense. OSHA agrees with the commenters that employees do not necessarily need to leave the work area to clean their faces and respirators, and the wording of the provision has been changed from work area to respirator use area. OSHA believes that potential health problems of skin irritation and contamination associated with wearing a respirator cannot properly be relegated to a labor relations issue as ORC suggests and OSHA has retained this provision in the proposal.

Another new provision involves the filter elements of air-purifying respirators. Employers are to allow employees to change such elements whenever employees detect a change in breathing resistance or chemical breakthrough. Since breathing rates differ, and workplace contamination levels may vary, it is difficult to predict the service life of a particular filtering element. Subjectively detected breathing resistance indicates that the load on the particulate filter may be approaching capacity and that the filter must be changed to ensure continuing protection. This decision was supported by several commenters in response to ANPR question 29 on service life (Ex. 15–18, 15–19, 15–38, 15–47, 15–48, 15–52, 15–54, 15–75B).

Comments on the preproposal draft also recommended that odor or chemical vapor breakthrough was a reason for changing an organic vapor cartridge or canister (Ex. 36–29, 36–30, 36–32, 36–41, 36–52, 36–55). The wording of the proposal has been changed to add chemical vapor breakthrough as a cause for changing filters. Wording has also been added to permit employees to leave the respirator use area to change filters since this should be done only in clean air.

The proposal also includes a provision that requires respirators be repaired or discarded and replaced immediately when they are no longer in their original working condition. Examples of these changes in condition would be that the strap has broken, the respirator has lost its shape, or the face seal can no longer be maintained. Since respirators must be in good working condition to function, it is imperative that they not be used if they have been impaired in any way. The respirator manufacturers can supply replacement parts for damaged portions of their elastomeric respirators. Disposable respirators cannot be repaired and must be discarded when damaged.

Many commenters to the ANPR stated that disposable respirators should be allowed to be used until they no longer can provide the protection for which they were designed (Ex. 15–13, 15–14, 15–19, 15–22, 15–30, 15–34, 15–36, 15–37, 15–41, 15–44, 15–46, 15–48, 15–53, 15–58, 15–75A, 15–75B, 15–81). How the useful service life would be determined, whether by professional judgment or by having the manufacturers of the respirators make a determination, was unclear. Such a specific service life determination is difficult to make. Support for a one day or one shift limit for the use of disposable respirators was presented by several ANPR commenters (Ex. 15–8, 15–18, 15–26, 15–33, 15–50, 15–54, 15–55, 15–70, 15–75). Disposable respirators are designed to be used and discarded. Their durability with repeated use is not great, and most of them are not designed to be easily cleaned or sanitized.

The proposal requires that disposable respirators which cannot be cleaned and sanitized be discarded at the end of the task or work shift whichever comes first. There are some disposable respirators which can be cleaned and sanitized after use, but they cannot be resupplied with an unused filter, and therefore the proposal would require disposal after their useful service life limit has been reached.

The employer is also to ensure that employees, upon donning the respirator, perform a facepiece seal check prior to entering the work area when wearing a respirator. The negative-pressure sealing check and the positive-pressure sealing check included in Appendix B, or the respirator manufacturer's recommended procedures shall be used for all respirators on which such checks are possible. The use of such seal checks are a way of helping to ensure that attention is paid to obtaining an adequate facepiece seal each time a respirator is used.

An additional requirement being proposed by OSHA is that each self-contained breathing apparatus used in IDLH atmospheres, or for emergency entry or fire fighting, be certified for a minimum service life of thirty minutes. Certified SCBA devices are available with shorter service lives, but given the types of situations encountered in IDLH

or emergency situations, OSHA maintains that a minimum of thirty minutes would be required to ensure protection in these conditions. The thirty minute service life requirement does not apply to combination supplied air respirators with auxiliary air supply since the air for normal work operations is supplied by an air line. No service life requirement has been set for the auxiliary air supply bottle, but the auxiliary air supply must be sufficient to permit escape from the IDLH atmosphere should the air line fail. Emergency escape SCBAs also do not have to meet the thirty minute service life requirement, since their intended use is only for escape.

The preproposal draft contained provisions to allow the use of "buddy breathing" devices and the interchange of air cylinders between SCBAs, as is permitted under the OSHA fire brigades standard (29 CFR 1910.156(F)). Comments on the preproposal draft by NIOSH (Ex. 36–42) recommended that OSHA not allow the interchange of respirator air cylinders since differences in air cylinder backpack construction could result in the cylinder falling off while in an IDLH atmosphere. Cylinders come in several different sizes, with varying air capacities and operating pressures, and can be constructed of different materials. As NIOSH points out, this can present problems with respirator operation when some types of cylinders are interchanged. NIOSH also considered initiating an approval program for SCBAs with emergency escape breathing support systems (buddy breathers) but found from their survey of interested parties that a safe and practical emergency escape breathing support system could not be certified at this time. Current buddy breathing systems have problems with equipment reliability and with maintaining adequate airflow in the positive pressure mode. The Industrial Safety Equipment Association (Ex. 36–45) also disagreed with the air cylinder interchange and buddy breather provisions and stated that extending their use to general industry applications would present problems since rescue and specialized training are not as prevalent in general industry as in fire fighting, and recommended that the practice not be allowed. Dow Chemical (Ex. 36–40) recommended that the air cylinder interchange and buddy breather provisions be deleted or put in a nonmandatory appendix. ORC (Ex. 36–47) also recommended a nonmandatory appendix. MSHA (Ex. 36–34) stated that the use of buddy breathers or the interchanging of air cylinders voids the NIOSH/MSHA approvals and asked whether OSHA was going to certify these changes as safe for the wearer. Earle Shoub (Ex. 36–17) also pointed out that the use of these modified respirators voids their NIOSH/MSHA approval, and suggested OSHA include a specific exemption from the NIOSH/MSHA approval requirement when they are used.

Since there are problems in assuring the proper operation of respirators modified to include buddy breathing devices, and there are problems with interchanging air cylinders of different construction, pressure, and size between different SCBAs, OSHA has decided to delete the provisions dealing with buddy breathing devices and air cylinder interchange from the proposal. The problems with their use given by the preproposal draft commenters and the lack of a demonstrated need for their use in general industry work situations has lead OSHA to remove these provisions from the proposal. Their use is still allowed for fire brigades under the fire brigades standard. OSHA seeks comment on this decision and on the performance of such devices in industry.

Commenters were equally divided on the issue of requiring low flow alarms or indicators for PAPRs. The AIHA (Ex. 15–81) thought the issue was related more to equipment certification rather than use, and suggested that NIOSH consider the advisability of low flow indicators as permissible modifications. Some felt OSHA should encourage the development of low flow indicators since it is the positive pressure generated by the normal PAPR airflow rates that give PAPRs their high protection factors (Ex. 15–14, 15–22, 15–34, 15–46, 15–48, 15–50, 15–51, 15–54, 15–55, 15–62, 15–76, 15–77, 15–79). Since low airflow could be detected by the wearer, some commenters felt airflow indicators were unnecessary (Ex. 15–16, 15–19, 15–27A, 15–44, 15–53, 15–58, 15–66, 15–70, 15–73, 15–81).

OSHA has decided not to require the use of low flow alarms or indicators for PAPRs. The protection levels that PAPRs achieve are in part dependent upon maintaining an adequate airflow through the respirator. OSHA encourages the use of airflow indicators with PAPRs, but since they are not currently available on existing PAPRs it has been decided not to require them at this time.

When PAPRs should be used was also the subject of comments. Some commenters felt that OSHA should not dictate the circumstances where PAPRs should be used (Ex. 15–30, 15–53, 15–58, 15–73). Most commenters felt PAPRs should be used where the employer or safety and health professionals determine their use is appropriate (Ex. 15–13, 15–14, 15–19, 15–22, 15–51, 15–62, 15–70, 15–76). Others felt PAPRs should be used when a high level of protection must be assured (Ex. 15–27A, 15–46, 15–79). PAPR use was also recommended where a significant physiological burden would be imposed by a negative pressure respirator (Ex. 15–38, 15–44, 15–46).

OSHA has also decided not to dictate the circumstances where PAPRs may be used. The employer or safety and health professional in charge of the respirator program is in the best position to determine where and when PAPR use is most appropriate. The PAPR's ability to provide increased protection, easier breathing, and greater worker acceptance should be taken into account during respirator selection. However, the responsibility for respirator selection has been placed on the respirator program administrator, and OSHA relies on the administrator to assure that the appropriate respirator is chosen. However, OSHA asks for comments on whether employees should be able to choose PAPRs rather than negative pressure respirators because of their reduced breathing resistance. OSHA has permitted this in several standards such as the coke oven emissions (29 CFR 1910.1029) and cotton dust (29 CFR 1910.1043). However, OSHA's experience is that few employees make the request.

(H) Maintenance and Care of Respirators

In order to ensure continuing protection from respiratory protective devices, it is necessary to establish and implement proper maintenance and care procedures. A lax attitude toward this part of the respiratory protection program will negate successful selection and fit because the devices will not deliver the assumed protection unless they are kept in good working order.

OSHA believes that the provisions on maintenance and care that exist in the current standard are effective and adequate. Therefore this proposal has mainly readopted the current OSHA provisions, the primary exception being the provisions which deal with cleaning and disinfecting respirators after they are worn. The present standard, while requiring cleaning and disinfecting, does not specify when to do it or provide guidelines for how it should be done. Consequently many employers have not been following these provisions, with the consequent result that the cleaning and disinfecting provision is one of the most frequently

cited for violation by OSHA compliance officers. Respirators which are not cleaned and disinfected—particularly those used by more than one employee—can cause skin irritation and dermatitis. Where the toxin to be protected against is a dust, mist or fume, build up of it on the respirator seal or within the respirator will reduce the protection factor given by the respirator because the toxin is in the breathing zone. In addition, the build-up of contamination on the respirator can contribute to the deterioration of the materials, and thus deterioration of the protection. Full facepieces must be cleaned to ensure that employees can see through the facepieces.

The proposal requires that routinely used respirators which are reserved for the exclusive use of a particular employee be cleaned and disinfected at least after each day's use. If a respirator is routinely used by more than one employee, it must be cleaned and disinfected after each use. Respirators maintained for emergency use must also be cleaned and disinfected after each use. Recommended procedures for cleaning and disinfection are included in Appendix B of the proposed standard.

In comments on the preproposal draft, Thomas Nelson of the ANSI Z88.2 respirator committee suggested that the cleaning instructions of the respirator manufacturer be allowed, since they may be different than these in Appendix B, or cover contaminants which cannot be cleaned using the methods in Appendix B such as radioactive materials. The Dow Chemical Company (Ex. 36–40) recommended that the reference to Appendix B be deleted and a statement to follow the manufacturer's recommended procedures be added. OSHA agrees and has added wording permitting the use of manufacturer's cleaning instructions.

Comments on the proposed draft also addressed the issue of the frequency of cleaning and disinfecting of respirators. The American Textile Manufacturers Institute (Ex. 36–18) felt that respirators should be cleaned after each day's use and disinfected periodically as needed. The Motor Vehicle Manufacturer's Association (Ex. 36–37) stated that cleaning and disinfecting of respirators should be required periodically. DuPont (Ex. 36–38) felt that the provisions of the respirator program suggested by Organization Resources Counselors (ORC) (Ex. 36–47 Attachment 1) that requires cleaning frequently enough to avoid hazardous exposures to residues was sufficient. Richard Boggs of ORC (Ex. 36–47) urged adopting the language in the ORC program since it would allow the individual organization to tailor its cleaning and sanitizing programs to the needs of the operation.

OSHA believes that allowing periodic cleaning and disinfecting without specifying the time period or requiring only that respirators be cleaned frequently enough to avoid hazardous exposures to residues are vague concepts which are not defined, which may be difficult to enforce and would perpetuate the poor cleaning practices which have already been shown to be a compliance problem (Ex. 33–5). Therefore, the proposal continues to require that routinely used respirators be cleaned and disinfected after each day's use and that respirators used by more than one employee be cleaned and disinfected after each use.

The proposal does not state who should do the cleaning and disinfecting, only that it be done. The United Steel Workers of America (Ex. 36–46) recommended that OSHA require that the employer do the cleaning and repairing of respirators. They stated that when the employer requires that employees turn in their respirators at the end of each shift to a central cleaning facility for inspection, cleaning, and repairs by trained personnel and with the respirators returned to the employees the next day, a better cleaning program results. OSHA agrees that such a centralized cleaning and repair operation can ensure that properly cleaned and disinfected respirators are available for use, but it is not the only way to do so. For example, in plants where respirator use is infrequent or where the numbers of respirators in use are small, central facilities may be inappropriate. The employer is allowed to choose the cleaning, disinfecting and repair program that best fits the requirements of the standard and the particular circumstances of the job. If the employer chooses to require that employees do the cleaning of respirators, then the employer must provide the cleaning and disinfecting equipment, supplies, facilities, and time for the job to be done. The proposal requires that the employer ensure that the cleaning is done properly, and that only properly cleaned and disinfected respirators are used.

Storage of respirators must be done properly to ensure that the equipment is protected and not subject to environmental conditions that may cause deterioration. The proposed provisions for storage are essentially the same as the current standard. The employer must protect the stored equipment from damage, dust, sunlight, extreme temperatures, excessive moisture, or damaging chemicals. The respirator manufacturer will often provide additional information on proper storage procedures which should be observed by the employer. Storage conditions are listed in performance language. For example, temperature ranges are not specified. It appears that the degree of severity of a condition would be related to the tolerance of the particular equipment in question and would thus vary from model to model. OSHA invites comment on whether this approach is appropriate, or whether the conditions of storage should be specified in more detail.

Respirators intended for emergency use shall be kept accessible to the work area. Where weathering, contamination or deterioration of the respirator could occur compartments shall be used to protect the respirator and must be clearly marked to indicate that they contain emergency respirators. This represents a change in wording of the proposed standard in response to comments on the preproposal draft (Ex. 36–45, 36–47, 36–55). Since many emergency respirators are stored in environmentally controlled areas, according to the ANSI Z88.2 respirator committee (Ex. 36–55), compartments would be unnecessary. The new wording of the proposed standard requires the use of compartments only where weathering, contamination or deterioration could occur.

Respirators that are used routinely in the work area are to be stored in a plastic bag or otherwise protected from contamination or damage. The prohibition on the use of lockers or tool boxes has been removed in response to comments in the preproposal draft (Ex. 36–47, 36–49). The requirement that respirators be stored in such a way as to prevent damage should avoid problems of damage from improper storage in lockers provided the employer takes appropriate precautions.

When respirators are packed or stored, the facepiece and exhalation valve must be stored in a manner that will prevent deformation. This is to prevent impairment of the elastomer due to stretching or reshaping of the facepiece or exhalation valve because of positioning of the equipment.

In order to assure the continued reliability of respirator equipment it must be inspected on a regular basis. The frequency of inspection is related to the frequency of use. Respirators that are used routinely are to be inspected before each use, and during cleaning after each use. Those that are maintained in the facility for emergency use must be inspected at least monthly, and checked for proper function before

and after each use. However, respirators used for emergency escape must be inspected before being carried into the workplace.

The proposal has changed the requirement that employers make a record of inspection dates and findings for emergency use respirators. Employers only need certify that the required inspections have been made. The employer must perform the respirator inspection as required by paragraph (h)(3) to determine that the respirator is functioning properly and is fully charged. Then the inspection is certified by having the inspector fill in a tag or label kept with the respirator or attached to the respirator storage compartment that contains the date of the inspection, the name or signature of the inspector, and the serial number or other means of identifying the respirator that was inspected. The inspection certification need only be maintained until it is replaced by the certification of the next inspection. This replaces the requirement in the present standard that the inspection record be kept as long as the respirator is in the workplace. Since the inspection tag or label serves to indicate that the respirator has been inspected within the time limit set for inspections there is no need to maintain the first certification once a new inspection is performed and certified.

Self-contained breathing apparatus are also to be inspected monthly. Air and oxygen cylinders must be maintained in a fully charged state and recharged when pressure falls to 90% of the manufacturer's recommended pressure level, and the employer must determine that the regulator and warning devices function properly.

The standard specifies what constitutes a minimal respirator inspection: Respirator function, the tightness of connections and the condition of the facepiece, headstraps, valves, connecting tube, and filters, canisters or cartridges must be checked. In addition, the rubber and elastomer parts must be evaluated for pliability and signs of deterioration. It should be noted that stretching and manipulating rubber or elastomer parts with a massaging action will help keep them pliable and flexible and prevent them from taking a set during storage.

The proposed standard also includes provisions related to the repair of respirators. Repairs or adjustments are to be made only by persons appropriately trained to perform them, using parts designed for that respirator. The employer is to ensure that the manufacturer's recommendations regarding the type and extent of repairs that can be performed are followed. In any case, reducing or admission valves or regulators must be returned to the manufacturer or given to an appropriately trained technician for adjustment or repair. These provisions are consistent with the requirements of the current standard.

OSHA invites comments on the provisions related to the maintenance and care of respirators, including suggestions for other items which should be considered for inclusion in or deletion from this section based on the experience of those currently implementing respiratory protection programs.

(I) Supplied Air Quality and Use

Where atmosphere-supplying respirators are being used to protect employees it is essential to ensure that the air being breathed is of sufficiently high quality. The current standard and this proposed revision reference a number of standard sources which establish parameters for breathing air quality.

For oxygen, the employer is to ensure that it meets the requirement of the latest edition of the United State Pharmacopoeia for medical or breathing oxygen. This represents no change from the current standard.

In the ANPR, comments were requested on whether acceptable respirator breathing air should continue to meet the specifications for Grade D breathing air as described in Compressed Gas Association Commodity Specification G 7.1–1966 or whether an alternate specification such as Grade E should be used. OSHA received comments stating that Grade D air is adequate and should continue to be used (Ex. 15–10, 15–18, 15–31, 15–52, 15–73, 15–75). The Los Alamos National Laboratory (Ex. 36–52) recommended that Grade E air be used, since most air that passes Grade D will also pass Grade E. However, LANL gave no specific reasons for doing so. Therefore OSHA does not believe that the need for a higher grade has been shown.

In the proposal, breathing air is to meet the requirements for the grade D air classification in the ANSI/ Compressed Gas Association Commodity Specification G–7.1–1989. This is the revised and current version of the G–7.1 1966 Compressed Gas Association Commodity Specification. This means that the oxygen content (v/v) must contain the amount of oxygen normally present in atmospheric air of 19.5 to 23.5 percent oxygen for synthesized air; hydrocarbon (condensed) of 5 milligram per cubic meter of air or less; carbon monoxide of 10 ppm or less, and carbon dioxide of 1,000 ppm or less. OSHA invites comments on the appropriateness of maintaining Grade D as the required quality of air.

The proposal prohibits the use of compressed oxygen in atmosphere-supplying respirators or in open circuit self-contained breathing apparatus that have previously used compressed air. This is to prevent fire or explosion resulting from the high pressure oxygen coming in contact with oil or grease (Ex. 10). The proposed standard also specifies that oxygen not be used with supplied air respirators. These requirements are also in the current standard.

Both the current standard and the proposal allow air for respirators to be provided from cylinders or compressors. Cylinders are required to be tested and maintained as prescribed in the Shipping Container Specification Regulations of the Department of Transportation (49 CFR Part 178).

Compressors are to be constructed and situated so contaminated air cannot enter the air supply system. In addition, the compressors are to be equipped with suitable in-line air-purifying sorbent beds and filters to clean the air and assure breathing air quality. The requirement that air compressors have a receiver of sufficient capacity to permit escape from a hazardous atmosphere in the event of compressor failure has been dropped. As was pointed out in several comments on the preproposal draft, a receiver is necessary only when the wearer cannot safely stop work and leave the area without injury (Ex. 36–29, 36–32, 36–45, 36–47, 36–52, 36–54, 36–55). Since this proposal requires that respirators used in IDLH situation be either an SCBA or combination supplied air respirator with escape air supply, the need for a receiver for air compressors has been eliminated. Also the requirement for alarms to indicate compressor failure and overheating have been eliminated. In the event of compressor failure with a wearer using a combination supplied air respirator with escape air supply, the loss of air supply would be readily apparent, and the wearer can switch to the auxiliary escape air supply and leave the area.

In the ANPR, OSHA also requested comments and input on the following questions: (1) How frequently should carbon monoxide concentrations be measured from an air compressor not equipped with a carbon monoxide alarm, and (2) Is there any reason not to require a carbon monoxide alarm on all oil lubricated compressors that provide breathing air? Responses to the issue of the frequency of carbon monoxide

measurements ranged from quarterly (Ex. 15–42) to twice a month provided the air intake for the compressor is located away from contamination (Ex. 15–52), to continuously (Ex. 15–14, 15–31, 15–34, 15–50, 15–65, 15–73). John L. Henshaw of Monsanto Company stated "One specified frequency would not be applicable under all conditions of breathing air compressor use." (Ex. 15–26).

In response to the ANPR question regarding carbon monoxide alarms on oil lubricated compressors, numerous comments were received stating that there was no reason not to require such an alarm (Ex. 15–10, 15–18, 15–26, 15–31, 15–46, 15–59, 15–70, 15–81). One commenter, Evan Campbell of Diamond Shamrock stated, "We recommend the installation of continuous carbon monoxide monitors with an alarm on oil lubricated air compressors operated by internal combustion engines, electric motors or auxiliary power takeoff . . ." (Ex. 15–65). In the comments of the National Constructors Association it was indicated that screw type compressors or oil free compressors do not need a carbon monoxide alarm provided the air intake is not near a potential carbon monoxide source (Ex. 15–34).

There was general recognition in the comments that contamination of the intake air on a compressor used to supply breathing air is of primary concern. Several comments cited the study published in the American Industrial Hygiene Association Journal by T.M. Distler of the Lawrence Livermore Laboratory (Ex. 32–1) entitled "Formation of Carbon Monoxide in Air Compressors" (Ex. 15–13, 15–22, 15–26, 15–30, 15–41, 15–81). The findings of this study revealed that low pressure compressors are unlikely to reach temperatures where carbon monoxide would be produced from the lubricant; synthetic lubricants do not significantly lessen carbon monoxide production; exhaust gases from combustion engines are the major threat to the quality of the compressed air; high temperature shut-offs or alarms do not significantly protect against carbon monoxide contamination of compressed air.

The preproposal draft contained provisions that required oil lubricated compressors to have carbon monoxide monitors and high temperature alarms. Freuhauf Corporation (Ex. 36–1) requested that compressors equipped with a high temperature shutdown device not be required to have carbon monoxide monitor since the compressor would be shut down before breakdown of the oil could occur. The Lawrence Livermore National Laboratory (Ex. 36–26), citing its study of compressors authored by Distler (Ex. 32–1), found no need for carbon monoxide monitors and alarms for oil lubricated compressors. However, they recommend that carbon monoxide monitoring and alarms be required for breathing air compressors powered by internal combustion engines, due to the potential for reentrainment of exhaust gases. Alan Hack (Ex. 36–29) stated that carbon monoxide alarms appear to be unreliable, there was little evidence of carbon monoxide production with oil lubricated compressors, and that OSHA should not require them. ASARCO (Ex. 36–39) recommended that OSHA allow the use of carbon monoxide absorption filters with visible color change indicators in place of carbon monoxide monitors. Richard Boggs of ORC (Ex. 36–47) recommended deleting section (i)(4)(v) requiring carbon monoxide monitors, citing the report on compressors performed by Distler. The Los Alamos National Laboratory (Ex. 36–52) stated that carbon monoxide alarms currently in use were unreliable, and that there was little evidence of carbon monoxide production with oil lubricated compressors. Lynnette Hendricks of the 3M Corporation (Ex. 36–54) stated that the requirement for carbon monoxide alarms added negligibly to the effort to provide quality breathing air, and that 3M was aware of no instances where oil lubricated compressor failures resulted in carbon monoxide exposure to workers. Thomas Nelson of the ANSI Z88.2 respirator committee (Ex. 36–55) recommended that the need for carbon monoxide alarms be dropped when the air intake is located away from sources of carbon monoxide contamination. He also recommended dropping the high temperature alarm requirement. The State of Wyoming OSHA (Ex. 36–9) recommended that continuous carbon monoxide monitors with alarms be required for oil lubricated compressors operated by internal combustion engines or electric motor auxiliary power takeoffs. The International Chemical Workers Union (Ex. 36–14) stated that continuous carbon monoxide monitors and alarms for oil lubricated compressors were the only effective methods to monitor carbon monoxide concentrations.

OSHA knows of one such incident which involved carbon monoxide production by an oil lubricated compressor. An MSHA Accident Investigation Report issued in January 1985 (Ex. 38–12) reported that a diesel engine powered two stage rotary air compressor that utilized oil for cooling had overheated during a sandblasting operation at a limestone quarry. This resulted in the near fatal carbon monoxide poisoning of the sandblaster who was wearing a continuous flow abrasive blasting hood which received its air from the compressor. The air compressor had a thermo bypass valve that should have normally directed the oil through a cooling radiator once the oil had reached a temperature of 185° F. The thermo bypass valve failed, allowing the cooling oil temperature to rise above its flashpoint of 420° F. The oil ignited in the oil separator and the fire spread to the combined oil receiver/air receiver, producing carbon monoxide. The compressor was equipped with a high temperature shutoff switch set for 235° F, but it had been disconnected for at least 30 days prior to the incident. The compressor was not equipped with a carbon monoxide filter or alarm. The air line to the respirator had an inline filter to remove oil, water, and particulates from the compressed air as it left the air receiver, but it allowed the carbon monoxide to pass through to the respirator wearer. The sandblaster collapsed from carbon monoxide poisoning. The sandblaster's assistant shut down the compressor, removed the victim's abrasive blasting hood, and called for emergency assistance. Neither of the employees performing the sandblasting operation had received any training in proper respirator use.

This extremely rare incident raises serious questions about carbon monoxide filters and alarms as well as high temperature shutoff devices, and whether their use should be required for oil lubricated compressors. A properly functioning high temperature shutoff switch should have shut down the overheated compressor, but it is unclear whether this would have occurred before the carbon monoxide laden air went out to the respirator wearer. This compressor had no carbon monoxide filter with alarm to warn the respirator wearer. However, given that the high temperature alarm was previously disconnected, it is unclear whether that alarm would have been disabled as well. OSHA requests any further information regarding other incidents involving carbon monoxide production by oil lubricated compressors, and any comments on the necessity for carbon monoxide filters and alarms as well as high temperature alarms for air compressors.

This proposal does not contain a requirement that carbon monoxide alarms or high temperature shutoff devices be used with oil lubricated compressors. As the Distler air

compressor study (Ex. 32–1) points out, air compressors are unlikely to reach temperatures where carbon monoxide production would occur. Exhaust gases from internal combustion engines and the intake of contaminated air are the major threats to air quality, and these threats occur with all compressors, not just oil lubricated ones. The proposal requires that the air intake for compressors be placed to avoid the entry of contaminated air. One way to ensure that contaminated air does not enter the air supply would be for OSHA to require carbon monoxide filters with continuous monitoring alarms for all breathing air compressors. OSHA requests comments on whether it should adopt this requirement for all compressors. OSHA requests any information about problems with air compressor air quality, filters and alarms, and invites comments on how best to ensure breathing air quality for respirators.

OSHA is aware that in recent years devices known as ambient air movers have been developed to provide air to supplied air respirators. These units are small compressors which are not oil lubricated and have no air receiver. Such compressors may have a use in non-IDLH atmospheres. The use of ambient air movers has been allowed under an OSHA compliance directive even though such devices do not have an air receiver as required by the current standard. The proposal drops the requirement for an air receiver for compressors. An ambient air mover is just another type of air compressor, and it is treated like any other compressor under the proposal.

Requirements in this proposal regarding the moisture content of compressed air for air cylinders and a provision requiring that air line couplings be incompatible with outlets for other gas systems are consistent with current accepted practice and with OSHA's current standard, having simply been updated to reflect the latest versions of the references. The proposal establishes a limitation of the moisture content of air in compressed air cylinders of no greater than 27 milliliters per cubic meter of air. This is to prevent freezing of the valves. The air coupling provision is also included to prevent inadvertent servicing of airline respirators with non-respirable gases or vapors. To accomplish this, breathing air couplings are to be made incompatible with outlets from non-respirable plant air or other gas systems.

In addition, employers must use breathing gas containers marked in accordance with the American National Standard Method of Marking Portable Compressed Gas Containers to Identify the Material Contained, Z48.1–1954 (R–1971); Federal Specification BB–A 1034a, June 21, 1968, Air, Compressed for Breathing Purposes; or Interim Federal Specification GG–13–00675b, September 23, 1976, Breathing Apparatus, Self-Contained.

(J) Identification of Filter, Cartridges, and Canisters

The current standard requires that the employer mark gas mask canisters with properly worded labels and color coding to ensure proper identification. However, as many commenters on the preproposal draft pointed out (Ex. 36–18, 36–19, 36–27, 36–30, 36–32, 36–34, 36–40, 36–45, 36–47, 36–49, 36–54, 36–55), the marking of filters, cartridges and canisters is the responsibility of the respirator manufacturer under the NIOSH 30 CFR 11 and 42 CFR 84 respirator certification standards. Therefore, this proposal has eliminated the requirements and tables relating to the marking of canisters from the standard. Two requirements have been added to replace the marking requirements. First, the employer must ensure that all filters, cartridges and canisters used are properly labeled and color coded. Since the manufacturer already does this, the employer need only check that the label is there. Second, the label may not be removed, obscured or defaced while in service since that would defeat its purpose.

(K) Training

The most thorough respiratory protection program will not be effective if employees do not wear respirators, or if wearing them, do not do so appropriately. The only way to ensure that employees are aware of the purpose of wearing respirators, and how they are to be worn, is to train them. The record shows widespread agreement that employee training is an important part of the respiratory protection program and is essential for correct respirator use (Ex. 15–13, 15–18, 15–19, 15–22, 15–30, 15–33, 15–41, 15–45, 15–50, 15–53, 15–54, 15–67, 15–79).

The current standard does not contain a separate section for training. The minimal requirements it imposes are included within other sections of the standard.

This proposal retains and clarifies the present provisions in a separate section for training and provides more comprehensive guidance than does the present standard.

In response to ANPR commenters who urged OSHA to mandate a program that is performance oriented and can be presented informally, (Ex. 15–13, 15–18, 15–22, 15–30, 15–41, 15–47, 15–62, 15–73, 15–75), this proposal is performance oriented in that it specfies categories of information to cover during training. It neither specifies how the training is to be performed nor the format of the employers training program. The employer can use whatever training method is effective for the particular worksite as long as it contains the topics discussed below. Employers can utilize prepared materials such as audio-visuals and slide presentations or they can use approaches ranging from formal classroom instruction to informal discussions during safety meetings (Ex. 15–53), or a combination of methods.

The first category of information to be included in the training program is the nature, extent and effects of respiratory hazards to which the employee may be exposed. This includes identification of the hazardous chemicals involved, what exposure levels there would be if no respiratory protection were being used, and what the potential health effects of such exposure would be if the respirator is not worn or not worn properly. This type of information will be available on the material safety data sheet for the hazardous chemical that the chemical manufacturer will be required to produce under the Hazard Communication Standard (29 CFR 1910.1200). These training requirements on health hazards of hazardous chemicals are also required under the Hazard Communication standard (29 CFR 1910.1200) and could easily be combined into the same training program. Many commenters agreed that this subject is an essential element of training (Ex. 61–3, 61–8, 15–10, 15–14, 15–18, 15–19, 15–27A, 15–41, 15–46, 15–53, 15–62, 15–73). None disagreed

Once employees are trained regarding the nature of the hazards, employers are to provide an explanation of the operation, limitations, and capabilities of the respirators selected for the employees to wear. This would include, for example, an explanation of how the respirator provides protection by either filtering the air, absorbing the vapor, or providing clean air from an uncontaminated source. Where appropriate, it also should include limitations on the equipment such as prohibitions against using an air-purifying respirator in the event of an emergency with IDLH atmospheres and an explanation of why they should not be used in such situations. In other words the employee should be able to understand the operation of the respirator thoroughly as a result of this training, and thus know why it was selected for the task at hand. Most commenters supported covering this

topic in the training program. (Ex. 61–3, 15–14, 15–18, 15–27A, 15–41, 15–46, 15–53, 15–62, 15–73). There was no disagreement.

Once the employee understands the nature of the hazards, and the particular equipment selected to protect against those hazards, the employer is to provide specific instruction regarding the type and frequency of respirator inspections. Although the employer is required to ensure that such inspections are performed, employees using the equipment may frequently be responsible for inspecting the respirators assigned to them. Therefore, it is necessary that they have this process explained and demonstrated to them so they are capable of recognizing any problems that may threaten the continued protective capability of the respirator. The training must include the steps employees are to follow if they discover any problems during inspection, i.e. who this should be reported to and where they can obtain replacement equipment if necessary.

The training must also include the procedures for donning or removing the respirator, checking the fit and seals, and actually wearing the respirator. It is very important to ensure that the everyday respirator fit is as close as possible to the fit obtained during fit testing, and therefore employees must be able to duplicate that fit through proper donning and removal. The fit testing procedure can help in training employees, particularly if quantitative fit testing is used since it can demonstrate numerically to employees the dramatic differences in measured fit when the respirator is not adjusted properly (Ex. 15–44). The proposal requires employers to include sufficient practice so that employees can perform these tasks effectively. The proposal also includes positive and negative pressure facepiece seal checks in non-mandatory Appendix B. If other tests are equally effective in testing the face seal, they may be used. Employees must be trained regarding the appropriate tests to be used for the respirators they are wearing. The inclusion of these topics in training was unanimously supported in the record (Ex. 61–3, 61–8, 15–10, 15–14, 15–22, 15–27A, 15–41, 15–46, 15–50, 15–62, 15–73).

The employer is also to explain the procedures for maintenance and storage of respirators. This provision may vary by establishment since in some cases the employees are responsible for doing some of the maintenance and for storing the respirators while not in use, but in other facilities specific people are assigned to carry out these activities. In any event, employees should be aware of the proper procedures to follow. The significance of this point was raised by a large number of commenters (Ex. 61–3, 61–8, 15–10, 15–14, 15–27A, 15–41, 15–46, 15–50, 15–62).

Respirators do malfunction on occasion, or emergency situations occur which require different respirators for the exposure levels involved. The training program must include a discussion of these possibilities, and the procedures the employer has established to deal with them. Most ANPR commenters concurred that comprehensive training is necessary where respirators are to be used in situations immediately dangerous to life or health, including oxygen deficient atmospheres, such as in fire fighting, rescue operations and confined area entry (Ex. 15–18, 15–19, 15–26, 15–31, 15–33, 15–37, 15–41, 15–47, 15–48, 15–50, 15–54, 15–55, 15–56, 15–59, 15–70).

Several commenters requested that OSHA adopt the applicable training requirements of the American National Standard Institute (ANSI) Z88.2–1980 Practices for Respiratory Protection which discussed the basic training requirements of an acceptable respirator program (Ex. 15–13, 15–14, 15–26, 15–27A, 15–31, 15–44, 15–46, 15–50, 15–54, 15–55, 15–58, 15–70, 15–76, 15–81). The new training requirements are similar to the ANSI requirements for training except that the proposal does not require a discussion on the role of engineering controls.

Although some commenters felt that the provisions covering training in the present standard are adequate (Ex. 15–37, 15–56, 15–75A), in view of the importance of training in motivating employees to wear respirators correctly and effectively, the additional information required by this proposal is deemed by OSHA to be critical for an effective respirator program. With the exception of the American Iron and Steel Institute (Ex. 15–37), A.E. Staley Manufacturing Company (Ex. 15–56), and the Sperry Corporation (Ex. 15–75A), the record supports further guidance for training than is currently contained in 1910.134 (Ex. 15–13, 15–14, 15–26, 15–27A, 15–31, 15–44, 15–46, 15–50, 15–54, 15–55, 15–58, 15–70, 15–76, 15–81).

In addition to specific training requirements regarding the proper use of respirators, the employer must inform employees of the existence and contents of the respirator standard (29 CFR 1910.134). They must also be told of the existence and contents of the written respiratory protection program required by the respirator standard, where it is kept in the facility, and how the employee can arrange to examine it if desired.

The majority of commenters agreed that annual training is necessary to assure an effective continuing program (Ex. 15–10, 15–18, 15–19, 15–20, 15–37, 15–44, 15–47, 15–48, 15–50, 15–54, 15–55, 15–71). The Sperry Corporation, however, recommended that employees be retrained every 6 months, but did not provide a rationale for their contention. In response to the preproposal draft, California OSHA (Ex. 36–44) recommended that a more comprehensive initial training and more frequent refresher training be required for employees assigned to use SCBA in potentially IDLH atmospheres; emergency response users of SCBA would receive refresher instruction in the operation inspection, and wearing of the SCBA at least every three months for the first two years following initial training, and thereafter every six months. Frank Wilcher of the International Safety Equipment Association (Ex. 36–45) also recommended that employees who use SCBAs be trained semiannually because of the higher degree of complexity of these units and the possibility of greater hazards associated with their use.

The Washington State Department of Labor and Industries (Ex. 36–20) recommended that training should be performed at least annually and be adjusted to the complexities of the respirator program and the level of respirator use. William O'Keefe of the American Petroleum Institute (Ex. 15–41) asserted that training should be repeated periodically, but at least every 2 years and more frequently as workplace conditions may warrant. Richard Boggs of ORC (Ex. 36–47) in response to the preproposal draft recommended that a 2 year cycle of retraining and refresher instruction after the initial respirator use training was reasonable. He recommended that any decision for more frequent training should be made by the employer. Annual retraining was called needlessly expensive. Amoco Corporation (Ex. 36–35) recommended that the retraining frequency for routinely used respirators be a minimum of two years, but emergency use respirators would require annual retraining. The American Textile Manufacturers Institute (Ex. 36–18) recommended retraining every two years for employees requiring an APF of 10 or less. Both the ANSI Z88.2–1980 and Z88.2–1993 respiratory protection standards call for annual retraining.

OSHA concurs with the majority of comments contending that annual training is sufficiently frequent to ensure employee cooperation and active

participation in the program. Training every two years instead of annually for routinely worn respirators has been rejected, since the purpose of the training is not only to instruct wearers in proper techniques but also to encourage their cooperation and participation in the respirator program. Switching to training every two years would tend to diminish attention to proper respirator use. OSHA compliance experience has demonstrated that inadequate respirator training is a common problem (Ex. 33–5) and is often associated with respirator program deficiencies that potentially lead to employee exposures. Therefore, the proposal contains the requirement for annual training for respirator wearers. Training required by this proposal is to be given to the employee before he or she is required to wear a respirator in the workplace. Employees must receive training at least annually so they will be reminded regularly of the effects of the respiratory hazards to which they may be exposed and how they can prevent such exposure by proper wearing of respirators. OSHA requests comments on the frequency of training, particularly the need for increased training and more frequent refresher training for employees using SCBAs or emergency use respirators.

(L) Respiratory Program Evaluation

It is inherent in respirator use that problems with protection, irritation, breathing resistance, comfort, etc. will arise. While it is not possible to eliminate all problems with wearing a respirator, the employer must try to eliminate as many problems as possible to improve protection and encourage wearer acceptance of respirators. Eliminating problems is accomplished most effectively when the program is evaluated carefully and revised as necessary. Although the current standard does require that the employer perform periodic checks of the effectiveness of the respiratory protection program, little guidance is provided regarding how this evaluation is to be done. The proposal includes a paragraph dealing with this requirement and provides more information regarding what should be assessed by the employer.

The person responsible for administration of the respiratory protection program is to review the program at least annually and is to conduct frequent random inspections of the workplace to ensure that the provisions of the program are being properly implemented. The annual review is to include an assessment of each element of the program that is required to be included under paragraph (c)(1).

In addition to this review of the program itself, the employer is to consult employees wearing respirators to ascertain whether they perceive any problems with the equipment. Factors to be included in this assessment are comfort; resistance to breathing; fatigue; interference with vision; interference with communication; restriction of movement; interference with job performance; and the employee's confidence in the respirators effectiveness. The employer should attempt to correct any such problem that is brought forward. Comments are requested on these requirements. Companies which have instituted similar assessments are encouraged to submit their views.

(M) Recordkeeping and Access to Records

The final paragraph of the proposal deals with recordkeeping related to the respiratory protection program. The employer is to record, maintain and provide access to any records of medical evaluations performed under paragraph (e) of the proposal. This record consists of the employee's name, a description of the employee's duties, the physician's written opinion and recommendations on the employee's ability to use a respirator, any results of medical examinations or tests performed, and a copy of the information provided to the physician. Once generated to comply with this standard, the records are to be kept, and access is to be provided to them under the provisions of 29 CFR 1910.20, OSHA's rule on Access to Employee Exposure and Medical Records.

The present standard does not contain a separate section for recordkeeping. It simply requires employers to indicate on the respirator to whom it was assigned and the date it was issued. It also requires recording of inspection dates and findings for respirators used for emergency use.

The importance of recordkeeping as a means of verifying compliance with the respiratory protection program requirements was stated frequently in the record (Ex 15–18, 15–22, 15–33, 15–41, 15–47, 15–82). Commenters urged OSHA to require only those records necessary to demonstrate an effective program (Ex 15–19, 15–21, 15–41, 15–47, 15–71). However, there was considerable disagreement over what recordkeeping items to require. Because OSHA recognizes that recordkeeping may be administratively burdensome and time consuming, the Agency has only required employers to maintain records that are necessary for determining compliance with the requirements of the proposal.

The written respiratory protection program itself needs to be kept current as long as respirators are in use in the workplace. However, there is no specific retention period as long as the latest version of the program is available in the workplace.

Employee fit testing records are required as part of Appendix A, section (1)(L). This record consists of the employee's name, the type, brand, and size of the respirator fitted; date of the fit test; and the strip chart recording or other record of the test results where quantitative fit testing was performed. The fit test record must be maintained until the next fit test is administered. The reason for requiring that fit test records be maintained is to provide a record of the results of fit testing in order to determine whether annual fit testing has been done and if the individual tested passed the QNFT with a fit factor that was adequate for the type of respirator being used. The preproposal draft did not contain a requirement that fit test records be maintained, but several commenters had serious doubts that OSHA would be able to determine if an individual had been properly fitted and was wearing the appropriate respirator by visual observation alone (Ex 36–6, 36–17, 36–34, 36–46). OSHA agrees that fit testing records must be maintained to ensure that all respirator wearers have received a fit test, that the appropriate respirator chosen by fit testing is being worn, and that retesting is performed annually. Fit testing records can also serve other uses in the respiratory protection program. The Ethyl Corporation (Ex 36–11) uses the strip chart recording of the fit test as a training tool when it is reviewed with the fit test subject.

(N) Substance Specific Standards

This proposed standard will affect OSHA's substance specific health standards. All such standards now incorporate provisions of the existing § 1910.134 as part of their requirements. Moreover, some respirator related provisions in the substance specific standards differ from their counterpart provisions in this proposal, mostly in respirator selection and the events which trigger medical examinations for respirator users.

OSHA is proposing to revise all references to § 1910.134 in the existing substance specific standards to conform to the proposed revised standard. Thus, for standards such as lead, coke oven emissions, asbestos, and others which now require that "the employer shall

institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e), and (f)", the text will read "the employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l)." The revised provisions cover program elements, selection criteria for respirators, fit testing, use of respirators, maintenance and care, air quality, training, and program evaluation. Each of these subject areas was addressed in previously incorporated paragraphs (b), (d), (e), and (f) of the existing standard. For the " carcinogen" standards (§ 1910.1003–1016), which now require that in certain instances employees use certain kinds of respirators "in accordance with 1910.134", the regulatory text will remain unchanged. However, the employer will have to comply with the amended provisions of the revised § 1910.134 rather than the earlier provisions.

OSHA is including the proposed revised paragraph (p) covering medical surveillance only in the carcinogen standards in 1910.1003–1910.1016. Each of the other substance specific standards now includes in its medical surveillance requirements a provision that the employee be evaluated concerning any potential limitations on respirator use. OSHA believes that the medical surveillance programs established under these substance specific standards are therefore sufficient to protect employees who are not medically able to wear respirators. Because each medical surveillance requirement in the substance specific standards was designed as a comprehensive program to evaluate employees for conditions and risks unrelated to respirator usage as well, OSHA believes any revision changing the required frequency or content of medical examinations would unnecessarily disturb ongoing medical surveillance programs. Comments on this approach are solicited from the public, especially those who have information concerning the sufficiency of medical evaluations for respirator use under substance specific standards.

OSHA has adopted various approaches to deal with respirator provisions in those substance specific standards which differ from this proposal. Based on the information and data in the respiratory protection docket, OSHA believes in order to maintain an effective respirator program regardless of the contaminant or workplace conditions, there should be a minimum program level. Thus, for provisions in substance specific standards which are more protective than the counterpart revised provisions of this standard, OSHA does not propose any changes. For example, the respirator selection tables of some standards provide for more restricted use of respirators than would the respirator selection criteria in this proposal. The least protective respirator allowed by the ethylene oxide standard is a full facepiece respirator with an ethylene oxide canister regardless of protection factor required, whereas respirator selection according to this proposal would allow a half mask or quarter facepiece cartridge/canister respirator up to the NIOSH assigned protection factor of 10. OSHA believes that the more protective provisions of respirator selection adopted for specific substances after rulemaking proceedings conducted pursuant to Section 6(b) of the Act reflect the content of each rulemaking record, the toxicity and circumstances of use of each substance and therefore should be retained.

In keeping with this principle of not going below the minimum program, in those cases where existing respirator selection options in the substance specific standards are less protective than would be permitted by the proposed NIOSH respirator selection tables, OSHA proposes to revise such permitted respirator selections to conform to paragraph (d). For example, the lead standard (1910.1025 (f)(2)) now allows any powered air-purifying respirator with high efficiency filters to be used in concentrations up to 1000 times the PEL, and the coke oven emissions standard allows the use of PAPRs in any concentration, whereas under this proposal respirator selection would allow powered air-purifying respirators to be used only in atmospheres of 25 and 50 times the PEL for respirators certified under 42 CFR Part 84, depending on type. In the case of new or modified respirator types as well as existing respirator types, OSHA continues to require that they be NIOSH certified for the contaminant involved as a prerequisite to their permitted use.

OSHA is also revising the respirator related provisions in the following OSHA safety standards, § 1910.94 (Ventilation), § 1910.111 (Anhydrous Ammonia), § 1910.252 (Welding), and § 1910.262 (Pulp, Paper, and Paperboard Mills) to make them conform to the revised requirements for respirator certification, selection, and use contained in this proposal.

In addition to making existing substance specific standards conform to the revised provisions of the respiratory protection standard in general, OSHA is also requesting comments on specific respirator-related issues of three specific standards.

OSHA is intending to reinstate the provision in the lead standard that requires the use of high efficiency filters for all air purifying respirators used with lead. In 1979, OSHA had stayed that provision to allow further administrative reconsideration (44 FR 5446). The recent asbestos standard record that has been generated supports requiring the use of high efficiency filters with whatever respiratory protection equipment is used to protect against highly toxic substances. When OSHA announced the stay on the requirement for high efficiency filters in the lead standard, it was stated that NIOSH would be asked for further interpretation of the record. Partially in response to this request, NIOSH performed a study on the effectiveness of various filters in the presence of lead aerosols. The results of this study (Ex. 38–6) show a substantial difference in penetration between high efficiency filters and others. OSHA therefore believes there is a clear increase in protectiveness as a result of the use of high efficiency filters in a lead aerosol atmosphere. Moreover, OSHA believes the use of high efficiency filters does not impose an undue burden on employers in relation to the use of less efficient filters, and that requiring the use of high efficiency filters in the presence of lead—a highly toxic substance—is both appropriate and reasonable. As a result of these considerations, OSHA intends to lift the stay on enforcement of the requirement that high efficiency filters (type III filters as defined under 42 CFR Part 84) be used.

As a second issue, the OSHA asbestos standard requires the use of high efficiency filters with air-purifying respirators and does not allow the use of disposable respirators with asbestos. Reasons for not permitting the use of such respirators were that it was determined in the asbestos standard record that high efficiency filters are necessary to provide the necessary protection against penetration; and that disposable respirators for the most part also were not shown to provide adequate fit and were not by virtue of design amenable to the performance of a fit check. However, it has come to OSHA's attention that there are disposable respirators with elastomeric facepieces and high efficiency filters which are said to provide fits as good as provided by half mask elastomeric respirators which have replaceable high efficiency filters. Such disposable respirators can be quantitatively fit tested, and are designed so that fit check procedures can be performed. OSHA is

asking for comments on whether such respirators should be allowed to be used under the asbestos standard.

The third issue concerns the OSHA standard for inorganic arsenic. At the time this standard was promulgated in May 1978, disposable respirators with high efficiency filters were not available. Therefore, disposable respirators were not addressed in the respirator selection tables of the standard. Now that there are such respirators, OSHA needs to determine whether they can provide adequate assurance of fit so as to be suitable for inorganic arsenic which is known to be carcinogenic. OSHA is proposing that disposable respirators not be permitted under the inorganic arsenic standard for the same reasons as stated for the asbestos standard. OSHA is seeking comment on whether disposable respirators with and without elastomeric facepieces should or should not be allowed to be used under the inorganic arsenic standard in view of facepiece sealability or any other considerations.

O. Maritime Standards: Parts 1915, 1917, 1918

In this document OSHA is proposing to update the respiratory provisions in Shipyards, § 1915.152. OSHA requests comments on the proposal and whether any changes in the proposed language is appropriate for shipyards based on relevant unique circumstances. Currently, the respiratory provision for Marine Terminals is a cross reference to § 1910.134. See Secs. 1917.92 and 1917 (a)(2)(viii). The current respiratory provision for Longshoring is at § 1918.102 and is many years out of date. OSHA proposed on June 2, 1994 at 59 FR 28594, 28622–3, 28690 to replace it with a cross reference to § 1910.134. See proposed § 1918.1(a)(12).

OSHA requests comments on whether the proposed respirator standards are appropriately incorporated into the Marine Terminal and Longshoring Parts by cross reference or directly. OSHA requests comments on costs and feasibility issues for these sectors. OSHA also requests comments on whether provisions different from the general industry standard are appropriate based on unique circumstances in these sectors.

P. Construction Advisory Committee

The revised respirator standard that results from this rulemaking will replace the existing respiratory protection standards in the construction industry (29 CFR 1926.103) and in maritime operations (29 CFR 1915.152). Since this revision affects the construction industry, the September 1985 preproposal draft standard was presented to the Construction Advisory Committee for Occupational Safety and Health (CACOSH) for their comments. The CACOSH comments, combined with the other comments received, were considered in preparing a revision of the September 1985 draft proposal.

As part of the Notice of Proposed Rulemaking (NPRM) approval process, the revised NPRM was presented at the March 1987 CACOSH meeting and the Committee's comments were presented to OSHA at the August 1987 meeting (Ex. 39). The following discussion summarizes the issues raised in these comments and presents OSHA's response to them.

The proposal would replace the existing construction industry standard for respiratory protection, 29 CFR 1926.103, with the provisions of the revised 29 CFR 1910.134 respirator standard. The Construction Advisory Committee recommended that there should be a separate respirator standard for construction. Whether there were particular changes that should be made to the provisions of the standard to reflect respirator usage in the construction industry was not clearly addressed by the Committee since the comments they presented were equally applicable to general industry respirator use. OSHA believes that there is no need for a separate rulemaking for the construction industry since no differences in content would appear to be appropriate. Consequently this recommendation was not incorporated. However, OSHA is establishing these respiratory provisions explicitly in the construction standards as 29 CFR 1926.103.

Paragraph (a)—Scope and Application

The Construction Advisory Committee recommended that the scope and application section, paragraph (a)(1) of the standard, require that all feasible engineering controls be used by employers and that the employer demonstrate that engineering controls are not feasible before respirators are used. The proposed change would eliminate the requirement that appropriate respirators be used while engineering controls are being installed. Since the only effect of this proposed language change would be to eliminate the required use of respirators during the installation of engineering controls, it has not been adopted.

The Committee proposed that paragraph (a)(2) be modified to require that employers provide respirators at one half the PEL or TLV, and that employees be required to wear them before the PEL is exceeded. To accompany this revision the Committee proposed a new definition establishing an "action level" at one half the PEL for all regulated substances. OSHA does not believe it to be within the scope of this proposed standard for respirator use to trigger action levels and is therefore not incorporating this CACOSH recommendation.

Paragraph (b)—Definitions

The Committee suggested that the definition of an atmosphere-supplying respirator be revised to include reference to "Grade D breathing air". This definition was intended by OSHA to describe a particular technical device, the atmosphere-supplying respirator. The requirement for Grade D breathing air is contained in paragraph (i)(1)(i) of the proposed standard and is not relevant to the definition of the type of respirator. Therefore, the definition of atmosphere-supplying respirator has not been changed.

CACOSH suggested that OSHA add a definition for "Grade D breathing air" to the proposal. While this term is already described in paragraph (i), Supplied Air Quality and Use, a definition for Grade D breathing air has been added in the definition section of the proposal.

A definition for "competent person" was proposed to be added as follows: "'Competent Person' means one who is capable of identifying existing respiratory hazards in the workplace and who has the authority to take prompt corrective measures to eliminate them, as specified in 29 CFR 1926.32 (f). The duties of the competent person include at least the following: reviewing the respiratory protection program, ensuring that the employer conducts the training, fit testing, tests and maintains the records for respirators and ensuring that engineering controls in use are in proper operating condition and are functioning properly." This proposed definition would establish duties and authority for the competent person, who would perform the function of the respiratory program administrator required in paragraph (c)(2) of the proposal. However, the definition contains duties and responsibilities that go beyond the requirements set for a program administrator. These duties, such as ensuring that engineering controls are in proper operating condition and are functioning properly, are the responsibility of whomever the employer chooses to designate. Although the competent person definition has not been included in this proposal, OSHA is asking for comments on the need for this definition or for

alternative definitions to accomplish the same purpose.

In the proposal's definition of hazardous exposure level, the ACGIH TLVs are used to determine the hazardous exposure level in the absence of a PEL. The Construction Advisory Committee recommended that the NIOSH Recommended Exposure Limit (REL) should also be used along with the TLV, and that whichever was lowest to be used in determining the hazardous exposure level. OSHA agrees that the NIOSH Recommended Exposure Limits are an appropriate source for exposure limits in the absence of a PEL. However, it is not clear that the lowest value from either the TLV or REL for a particular substance should be used. OSHA has received no comment on the appropriateness of the NIOSH RELs in the docket, and is requesting comment on how OSHA should require the use of the RELs by employers in establishing hazardous exposure levels for respirator use. Language has been added to the hazardous exposure level definition to require the use of the RELs, but only in the absence of a PEL or TLV, since these values are widely recognized as appropriate for such uses. OSHA requests comments on this addition and on the use of RELs in relation to TLVs.

The proposal states in paragraph (d)(6) that air-purifying respirators may not be used for a hazardous chemical with poor or inadequate warning properties. The proposed standard defines adequate warning properties as detectable odor, taste, or irritation effects which are detectable and persistent at or below the hazardous exposure level. CACOSH recommended inclusion of a definition of "inadequate warning properties" as those associated with an odor or taste threshold equal to or greater than one-half of the substance's PEL or TLV. The CACOSH definition reduces the cutoff level for warning properties to one-half the PEL or TLV. This would reduce the number of chemicals with adequate warning properties with which air-purifying respirators can be used. OSHA requests comments and information on the appropriateness of using a cutoff level of one-half the PEL or TLV as the point where inadequate warning properties start, and on the effects such a level would have on air-purifying respirator use.

The definition of "maximum use concentration" (MUC) in the proposal limits the use of gas and vapor air-purifying elements to a maximum level which cannot exceed the NIOSH limits on the respirator approval label. CACOSH suggested that OSHA add a sentence to the definition to limit the MUC to a maximum of 1000 ppm. NIOSH in Table 5 of their Respirator Decision Logic (Ex. 38–20) presents recommended MUC levels for gas and vapor air-purifying elements. The 1000 ppm MUC is used only for organic vapor cartridges. Different MUCs are given, based on whether the element is a cartridge, chin canister, or front-or-back-mounted canister. The MUC is limited by the NIOSH Decision Logic to the maximum listed in the table or the IDLH level of the specific organic vapor, whichever is lower. OSHA requests comments on whether it should adopt the NIOSH limitations on MUC for use in the revised OSHA respirator standard.

CACOSH also suggested that OSHA add a definition for "odor threshold" as the concentration at which 100 percent of a human test group would detect the odor of a substance. However, odor thresholds vary greatly among individuals, a few of whom may be virtually insensitive to a large number of chemicals. A requirement that 100 percent of a human test group be able to identify the chemical could result in the elimination of most chemicals as having no odor threshold. OSHA has therefore not adopted this definition. However, OSHA is requesting comment on the appropriate levels that should be used in determining odor thresholds, the test methods used, and the appropriateness of requiring that odor threshold testing be performed for individuals who must wear air-purifying respirators.

The Construction Advisory Committee also recommended replacing the proposal's definition of "respirator" with the following: " 'Respirator' means any device worn by an individual and intended to reduce an exposure to airborne contaminants or supply the wearer with Grade D breathing air in a contaminated or oxygen deficient atmosphere." OSHA believes that performance characteristics of respirators should be stated where appropriate in the standard. Some respirators are adequate while others are not. However, an inadequate respirator is still a respirator. Therefore OSHA has not adopted this CACOSH change in the definition of respirator.

The Committee also proposed revising the language in the definition of service life in the proposal with the following: " 'Service Life' means the period of time it takes for a specified substance to break through a chemical or organic vapor cartridge or canister." Service life, as the definition in the proposal states, is a function not only of the type of substance but also of the specific concentration of that substance. Removing the specific concentration of the substance from the definition, as the CACOSH revised definition does, obscures the meaning of the definition, and therefore it has not been adopted. The NIOSH Respirator Decision Logic (Ex. 38–20) uses a broader definition that covers all air-purifying respirators as well as SCBA. It reads as follows: "SERVICE LIFE: The length of time required for an air-purifying element to reach a specific effluent concentration. Service life is determined by the type of substance being removed, the concentration of the substance, the ambient temperature, the specific elements being tested (cartridge or canister), the flow rate resistance, and the selected breakthrough value. The service life for a self-contained breathing apparatus (SCBA) is the period of time, as determined by the NIOSH certification tests, in which adequate breathing gas is supplied." OSHA requests comments on whether it should adopt the broader NIOSH definition of service life, replacing the definition in this proposal.

Paragraph (c)—Respirator Program

Paragraph (c)(1) of the proposal contains a requirement that the employer establish and implement a written respirator program that covers certain elements, as applicable. The Construction Advisory Committee recommended that OSHA change the word "cover" to "include" and remove the phrase "as applicable." The phrase as applicable was included in the requirements to cover situations where not all the elements listed in the paragraph would be appropriate for some particular written respiratory program. For instance, if only air-purifying respirators are to be used, it would not be applicable to include in the written program the elements covering supplied air quality, the maintenance and cleaning of supplied air respirators, or fit testing of SCBAs. Therefore, OSHA has not changed the wording in the proposal.

The Committee raised the issue of monitoring exposure levels in construction. They recommended that OSHA add a new element to the existing elements of the written respirator program in paragraph (c)(1) that would read as follows: "(i) Procedures for monitoring the work environment and selecting respirators based on monitoring results for use in the workplace." Discussion by the Committee brought out that construction work situations are not stable, and that monitoring results for a particular individual operation would likely not be returned in time by a

laboratory before that task was completed. Previous monitoring results can be used, along with past experience with similar work operations, to estimate exposure levels. The Committee then recommended that OSHA add to the standard a requirement that "If monitoring is not done, the most protective respirator shall be used." In most cases this would mean using supplied air respirators or SCBAs in the absence of monitoring. The proposal does not now require monitoring, but it does require that where monitoring results exist, the employer evaluate them in selecting the proper respirator. OSHA requests comments and suggestions on whether monitoring should be made mandatory for making respirator selections, and what monitoring procedures should be used. OSHA also requests comments on the recommendation by CACOSH that the most protective respirator must be used in the absence of monitoring.

One of the elements in the written respirator program, paragraph (c)(1)(vi), states that the program shall include procedures to ensure proper air quality for atmosphere-supplying respirators. CACOSH proposed adding the words "quantity and flow" to this element on air quality procedures. OSHA agrees that adding these words will provide more direction for employers on what the procedures should cover, and has revised the wording of this element accordingly.

In paragraph (c)(2) CACOSH recommended that OSHA substitute the term "competent person" for the language "person qualified by appropriate training and/or experience." This has been discussed previously in the CACOSH recommendation for a definition of "competent person." The language in the proposal has not been changed, but will be reviewed in light of any comments received on the "competent person" definition.

The written respiratory protection program, in paragraph (c)(3), is required to reflect current workplace conditions and respirator use. The Committee wanted to add the term "training", to require that the program reflect current workplace conditions, training and respirator use. This suggestion has not been adopted since OSHA believes that training should reflect current workplace conditions and the written respirator program, and not the reverse. It was recommended by the Committee that OSHA add to paragraph (c) a paragraph that would allow employees and designated representatives access to exposure and medical records maintained by the employer. OSHA has not adopted this suggestion, since this requirement is already included in 29 CFR 1910.20, the medical and exposure records access standard, which is referenced in this proposed standard.

In paragraph (c)(5), the employer is required to make the written program available to affected employees, designated representatives, and OSHA. The Committee requested that employers be required to send a copy of the program to the OSHA Special Assistant for Construction. This suggestion has not been adopted, since no procedures exist in the Special Assistant's Office that would utilize these written programs if they were sent in. However, language has been added that would require the sending of a copy of the program to the Assistant Secretary upon request. This should meet any possible need that may arise for copies of the written program without creating an unreasonable burden.

The Committee further recommended that the respirator program should be maintained and made available to employees at the job site, and that the medical and monitoring results pertaining to respirator use be available at the work site as well. How the latter would be performed, given the highly mobile nature of construction activities, was not clear. OSHA requests comments on this recommendation and any suggestions on how to provide the above information at the job site in a reasonable manner without placing an inappropriate burden on employers.

Paragraph (d)—Selection of Respirators

In its review of paragraph (d) of the proposal on selection of respirators, the Committee requested a new provision that would require monitoring for contaminants when air-purifying respirators are used to be sure that the maximum use concentration for the respirator type would not be exceeded. This provision is related to the requirement for monitoring that was previously discussed, and on which comments are requested.

In paragraph (d)(3) of the respirator selection section of the proposal, the employer is required to evaluate certain information when selecting respirators. The information to be evaluated is listed in paragraphs (d)(3) (i) to (xi). The Committee recommended that the word "obtain" be added to paragraph (d)(3), to require that employers "obtain and evaluate the following information for each work situation". By requiring that employers both obtain and evaluate the information, the intent of the provision would be clarified. OSHA has adopted this changed language to better clarify the provision for employers.

The proposal in paragraph (d)(4) requires that respirators approved by NIOSH be selected when they exist. The Committee wanted to remove the phrase "when they exist" since they felt that one should use the most protective respirator available, an SCBA or supplied air respirator, in cases where no approved air-purifying respirator exists. As stated in the proposal, OSHA has the option of allowing the use of non-approved respirators for certain types of exposures. The option of allowing the use of non-approved respirators has been of value in the past. An example is the ethylene oxide standard, 29 CFR 1910.1047, where the use of certain air-purifying respirators is permitted, while the use of these respirators would not have been approved by NIOSH. OSHA wants to continue to have this option with any future standard. Therefore, this recommendation has not been adopted.

In paragraph (d)(6) the proposal states that air-purifying respirators shall not be used for hazardous chemicals with poor or inadequate warning properties. However, in paragraphs (d)(6) (i) and (ii) their use with such substances is allowed when permitted under an OSHA substance specific standard or when certain conditions for use are met. As discussed previously in this section the Committee wanted to include poor odor threshold as a reason for prohibiting use, and to remove paragraph (d)(6)(ii) which allows their use under limited circumstances. OSHA has asked for comments on this issue.

In oxygen deficient atmospheres, the proposal in paragraph (d)(8) allows the use of air-purifying respirators in an atmosphere with an oxygen content of 19.5 percent or greater at altitudes of 14,000 feet or below. The Committee wanted to remove this provision, thus requiring the use of supplied air respirators for many work sites at altitudes where the use of air-purifying respirators has caused no problems. There was nothing presented at the meeting to support this request. The record on the issue has been discussed previously in this preamble, and OSHA is inviting further comment on this issue and on the use of air-purifying respirators at high altitudes on construction worksites.

Paragraph (e)—Medical Evaluations

In the medical section of the proposed standard, the Committee recommended that a mandatory medical examination be required in accordance with ANSI Z88.2 and that the standard include a list of diseases and conditions which should be considered by the physician in determining an individual's ability to

wear a respirator. As discussed in the section of this preamble on medical surveillance, OSHA is inviting comment on three specific alternatives for medical surveillance requirements.

The medical evaluation section of the proposal in paragraph (e)(1) states that the medical provisions apply for each employee required to wear a respirator for more than five hours in any work week. The Committee wanted to eliminate the five hour per work week exemption. Their concern was that there would be many times on a construction project where employees would use respiratory protection for periods much shorter than five hours, and a situation would develop where respirators could be used without requiring a respirator physical. This issue has been discussed in the medical evaluation section of the preamble, and comments have been requested on the five-hour-in-any-work-week provision. OSHA will consider the Committee's comment, along with any other comments received, in resolving this issue.

In paragraph (e)(1) of the medical evaluation provision that the Committee reviewed, the employer is required to obtain a physician's written opinion which states whether the employee has any detected medical condition which would place the employee's health at increased risk of material impairment from respirator use and any recommended limitations upon the use of respirators. The Committee suggested that OSHA revise the language in this provision to read: "For each employee required to wear a respirator the employer shall obtain from a licensed physician a written opinion based upon any detected medical condition, which states whether the employee can wear the respirator and perform the work or whether there are limitations to type of respirator worn or work performed." The Committee was concerned that the original language could be interpreted as permitting the employer to know what the medical conditions were that limit respirator use. They wanted to limit the language so that the employer would only receive from the physician an opinion on whether the employee can perform the required work while wearing a respirator or whether there is some restriction on the respirator type that can be used. The current proposal now requests comments on three alternatives for medical surveillance requirements, one of which is the provision reviewed by CACOSH. OSHA requests comments on all three alternatives and, in particular, on the need for restricting the medical opinion to only the individual's ability to wear a respirator.

Employers are required in the proposal to provide the physician performing a medical evaluation with certain information concerning the types of respirators to be used and conditions under which they will be used by employees. The Committee recommended that OSHA add a provision requiring that the employer inform the physician of the contaminants the employee will be exposed to. OSHA agrees with this comment, and has added such a provision to paragraph (e)(1).

In paragraph (e)(2) the employer is allowed to accept a new employee's previous medical examination or written physician's opinion on respirator use, provided it was conducted within a year of the date of employment. The Committee recommended that OSHA also require that these previously performed exams or written opinions meet the same conditions required of medical evaluations provided by the employer under paragraph (e)(1). This suggestion has been accepted, and appropriate language has been added to paragraph (e)(2) to require that the previously performed exams or opinions meet the requirements of paragraph (e)(1) for medical evaluations.

It was recommended that OSHA add a new provision to paragraph (e) to require that the employer provide a powered air-purifying respirator or atmosphere-supplying respirator to any employee found medically unable to wear a negative pressure respirator but otherwise able to perform the task to be done. There is no applicable record in the docket upon which to base a decision. OSHA therefore, is requesting comments or information on this issue.

Paragraph (f)—Fit Testing

With respect to fit testing procedures, the Committee recommended that paragraph (f)(1) be rewritten to state that respirators shall fit the employee so no exposure above the TLV or ceiling level shall occur. OSHA has added a new provision to require that the respirator used shall reduce employee exposures in the breathing zone to below the hazardous exposure limit. This change answers the Committee comment and preserves the language of the original proposal.

In paragraph (f)(2) the Committee suggested revising the language to clarify that a fit test is required whenever a different make or size respirator is used if the facial characteristics of the employee change. Facial changes are already addressed in paragraph (f)(7). Passing a fit test with one particular make and size respirator does not mean that a different respirator can be used without further fit testing. Therefore, reference to different makes and sizes has been added to paragraph (f)(2) to cover variations in respirator make and size.

The Committee also wanted to limit fit testing to only tight fitting negative pressure respirators. For the reasons previously discussed in the fit testing section of the preamble, OSHA does not feel this is sufficient. Therefore, the proposal continues to require fit testing of both tight fitting air-purifying as well as tight fitting atmosphere-supplying respirators.

In paragraph (f)(9) the employer is allowed to use a qualitative fit test for selecting respirators for employees who require fit factors greater than 10 in situations where outside contractors who do the quantitative fit testing are not available. A thirty day time limit is placed on this exemption from the requirement for quantitative fit testing. The Committee felt this exemption is not safe and should not be allowed. An employee who is hired between the normal visits of the quantitative fit test contractor therefore could not be assigned to any work area requiring fit factors greater than 10 until a quantitative fit test was passed. OSHA requests comments on this issue and on the Construction Advisory Committee suggestion to delete paragraph (f)(9) from the standard.

Paragraph (g)—Respirator Use

In paragraph (g)(3) of the respirator use section of the proposal, the employer is required to refuse the use of respirators that rely on a tight facepiece fit when facial conditions such as a beard or scarring would prevent such fits. The Committee wanted this provision to cover loose fitting respirators as well as tight fitting ones. However, conditions such as a beard or facial scarring would have no effect on the performance of loose fitting hoods or helmets, and OSHA therefore does not regard it as appropriate to make this change.

Employees who wear corrective glasses are required in paragraph (g)(4) to wear them in a manner that does not interfere with the facepiece seal of the respirator. The Committee suggested an additional requirement that, where the employee must wear corrective lenses and the respirator requires that these be of special design, the employer shall provide the lenses at no cost to the employee. The question of who pays for respirator corrective lenses has not previously been addressed, and OSHA has no information in the docket on this issue. Therefore, OSHA requests

comments and information on the responsibility for paying for specially designed corrective lenses for respirators.

The cleaning, sanitizing, and discarding of disposable respirators is addressed in paragraph (g)(9) of the proposal. The Committee recommended that OSHA delete this provision since it refers to disposable respirators. In an earlier discussion of assigned protection factors, the Committee recommended that OSHA only permit the use of respirators that achieve a minimum assigned protection factor of ten. Since disposable respirators, in the Committee's opinion, could only achieve an assigned protection factor of five, their use should not be permitted. The Committee therefore recommended that paragraph (g)(9), which refers to disposable respirators, be deleted since it refers to a class of respirators which could not be used. However, after further discussion the recommendation for a minimum assigned protection factor of ten was withdrawn. Since it was this withdrawn provision that supported the Committee's recommendation to deleting any reference to disposable respirators, and disposable respirators as a class are still covered by the proposal, the provision covering their cleaning, sanitizing and disposal has not been deleted.

Paragraph (h)—Maintenance and Care of Respirators

In the Maintenance and Care of Respirators section of the proposal, paragraph (h)(1) requires that respirators be cleaned and disinfected by following certain procedures. The Committee wanted to add the phrase "on paid time" in order to require that the cleaning not be required to be performed by employees on their own time. OSHA believes that this is not a respiratory protection issue but a labor relations issue that should be addressed by labor/management negotiation. Therefore, the suggested wording has not been added.

Paragraph (k)—Training

The training section of the proposal requires that employers provide a training program for employees who are required to wear respirators. The Committee wanted to add language to paragraph (k)(1) to require employers to provide, conduct and document the effectiveness of the training program. The proposal already contains the requirement that employers provide a training program, which has always been interpreted by OSHA as requiring that the training be conducted. Documenting the effectiveness would mean that some sort of testing of employee capabilities to properly use respirators after training would have to be performed. OSHA currently evaluates training programs by other means such as by seeing how respirators are being used by employees on the job and by interviewing respirator users. OSHA does not regard the suggested additional requirements proposed by the Committee as necessary for enforcement of the standard and has therefore not included them.

Paragraph (m)—Recordkeeping

The recordkeeping section of the proposal requires that employers maintain the medical evaluation record in accordance with 29 CFR 1910.20, the records access standard. The Committee wanted to add the phrase, "and make available", to this provision. Although already implied by the reference to the records access standard, the suggested language has been added to paragraph (m)(1)(iii) to require that employers maintain and make available this record in accordance with 29 CFR 1910.20.

The Committee further wanted to add a provision that all records required by this standard be retained for a period of 30 years. The records retention provisions of the records access standard already address this issue, and duplicating those requirements is felt by OSHA to be unnecessary.

Appendix B—Recommended Practices

Appendix B of the proposal contains recommended practices for performing positive and negative pressure faceseal checks. Respirator wearers are required by paragraph (g)(10) to perform a faceseal check before entering the work area by following either the recommended faceseal check methods or by following the respirator manufacturer's recommended method. The Construction Advisory Committee wanted OSHA to add a new fit check method covering the use of isoamyl acetate or irritant smoke in an abbreviated fit check procedure. OSHA request comments on the use of isoamyl acetate or irritant smoke fit check procedures for daily faceseal tests and on appropriate procedures for performing such fit check testing using these test agents.

VIII. References

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3. American National Standards Institute, *Practices for Respiratory Protection*, ANSI Z88.2–1969.
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5. Centaur Associates, Inc. *Preliminary Regulatory Impact Analysis of Alternative Respiratory Protection Standards*, 1984.
6. Schulte, Harry F. "Personal Protection Devices" in *The Industrial Environment—Its Evaluation and Control*, U.S. Government Printing Office, Washington, D.C. 20402.
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11. Luxon, Stuart G. "Harmonization of Respirator Standards in Europe", American Industrial Hygiene Association Journal, April 1973, pp. 143–149.
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14. White, N. et. al. "Critical Review of International Standards for Respiratory Protective Equipment III. Practical Performance Tests", American Industrial Hygiene Association Journal, 44 (10): 768–773 (1983).
15. Department of the Army, the Air Force, and the Defense Logistics Agency. Respiratory Protection Program, TB MED 223/AFOSH STD 161–1/OCAM 1000.2, Washington, DC, April 1977.

IX. Public Participation—Notice of Hearing

Interested persons are invited to submit written data, views, and arguments on all issues with respect to this proposed standard. These comments must be postmarked on or before February 13, 1995. Comments are to submitted in quadruplicate or 1 original (hardcopy) and 1 disk (5¼ or 3½) on WordPerfect 5.0, 5.1, 6.0 or ASCII. Note: any information not contained on disk, e.g., studies, articles, etc., must be submitted in quadruplicate

to the Docket Office, Docket No. H–049, Room N2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken with respect to each issue.

All written comments, data, views, and arguments that are received within the specific comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

Notice of Intention to Appear at the Informal Hearing

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by the proposed standard including economic and environmental impacts, will be provided at an informal public hearing to be held in Washington, DC from March 7 to March 24, 1995. If OSHA receives sufficient requests to participate in the hearing, the hearing period may be extended or shortened if there are few requests.

The hearing will commence at 9:30 a.m. on March 7, 1995, in the Auditorium, Frances Perkins Building, U.S. Department of Labor, 3rd Street and Constitution Avenue N.W., Washington, DC 20210.

All persons desiring to participate at the hearing must file in quadruplicate a notice of intention to appear, postmarked on or before January 27, 1995. The notice of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office (Room N2625), telephone (202) 219–7894, must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The issues that will be addressed;
5. A brief statement of the position that will be taken with respect to each issue; and
6. Whether the party intends to submit documentary evidence and, if so, a brief summary of it.

The notice of intention to appear shall be mailed to Mr. Thomas Hall, OSHA Division of Consumer Affairs, Docket H–049, Room N3649, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, DC 20210; telephone (202) 219–8617.

A notice of intention to appear also may be transmitted by facsimile to (202) 219–5986, by the same date, provided the original and 3 copies are sent to the same address and postmarked no more than 3 days later.

Filing of Testimony and Evidence Before the Hearing

Any party requesting more than ten (10) minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of the testimony, including any documentary evidence to be presented at the hearing. One copy shall not be stapled or bound and be suitable for copying. These materials must be provided to Mr. Thomas Hall, OSHA Division of Consumer Affairs at the address above and be postmarked no later than February 13, 1995.

Each such submission will be reviewed in light of the amount of time requested in the notice of intention to appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact prior to the informal public hearing.

Any party who has not substantially complied with this requirement may be limited to a ten-minute presentation, and may be requested to return for questioning at a later time.

Any party who has not filed a notice of intention to appear may be allowed to testify for no more than 10 minutes as time permits, at the discretion of the Administrative Law Judge, but will not be allowed to question witnesses.

Notice of intention to appear, testimony and evidence will be available for inspection and copying at the Docket Office at the address above.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m. on the first day.

At that time, any procedural matters relating to the proceeding will be resolved.

The nature of an informal rulemaking hearing is established in the legislative history of section 6 of the OSH Act and is reflected by OSHA's rules of procedure for hearings (29 CFR 1911.15(a)). Although the presiding officer is an Administrative Law Judge and limited questioning by persons who have filed notices of intention to appear is allowed on crucial issues, the proceeding is informal and legislative in type. The Agency's intent, in essence, is to provide interested persons with an opportunity to make effective oral presentations which can proceed expeditiously in the absence of procedural restraints which impede or protract the rulemaking process.

Additionally, since the hearing is primarily for information gathering and clarification, it is an informal administrative proceeding rather than an adjudicative one. The technical rules of evidence, for example do not apply. The regulations that govern hearings and the pre-hearing guidelines to be issued for this hearing will ensure fairness and due process and also facilitate the development of a clear, accurate and complete record. Those rules and guidelines will be interpreted in a manner that furthers that development. Thus, questions of relevance, procedure and participation generally will be decided so as to favor development of the record.

The hearing will be conducted in accordance with 29 CFR Part 1911. It should be noted that § 1911.4 specifies the Assistant Secretary may upon reasonable notice issue alternative procedures to expedite proceedings or for other good cause.

The hearing will be presided over by an Administrative Law Judge who makes no decision or recommendation on the merits of OSHA's proposal. The responsibility of the Administrative Law Judge is to ensure that the hearing proceeds at a reasonable pace and in an orderly manner. The Administrative Law Judge, therefore, will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911 including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections and comparable matters;
3. To confine the presentations to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit the questioning of any witnesses and to limit the time for questioning; and
6. In the Judge's discretion, to keep the record open for a reasonable, stated time (known as the post-hearing comment period) to receive written information and additional data, views and arguments from any person who has participated in the oral proceedings.

OSHA recognizes that there may be interested persons or organizations who, through their knowledge of the subject matter or their experience in the field, would wish to endorse or support the whole proposal or certain provisions of the proposal. OSHA welcomes such supportive comments, including any pertinent data and cost information

which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

X. Federalism

This Notice of Proposed Rulemaking has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of state law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' clear intent to preempt state laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce, they may not unduly burden commerce and must be justified by compelling local conditions (see OSH Act, Section 18 C).

The proposed Federal standards on respiratory protection addresses hazards which are not unique to any one state or region of the country. Nonetheless, states with occupational safety and health plans approved under Section 18 of the OSH Act will be able to develop their own state standards to deal with any special problems which might be encountered in a particular state. Moreover, because this standard is written in general, performance-oriented terms, there is considerable flexibility for state plans to require, and for affected employers to use, methods of compliance which are appropriate to the working conditions covered by the standard.

In brief, this Notice of Proposed Rulemaking addresses a clear national problem related to occupational safety and health in general industry. Those states which have elected to participate under Section 18 of the OSH Act are not preempted by this standard, and will be able to address any special conditions within the framework of the Federal Act while ensuring that the state standards are at least as effective as that standard.

XI. State Plan Standards

The 25 states and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication dates of a final standard. These 25 states are: Alaska, Arizona, California, Connecticut, New York (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

XII. List of Subjects in 29 CFR Parts 1910, 1915, and 1926

Health, Occupational safety and health, Reporting and recordkeeping requirements.

XIII. Authority and Signature

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

Accordingly, pursuant to sections 4, 6(b), 8(c), and (8)g of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), (40 U.S.C. 333); Sec. 41, Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. 941); 29 CFR Part 1911 and Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033) as applicable, 29 CFR Part 1910 is proposed to be amended as set forth below. In addition, pursuant to section 4(b)(2) of the Act, OSHA has determined that this amended standard would be more effective than the corresponding standards now in Parts 1915 and 1926 of Title 29, Code of Federal Regulations. Therefore, these corresponding standards would be superseded by these changes.

Signed at Washington, DC, this 28th day of October, 1994.

Joseph A. Dear,

Assistant Secretary of Labor for Occupational Safety and Health.

XIV. Proposed Standard and Appendices

It is hereby proposed to amend Parts 1910, 1915, and 1926 of Title 29 of the Code of Federal Regulations as follows:

PARTS 1910, 1915, 1926—[AMENDED]

1. The authority citation for Subpart I of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable. Section 1910.134 also issued under 29 CFR Part 1911.

PART 1915—[AMENDED]

2. The authority citation for 29 CFR part 1915 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable. Section 1915.99 also issued under 5 U.S.C. 553. Section 1915.152 also issued under 29 CFR Part 1911.

PART 1926—[AMENDED]

3. The authority citation for Subpart E of 29 CFR part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable. Section 1916.103 also issued under 29 CFR Part 1911.

§§ 1910.134, 1915.152 and 1926.103 [Amended]

4. Parts 1910, subpart I; 1915, subpart I; and 1926, subpart E of Title 29 of the Code of Federal Regulations are amended by adding identical sections are §§ 1910.134, 1915.152 and 1926.103 to read as follows:

§ **.*** Respiratory protection.**

(a) *Scope and application.* (1) In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by

accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to this section.

(2) Respirators shall be provided by the employer when such equipment is necessary to protect the health of the employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protective program which shall include the requirements outlined in paragraph (c) of this section.

(b) *Definitions. Adequate warning properties* means the detectable characteristics of a hazardous chemical including odor, taste, and/or irritation effects which are detectable and persistent at concentrations at or below the hazardous exposure level, and exposure at these low levels does not cause olfactory fatigue.

Air-purifying respirators means a respirator which is designed to remove air contaminants (i.e. dust, fumes, mists, gases, vapors, or aerosols) from the ambient air or air surrounding the respirator.

Assigned protection factor means the number assigned by NIOSH to indicate the capability of a respirator to afford a certain degree of protection in terms of fit and filter/cartridge penetration.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Atmosphere-supplying respirator means a respirator which supplies the wearer with air or oxygen from a source independent of the immediate ambient atmosphere. This includes air-supplied respirators and self-contained breathing apparatus (SCBA) units.

Canister or *cartridge* means the element of a gas and vapor or particulate air-purifying respirator which contains the sorbent, filter and/or catalyst which removes specific contaminants from air drawn through it.

Closed circuit respirator means a SCBA in which the air is rebreathed after exhaled carbon dioxide has been removed and the oxygen content restored by a compressed or liquid oxygen source or an oxygen generating solid.

Demand means a mode of operation for atmosphere-supplying respirators in which air flows into the respirator only when inhalation creates a lower pressure within the facepiece than the ambient atmospheric pressure.

Director means the Director of the National Institute for Occupational Safety and Health, U.S. Department of Health and Human Services, or designee.

Disposable respirator means a respiratory protective device which cannot be resupplied with an unused filter or cartridge and which is to be discarded in its entirety after its useful service life has been reached.

Filter means a media component used in respirators to remove solid and/or liquid particles from the inspired air.

Fit factor means an estimate of the ratio of the average concentration of a challenge agent in a test chamber to the average concentration inside the respirator as worn with a high-efficiency filter.

Hazardous chemical means a substance which meets the definitions for "health hazard" under the Hazard Communication Standard (29 CFR 1910.1200(c)).

Hazardous exposure level means:

(1) The permissible exposure limit (PEL) for the hazardous chemical in 29 CFR Part 1910, Subpart Z, of the General Industry Standards of the Occupational Safety and Health Administration (OSHA); or,

(2) If there is no PEL for the hazardous chemical, the Threshold Limit Values (TLV) recommended by the American Conference of Governmental Industrial Hygienists (ACGIH) in the latest edition of *Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment*: or,

(3) If there is no PEL or TLV for the hazardous chemical, the NIOSH Recommended Exposure Limit (REL); or,

(4) If there is no PEL, TLV, or REL for the hazardous chemical, an exposure level based on available scientific information including material safety data sheets.

Immediately dangerous to life or health or *IDLH* means an atmospheric concentration of any toxic, corrosive or asphyxiant substance that poses an immediate threat to life or would cause irreversible or delayed adverse health effects or would interfere with an individual's ability to escape from a dangerous atmosphere.

Maximum use concentration (MUC) means the maximum concentration of an air contaminant in which a particular respirator can be used, based on the respirator's assigned protection factor. The MUC cannot exceed the use limitations specified on the NIOSH approval label for the cartridge, canister, or filter. The MUC can be determined by multiplying the assigned protection factor for the respirator by the permissible exposure limit for the air contaminant for which the respirator will be used.

Negative pressure respirator means a respirator in which the air pressure inside the facepiece is positive during exhalation in relation to the outside air pressure and negative during inhalation in relation to the outside air pressure.

Oxygen deficient atmosphere means an atmosphere with an oxygen content of less than 19.5% by volume at altitudes of 8000 feet or below. (For altitudes above 8000 feet, see the oxygen deficient IDLH atmosphere definition.)

Oxygen deficient IDLH atmosphere means an atmosphere with an oxygen content below 16% by volume at altitudes of 3000 feet or below, or below the oxygen levels specified in Table III for altitudes up to 8000 feet, or below 19.5% for altitudes above 8000 up to 14,000 feet.

Positive pressure respirator means an atmosphere-supplying respirator which is designed so that air pressure inside the facepiece is positive in relation to the outside air pressure during inhalation and exhalation.

Powered air-purifying respirator means an air-purifying respirator which uses a blower to deliver air through the air-purifying element to the wearer's breathing zone.

Pressure demand means a mode of operation for atmosphere-supplying respirators in which the air pressure inside the respirator is substantially maintained at a specific positive pressure differential with respect to the ambient air pressure. To maintain this pressure differential additional air is admitted on demand to the facepiece when the wearer inhales.

Qualitative fit test (QLFT) means an assessment of the adequacy of respirator fit by determining whether or not an individual wearing the respirator can detect the odor, taste, or irritation of a contaminant introduced into the vicinity of the wearer's head.

Quantitative fit test (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring concentrations of a challenge agent inside and outside the facepiece. The ratio of the two measurements is an index of leakage of the seal between the respirator facepiece and the wearer's face.

Rebreather respirator. See *closed circuit respirator.*

Respirator means any device worn by an individual and intended to provide the wearer with respiratory protection against inhalation of airborne contaminants or oxygen deficient air.

Self-contained breathing apparatus (SCBA) means an atmosphere-supplying respirator for which the source of air or oxygen is contained within the respirator independent of any other source.

Service life of a chemical or organic vapor cartridge or canister means the period of time it takes for a specified concentration of a specific substance to break through the cartridge or canister. This concentration is determined by the manufacturer for each type of cartridge or canister for particular substances.

Supplied air respirator means a respirator which receives breathing air through an air line or hose from a portable or stationary source of compressed air.

(c) *Respiratory protection program*—(1) The employer in accordance with this section shall establish and implement a written respiratory protection program which shall ensure that the respirators are properly selected, fitted, used, and maintained as necessary to protect the health of employees. The program shall cover the following elements as applicable:

(i) Procedures for selecting respirators for use in the workplace;

(ii) Medical evaluations of employees required to wear respirators;

(iii) Use of respirators;

(iv) Fit testing procedures for air-purifying respirators and tight fitting positive pressure respirators;

(v) Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, or otherwise maintaining respirators;

(vi) Procedures to ensure proper air quality, quantity and flow for atmosphere-supplying respirator;

(vii) Training of employees in the respiratory and health hazards of the hazardous chemicals to which they are potentially exposed as required under the Hazard Communication standard (29 CFR 1910.1200);

(viii) Training of employees to ensure the proper use and maintenance of the respirators; and,

(iv) Procedures for periodically evaluating the effectiveness of the program.

(2) The employer shall designate a person qualified by appropriate training and/or experience to be responsible for the management and administration of the respiratory protection program and for conducting the required periodic evaluations of its effectiveness.

(3) The written respiratory protection program shall reflect current workplace conditions and respirator use.

(4) Employers shall, upon request, make the written respiratory protection program available to affected employees, their designated representatives, the Assistant Secretary, and the Director. A copy of the program shall be submitted to the Assistant Secretary and/or the Director, if requested.

(d) *Selection of respirators*—(1) The employer shall provide respirators and respiratory equipment at no cost to employees.

(2) Where elastomeric facepiece respirators are to be used, the employer shall provide a selection of respirators from an assortment of at least three sizes for each type of facepiece and from at least two different manufacturers.

(3) In addition, the employer shall obtain and evaluate the following information for each work situation:

(i) The nature of the hazard;

(ii) The physical and chemical properties of the air contaminant;

(iii) The adverse health effects of the respiratory hazard;

(iv) The relevant hazardous exposure level;

(v) The results of workplace sampling of airborne concentrations of contaminants;

(vi) The nature of the work operation or process;

(vii) The period of time respiratory protection will be worn by employees during the work shift;

(viii) The work activities of the employees and the potential stress of these work conditions on employees wearing the respirators;

(ix) Fit test results;

(x) Warning properties of the hazardous chemical; and,

(xi) The physical characteristics, functional capabilities, and limitations of the various types of respirators.

(4) The employer shall select appropriate respirators from among those approved and certified by the National Institute for Occupational Safety and Health (NIOSH).

(5) The employer shall make types of respirators available for selection and shall assure that employees use respirators in accordance with the assigned protection factor tables in the NIOSH Respirator Decision Logic published in May 1987. This is available from the NIOSH Publication Dissemination Office, DHHS (NIOSH) Publication No. 87–108, 4676 Columbia Parkway, Cincinnati, Ohio 45226 or from the OSHA Docket Office, Exhibit No. 38–20, Room N2439, 200 Constitution Avenue, NW., Washington, DC 20210.

(6) [Reserved]

(7) The employer shall not allow use of any respirator where the maximum use concentration for an air contaminant exceeds the limitations specified on the NIOSH approval label for the cartridge, canister or filter for such respirators.

(8) Air-purifying respirators shall not be used for a hazardous chemical with poor or inadequate warning properties unless either:

(i) Their use is permitted under the provisions of a substance specific OSHA standard, or

(ii) The odor or irritation threshold is not in excess of three times the hazardous exposure level and there is no associated ceiling limit.

(9) In addition, in order to use an air-purifying respirator for hazardous chemicals with poor or inadequate warning properties, at least one of the following conditions must be met:

(i) The respirator has an end of service life indicator approved by NIOSH for use with the specific chemical, or

(ii) A change schedule has been implemented to assure that air-purifying cartridges, canisters and/or filters are replaced before 80% of their useful service life has expired, based upon documented service life data, airborne concentration of the chemical, and duration of exposure.

(10) Where an oxygen deficient atmosphere or an oxygen deficient IDLH atmosphere exists, appropriate respirators shall be selected as follows:

(i) Either an air-purifying respirator or atmosphere supplying respirator may be used where an atmosphere has a measured oxygen content of 19.5% by volume or greater at altitudes of 14,000 feet or below.

(ii) An atmosphere-supplying respirator shall be used for oxygen deficient atmospheres with a measured oxygen content level above that level defined as oxygen deficient IDLH but which is less than 19.5% by volume at altitudes of 8000 feet or below

(iii) For oxygen deficient IDLH atmospheres with a measured oxygen content below 16% by volume at altitudes up to 3000 feet, or below the oxygen levels specified in Table III at altitudes up to 8000 feet, or below 19.5% at altitudes above 8000 feet up to 14,000 feet, or in atmospheres where the concentration of the hazardous chemical is unknown or in other IDLH atmospheres, either a full facepiece pressure demand SCBA or a combination full facepiece pressure demand supplied air respirator with auxiliary self-contained air supply shall be used.

TABLE I.—OXYGEN PERCENTAGES CONSTITUTING OXYGEN DEFICIENT AND OXYGEN DEFICIENT IDLH ATMOSPHERES

Column 1 altitude above sea level (in feet)	Column 2 percent oxygen below which an oxygen deficient atmosphere exists	Column 3 percent oxygen below which an oxygen deficient IDLH atmosphere exits
0 to 3000	19.5	16.0
3001 to 4000	19.5	16.4
4001 to 5000	19.5	17.1
5001 to 6000	19.5	17.8
6001 to 7000	19.5	18.5
7001 to 8000	19.5	19.3
Above 8000 to 14,000	(1)	19.5

[1] For altitudes above 8000 feet, an oxygen deficient IDLH atmosphere exists when the oxygen level falls below 19.5%.

(e) *Medical evaluation*—(1) For each employee required to wear a respirator for more than five hours during any work week, the employer shall obtain from a licensed physician a written opinion which states whether the employee has any detected medical condition which would place the employee's health at increased risk of material impairment from respirator use and any recommended limitations upon the use of respirators. In requesting the written medical opinion, the employer shall provide the licensed physician with information concerning:

(i) The type of respiratory protection to be used;

(ii) The substances the employee will be exposed to;

(iii) Description of the work effort required;

(iv) Duration and frequency of usage;

(v) The type of work performed, including any special responsibilities that affect the safety of others such as fire fighting or rescue work;

(vi) Any special environmental conditions (such as heat or confined space entry); and,

(vii) Additional requirements for protective clothing and equipment.

(2) In the case of new employees, employers may accept an already existing medical examination or written opinion from a physician provided it was conducted within a year of the date of employment, covered the same type of respirator under similar use conditions, and meets the requirements of paragraph (e)(1).

(3) The employer shall have the employee's medical status reviewed by, or under the supervision of, a licensed physician annually and at any time the employee experiences unusual difficulty breathing while being fitted for or while using a respirator. The employer shall have the responsible licensed physician provide a written opinion resulting from the review as required under paragraph (e)(1).

(f) *Fit testing*—(1) The employer shall ensure that the respirator selected fits the employee well enough to reduce employee exposures inside the mask to below the hazardous exposure level.

(2) The employer shall ensure that an employee is fit tested prior to initial use of the respirator, whenever a different make or size respirator is used, and annually thereafter.

(3) The employer shall fit test employees required to wear tight fitting air-purifying respirators and tight fitting atmosphere-supplying respirators. The fit test shall be administered using either an established qualitative or quantitative fit test procedure contained in section II of Appendix A or an alternative procedure which has been developed and approved which meets the Minimum Criteria as defined in section I of Appendix A.

(4) In order to use an alternative fit test procedure which meets the Minimum Criteria as defined in section I of Appendix A, the employer shall obtain advance approval from the Assistant Secretary. Once such a procedure is published by OSHA as an approved procedure in the **Federal Register**, any employer may use it without further approval.

(5) The employer shall present relevant data as required by Appendix A to demonstrate that any new method used provides results comparable to or better than one or more of the established methods contained in Appendix A for the type of test, i.e. qualitative or quantitative. The employer shall be permitted to use any method for which such data have already been submitted to and approved by the Assistant Secretary.

(6) Fit testing protocols.

(i) The employer shall use either qualitative or quantitative fit testing for tight fitting air-purifying respirators with quarter and half mask facepieces.

(*A*) Qualitative fit testing shall be performed in accordance with the established protocols specified in section II of Appendix A or new protocols that meet the minimum criteria contained in section I of Appendix A. If the respirator passes the qualitative test the employees may wear it in atmospheres no greater than ten times the hazardous exposure level.

(*B*) Quantitative fit testing shall be performed in accordance with an established protocol specified in section II of Appendix A or a protocol that meets the minimum criteria contained in section I of Appendix A. The test subject shall not be permitted to wear a half mask or quarter facepiece respirator unless a minimum fit factor of one hundred (100) is obtained in the test chamber. The respirator may not be worn in concentrations greater than ten (10) times the hazardous exposure level regardless of the measured fit factor in the chamber.

(ii) The employer shall use either qualitative or quantitative fit testing for tight fitting air-purifying respirators with full facepieces.

(*A*) Qualitative fit testing shall be performed in accordance with the established protocols specified in section II of Appendix A or new protocols that meet the minimum criteria contained in section I of Appendix A. If the respirator passes the qualitative fit test the employees may wear it in atmospheres no greater than ten (10) times the hazardous exposure level.

(*B*) Quantitative fit testing shall be performed in accordance with the established protocol specified in section II of Appendix A or a new protocol that meets the minimum criteria contained in section I of Appendix A. The test subject shall not be permitted to wear a full facepiece respirator unless a minimum fit factor of five hundred (500) is obtained in the test chamber. The full facepiece respirator may not be worn in concentrations greater than fifty (50) times the hazardous exposure level regardless of the measured fit factor in the chamber.

(iii) Fit testing of tight fitting atmosphere-supplying respirators and tight fitting powered air-purifying respirators.

(*A*) Tight fitting atmosphere-supplying respirators and tight fitting powered air-purifying respirators, i.e. half mask, quarter facepiece, and full facepiece, shall be fit tested using either qualitative or quantitative fit testing pursuant to paragraphs (f)(6)(i) (*A*) and (*B*).

(*B*) During the test only the facepiece shall be tested without any air-supplying equipment or attachments. This may be accomplished by testing a particular respirator facepiece make, model and size (which is available for use on atmosphere-supplying air units as well as on air-purifying respirators) which is equipped with appropriate air-purifying elements.

(*1*) Qualitative fit testing shall be performed in accordance with the established protocols specified in section II of Appendix A or a new protocol that meets the minimum criteria contained in section I of

Appendix A. If the respirator wearer passes the fit test then the same respirator facepiece (i.e. make and model and size), which is available on a NIOSH approved atmosphere-supplying respirator shall be used by the employee. The respirator shall be used with an assigned protection factor as provided in paragraphs (d) (5) and (6) of this section.

(2) Quantitative fit testing shall be performed in accordance with the protocol specified in Appendix A or a protocol that meets the minimum criteria contained in Appendix A. A NIOSH approved atmosphere-supplying respirator with the same respirator facepiece (make, model, size) with which the employee passed the quantitative fit test shall be used. The respirator shall be used with an assigned protection factor as provided in paragraphs (d) (5) and (6) of this section.

(7) The employee shall be refitted as necessary, such as when visual observations are noted regarding an employee's condition which could affect respirator fit. Conditions to look for include facial scarring, cosmetic surgery, or an obvious change in body weight.

(8) The employee, once successfully fitted, shall be given the opportunity to wear the respirator for a period of two weeks. If the respirator becomes unacceptably uncomfortable at any time, the employee shall be given the opportunity to select a different respirator facepiece and be retested.

(9) Where an employer relies on an outside contractor/party to conduct quantitative fit testing and the contractor is not readily available, and where assigned protection factors greater than 10 are necessary, the employer may administer a qualitative fit test to enable the selection of a respirator provided that a quantitative fit is administered in accordance with Appendix A within thirty (30) days.

(g) *Use of respirators*—(1) The employer shall develop and implement written standard operating procedures for the use of respirators which anticipate possible emergency as well as routine use of respirators based on the conditions in the workplace in which they are to be used.

(2) The employer shall develop and implement specific procedures for the use of respirators in atmospheres where oxygen deficiency or the concentrations of a hazardous chemical are unknown and/or potentially immediately dangerous to the life or health (IDLH) of the employees. These procedures shall include the following provisions:

(i) The employees shall wear positive pressure self-contained breathing apparatus (SCBA) or combination full facepiece pressure demand supplied air respirator with auxiliary self-contained air supply.

(ii) When an employee(s) wears a respirator in IDLH, unknown or potentially IDLH atmospheres where the employee(s) could be overcome if the respiratory protection fails, the employer shall ensure that at least one additional person located outside the IDLH atmosphere is in communication with the employee(s) in the IDLH atmosphere, and able to provide effective emergency assistance; and,

(iii) Where employees enter IDLH atmospheres, the employer shall ensure that they are equipped with retrieval equipment for lifting or removing them from the hazardous area, or shall ensure that equivalent provisions for rescue have been made.

(iv) The emergency assistance personnel present shall be equipped with a positive pressure self-contained breathing apparatus.

(3) The employer shall not permit negative pressure, pressure demand or positive pressure respirators which depend for effective performance on a tight facepiece-to-face seal to be worn by employees with conditions that prevent such fits. Examples of these conditions include facial hair that interferes with the facepiece seal, absence of normally worn dentures, facial scars or headgear that projects under the facepiece seal.

(4) If an employee wears corrective glasses or goggles, the employer shall ensure that they are worn in such a manner that they do not interfere with the seal of the facepiece to the face of the wearer.

(5) The employer shall permit employees to leave the respirator use area to wash their faces and respirator facepieces as necessary to prevent skin irritation associated with respirator use.

(6) The employer shall permit employees to leave the respirator use area to change the filter elements or replace air-purifying respirators whenever they detect the warning properties of the contaminant.

(7) The employer shall permit employees to leave the respirator use area to change the filter elements of air-purifying respirators whenever they detect a change in breathing resistance or chemical vapor breakthrough.

(8) The employer shall ensure that respirators are immediately repaired, or discarded and replaced when they are no longer in proper original working condition.

(9) The employer shall ensure that disposable respirators which cannot be cleaned and sanitized are discarded at the end of the task or the work shift, whichever comes first. A disposable respirator which can be cleaned and sanitized shall be disposed of after its useful service life has been reached.

(10) The employer shall ensure that employees upon donning the respirator perform a facepiece seal check prior to entering the work area for all respirators on which such a check is possible to be performed. The recommended procedures in Appendix B or the respirator manufacturer's recommended procedures shall be used.

(11) The employer shall ensure that each self-contained breathing apparatus used in IDLH atmospheres, or for emergency entry or fire fighting, is certified for a minimum service life of thirty minutes. This requirement does not apply to combination supplied air respirators with auxiliary air supply or to emergency escape SCBAs.

(h) *Maintenance and care of respirators*—(1) *Cleaning and disinfecting.* The employer shall ensure that respirators are cleaned and disinfected using the cleaning procedures recommended by the respirator manufacturer or cleaning procedures recommended in Appendix B at the following intervals.

(i) Routinely used respirators issued for the exclusive use of an employee shall be cleaned and disinfected after each day's use;

(ii) Routinely used respirators issued to more than one employee shall be cleaned and disinfected after each use; and,

(iii) Respirators maintained for emergency use shall be cleaned and disinfected after each use.

(2) Storage. The employer shall store respirators as follows:

(i) All respirators shall be stored in a manner that protects them from damage, dust, sunlight, extreme temperatures, excessive moisture, or damaging chemicals;

(ii) Emergency respirators shall be kept accessible to the work area. In locations where weathering, contamination, or deterioration of the respirator could occur, respirators shall be stored in compartments built to protect them. Such compartments shall be clearly marked as containing emergency respirators and shall be used in accordance with any applicable manufacturer instructions;

(iii) Non-emergency respirators shall be stored in plastic bags or otherwise protected from contamination or damage; and,

(iv) Respirators shall be packed or stored to prevent deformation of the facepiece or exhalation valve.

(3) *Inspection.* (i) The employer shall ensure that respirators are inspected as follows:

(A) All respirators used in non-emergency circumstances shall be inspected before each use and during cleaning after each use;

(B) All respirators maintained for emergency situations shall be inspected at least monthly, and checked for proper function before and after each use. Emergency escape respirators shall be inspected before being carried into the workplace; and,

(C) Self-contained breathing apparatus shall be inspected monthly. Air and oxygen cylinders shall be maintained in a fully charged state and recharged when the pressure falls to 90% of the manufacturer's recommended pressure level. The employer shall determine that the regulator and warning devices function properly.

(ii) The employer shall ensure that the respirator inspections include the following:

(A) A check of respirator function, tightness of connections and the condition of the facepiece, headstraps, valves, connecting tube, and cartridges, canisters or filters; and,

(B) A check of rubber or elastomer parts for pliability and signs of deterioration.

(iii) The employer shall certify in writing the inspection of respirators maintained for emergency use. Certification shall include the date the inspection was performed, the name (or signature) of the person that made the inspection, and a serial number or other means of identifying the inspected respirator. This certification may be in the form of a tag or label attached to the storage compartment for the respirator, or kept with the respirator, and shall be maintained until replaced by the certification of the next inspection.

(4) *Repairs.* The employer shall ensure that respirators which fail to pass inspection are removed from service and repaired or adjusted in accordance with the following:

(i) Repairs or adjustments to respirators are to be made only by persons appropriately trained to perform such operations, using parts designed for the respirator;

(ii) No repairs shall be performed that are outside the manufacturer's recommendations concerning the type and extent of repairs that can be performed; and

(iii) Reducing or admission valves or regulators shall be returned to the manufacturer or given to an appropriately trained technician for adjustment or repair.

(i) *Supplied air quality and use*—(1) The employer shall ensure that compressed air, compressed oxygen, liquid air, and liquid oxygen used for respiration is of high purity, and in accordance with the following specifications: Compressed and liquid oxygen shall meet the requirements of the latest edition of the United States Pharmacopoeia for medical or breathing oxygen; and compressed breathing air shall at least meet the requirements of the specification for Grade D breathing air as described in ANSI/Compressed Gas Association Commodity Specification G–7.1–1989 (oxygen content (v/v) of 19.5–23.5% (atmospheric air); hydrocarbon (condensed) of 5 milligrams per cubic meter of air or less; carbon monoxide of 10 ppm or less, and carbon dioxide of 1,000 ppm or less).

(2) Compressed oxygen shall not be used in atmosphere-supplying respirators or in open circuit self-contained breathing apparatus that have previously used compressed air.

(3) Oxygen shall not be used with supplied air respirators.

(4) Breathing air to respirators shall be provided from cylinders or air compressors:

(i) Cylinders shall be tested and maintained as prescribed in the Shipping Container Specification Regulations of the Department of Transportation (49 CFR part 178);

(ii) Compressors shall be constructed and situated so as to avoid entry of contaminated air into the air-supply system and shall be equipped with suitable in-line air-purifying sorbent beds and filters to further assure breathing air quality, and to minimize moisture content so that the dew point at line pressure is 10° C below the ambient temperature; and

(iii) The moisture content in compressed air cylinders shall not exceed 27 milliliters per cubic meter.

(5) The employer shall ensure that breathing air couplings are incompatible with outlets for non-respirable plant air or other gas systems to prevent inadvertent servicing of air line respirators with non-respirable gases or oxygen.

(6) The employer shall use breathing gas containers marked in accordance with the American National Standard Method of Marking Portable Compressed Gas Containers to Identify the Material Contained, Z48.1–1954 (R 1971); Federal Specification BB–A–1034a, June 21, 1968, Air, Compressed for Breathing Purposes; or Interim Federal Specification GG–13–00676b, September 23, 1976, Breathing Apparatus, Self-Contained.

(j) *Identification of filters, cartridges, and canisters*—(1) The employer shall ensure that all filters, cartridges and canisters used in the workplace are properly labeled and color coded with the NIOSH approval label before they are placed in service.

(2) The employer shall ensure that the existing NIOSH approval label on a filter, cartridge, or canister is not removed, obscured or defaced while they are in service in the workplace.

(k) *Training*—(1) The employer shall provide a training program for employees required by the employer to wear respirators which includes the following:

(i) Nature, extent, and effects of respiratory hazards to which the employee may be exposed as required under the Hazard Communication standard (29 CFR 1910.1200);

(ii) Explanation of the operation, limitations, and capabilities of the selected respirator(s);

(iii) Instruction in procedures for inspection, donning and removal, checking the fit and seals, and in the wearing of the respirator, including sufficient practice to enable the employee to become thoroughly familiar with, confident, and effective in performing these tasks;

(iv) Explanation of the procedures for maintenance and storage of the respirator;

(v) Instruction on how to deal with emergency situations involving the use of respirators or with respirator malfunctions; and

(vi) The contents of this section (29 CFR 1910.134), and of the written respiratory protection program, its location and availability.

(2) The employer shall provide the training prior to requiring the employee to wear a respirator in the workplace, and annually thereafter.

(l) *Respiratory protection program evaluation*—(1) The employer shall review the respiratory protection program at least annually, and shall conduct frequent random inspections of the workplace to ensure that the provisions of the program are being properly implemented for all affected employees. The review of the program shall include an assessment of each element required under paragraph (c)(1) of this section.

(2) The employer shall periodically consult employees wearing respirators to assess wearer acceptance and attempt to correct any problems that are revealed during this assessment. Factors to be included in the assessment are whether the respirators being used are:

(i) Preventing the occurrence of illness;

(ii) Properly fitted;

(iii) Properly selected for the hazards encountered;

(iv) Being worn when necessary; and

(v) Being maintained properly.

(m) *Recordkeeping and access to records*——(1) Medical evaluation. (i) The employer shall establish and maintain an accurate record for each employee subject to medical evaluation required by paragraph (e) of this section, in accordance with 29 CFR 1910.20, Access to Employee Exposure and Medical Records.

(ii) This record shall include:

(A) The name, social security number and description of the duties of the employee;

(B) The employer's copy of the physician's written opinion on the initial, periodic and special examinations, including results of medical examination and all tests, opinions and recommendations;

(C) A copy of the information provided to the physician as required by paragraph (e)(1) of this section.

(iii) The employer shall maintain and make available this record in accordance with 29 CFR 1910.20.

(2) *Availability.* (i) The employer shall assure that all records required to be maintained by this section shall be available or submitted upon request to the Assistant Secretary and the Director for examination and copying.

(ii) Employee medical records required by this paragraph shall be provided upon request for examination and copying to the subject employee, to anyone having the specific written consent of the subject employee, and to the Assistant Secretary and the Director in accordance with 29 CFR 1910.20.

(3) *Transfer of records.* (i) The employer shall comply with the requirements involving transfer of records set forth in 29 CFR 1910.20.

(ii) If the employer ceases to do business and there is no successor employer to receive and retain the records for the prescribed period, the employer shall notify the Director at least 90 days prior to disposal, and transmit them to the Director if requested by the Director within that period.

(n) *Effective date.* The standard in this section is effective [90 days after date of publication of the final rule in the Federal Register]

(o) *Appendixes.* The protocols in Appendix A on fit testing procedures are mandatory. The recommended practices in Appendix B and the medical evaluation procedures in Appendix C are nonmandatory.

Appendix A: Fit Testing Procedures (Mandatory)

I. New Fit Test Protocols

1. In order for a new fit test method to be used by an employer a description of the fit test method and validation testing data must be submitted to OSHA for evaluation.

2. OSHA will evaluate the method and data and if the method is found to conform to the validation criteria OSHA has established, OSHA will publish a proposed revision of 29 CFR 1910.134 under the section 6(b)(7) limited rulemaking provision of the Occupational Safety and Health Act of 1970 for public comment. OSHA will invite comments and make a final decision on the protocol after consideration of comments received on the proposal.

3. OSHA will publish a revised 29 CFR 1910.134 incorporating the new fit test method into Appendix A.

A. Minimum Criteria for a Valid Qualitative Fit Test

1. This section applies in addition to section II.A. of Appendix A where a test method and/or test agent not identified in section II.B. of Appendix A is to be used for testing the fit of a respirator. Fit tests which meet the criteria of this section may be used to verify the fit of respirators for use up to the assigned protection factors specified in the respirator selection table in paragraph (d) of this section.

2. Test Agents. (a) The test agent shall be relatively non, toxic. The concentrations generated during the test shall not exceed an OSHA permissible exposure limit, the ACGIH threshold limit value, or any known recommended exposure limit when there is no OSHA PEL or ACGIH TLV, and not create a health or physical hazard for the test subject or operator.

(b) It shall be demonstrated that the test agent used will penetrate deficiencies in the respirator facepiece to face sealing area.

(c) It shall be demonstrated that the test agent can elicit a subjective response in the test subject without fatiguing the response mechanism (i.e., smell, taste, or other relevant sensation) of the test subject.

(d) A reference concentration shall be established for the test agent. It shall be demonstrated that the test subject can detect by subjective means the test agent at the reference concentration prior to commencement of the test.

(e) A stable test agent concentration shall be established for purposes of challenging the fit of the respirator.

(f) Where a test enclosure is used, the concentration of test agent inside the test enclosure shall exceed the product of the reference concentration of the test agent, the assigned protection factor of the respirator being tested, and a safety factor of 10. For example, if the reference concentration is 1 ppm, and the respirator being tested is a half mask with an assigned protection factor of 10, then the minimum test agent concentration would be 100 ppm.

(g) Where gases/vapors are used as test agents to test air-purifying respirators, an appropriate cartridge/canister shall be utilized which affords a high degree of collection efficiency for the test agent.

(h) Precautions shall be taken to avoid allowing the test agent from the fit test area to contaminate the area where the test subjects are tested to determine their response to the threshold screening concentrations. Contamination of the area where the threshold screening test is administered by the test agent from the fit test area will render any tests unacceptable.

B. Validation Criteria for Qualitative Fit Tests

1. In order to establish a QLFT method/agent as being acceptable for an APF of 10, it shall be demonstrated that at the 95% confidence level 95% of the facepieces with a fit factor less than 100 as determined by an established QNFT method will be identified.

2. Means of establishing the 95% confidence level shall include the following procedures:

(a) The respirators used in the validation procedure shall be equipped so as to permit valid QNFT testing as specified in Appendix A of this section.

(b) The hoses on the test respirators shall be clamped shut and the new QLFT test administered. Immediately following the new QLFT method a QNFT shall be administered using the protocol established in section II.C. of Appendix A except that a strip chart recording of the test shall be made. The numbers of respirators, test subject size population, exercises sizes of respirators, and numbers of tests shall be sufficient to enable a determination to be made as to whether or not the 95% confidence level is attained in identifying whether 95% of facepieces with less than a fit factor or 100 will be identified by the new QLFT method.

C. Minimum Criteria for a Valid Particle Counting Quantitative Fit Test

1. This section applies in addition to sections II.A. and II.C.4.(j) of Appendix A where a test method and/or test agent not identified in section II.C. of Appendix A is to be used for testing the fit of a respirator. Fit tests which meet the criteria of this section may be used to verify the fit of respirators for use up to the assigned protection factors in paragraph (d) of this section.

2. Aerosol/Gas Generation.

(a) The aerosol/gas generator shall produce a stable test agent concentration (±10%) throughout the test environment. The test agent concentration shall not vary as a function of time more than ±10 percent.

(b) The concentration of the aerosol/gas shall not exceed an OSHA permissible exposure limit, the ACGIH threshold limit value, or any known recommended exposure limit when there is no OSHA PEL or ACGIH TLV, and not create a health or physical hazard for the test subject or operator.

(c) Aerosols used to test respirators with high efficiency particulate air (HEPA) filters shall be polydisperse with a mass median aerodynamic diameter of 0.6 micrometers and a geometric standard deviation of 2. The test agent shall not be appreciably absorbed or retained in the lungs upon inhalation.

(d) A test agent detection system shall be able to reliably monitor the agent concentration in the test environment and inside the respirator during the breathing cycle.

(e) If it is desired to use a test agent aerosol larger than 0.6 micrometers in diameter to test respirators with other than high efficiency filters, it shall be demonstrated that the particle size is capable of penetrating deficiencies in the respirator facepiece to face sealing area, will be reliably detected by the measurement instruments, and that a significant portion will not be retained by the lungs upon inhalation.

D. Validation Criteria for Quantitative Fit Test Protocols

1. In determining the acceptability of a new method, its accuracy across the full range of measurement must be at least as great as the QNFT protocol established in section II.C. of Appendix A.

2. Means of establishing the accuracy across the full range of measurements shall include the following procedures:

(a) The respirators used in the validation procedure shall be probed and equipped with hoses as established in the QNFT procedures in Appendix A of this section.

(b) Validation of a proposed new QNFT shall be accomplished using instrumentation with sufficient accuracy and precision. Accuracy and precision of the validation instrumentation shall be considered by the Assistant Secretary in determining whether to approve a proposed new protocol.

(c) The numbers of respirators, test subject size population, exercises sizes of respirators, and numbers of tests shall be sufficient to enable a determination to be made as to whether or not the 95% confidence level is attained with respect to agreement between the two methods.

E. Minimum Criteria for New Technology

1. Test methods/equipment shall not alter the design, balance, integrity, manner of respirator fitting, nor distort the respirator in a manner which would result in the test respirator having different characteristics than under normal use.

2. Equipment measuring: respirator efficiency; test agent penetration; protection factors; or fit factors must be capable of reliably detecting and measuring the test agent, protection factor or fit factor with a high degree of accuracy. The limitations of detection and test sensitivity must be known.

3. Test respirators must be donned and adjusted in the same manner in which it will be used in the workplace.

4. It must be demonstrated that the new technology used will produce reliable and reproducible results.

5. There shall be a sufficient safety factor applied to account for variations in the use of the respirator and reproducibility of test results.

6. Where test agents, aerosol or gases/vapors are used in a test environment the following shall apply:

(a) The test agent concentration must be maintained below an established PEL, ACGIH TLV, or recommended exposure level and not create a health hazard or physical hazard for the test subject or associated personnel.

(b) For particulate test agents:

—The particle size must be uniform, the concentration stable.

—Particles must be able to penetrate deficiencies in the respirator to face seal, but not be retained by the airways of respiratory tract,

(c) Filters, cartridges used on the test respirator must be capable of removing 99.97% of the test agent (i.e. large particles collected on dust filters, small particles collected on high efficiency filters).

(d) Detection system for test agents must be capable of detecting the concentration of test agent inside the respirator during the entire breathing cycle.

F. Validation for New Technological Methods of Determining Respirator Fit

1. In determining the acceptability of a new method, its accuracy across the full range of measurement must be at least as great as that of the QNFT protocol established in section II.C. of Appendix A.

2. Means of establishing the accuracy across the full range of measurements shall include the following:

(a) For particle counting methods, the respirators used in the validation procedure shall be probed and equipped with hoses as established in the QNFT procedures in Appendix A of this section.

(b) For any method, the new test method shall be administered first. Immediately following the new method, a QNFT shall be administered using the protocol established in section II of Appendix A except that a strip chart recording of the test shall be made. The numbers of respirators, test subject size population, exercises sizes of respirators, and numbers of tests shall be sufficient to enable a determination to be made as to whether or not the 95% confidence level is attained with respect to agreement between the two methods.

II. Current Fit Test Protocols

A. The employer shall include the following provisions in the fit test procedures. These provisions apply to both QLFT and QNFT.

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers.

2. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to get strap tension and how to determine a comfortable fit. A mirror shall be available to assist the subject in evaluating the fit and positioning the respirator. This instruction may not constitute the subject's formal training on respirator use, as it is only a review.

3. The test subject shall be informed that he/she is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape, and if fitted and used properly, will provide adequate protection.

4. The test subject shall be instructed to hold each facepiece up to the face and eliminate those which obviously do not give a comfortable fit.

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. Assistance in assessing comfort can be given by discussing the points in item II A.6. of this appendix. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:

(a) Position of the mask on the nose
(b) Room for eye protection
(c) Room to talk
(d) Position of mask on face and cheeks

7. The following criteria shall be used to help determine the adequacy of the respirator fit:

(a) Chin properly placed;

(b) Adequate strap tension, not overly tightened;

(c) Fit across nose bridge;

(d) Respirator of proper size to span distance from nose to chin;

(e) Tendency of respirator to slip;

(f) Self-observation in mirror to evaluate fit and respirator position.

8. The test subject shall conduct the negative and positive pressure fit checks as described in Appendix B or ANSI Z88.2–1980. Before conducting the negative or positive pressure test, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another facepiece shall be selected and retested if the test subject fails the fit check tests.

9. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, or long sideburns which cross the respirator sealing surface. Any type of apparel which interferes with a satisfactory fit shall be altered or removed.

10. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician to determine whether the test subject can wear a respirator while performing her or his duties.

11. If at any time within the first two weeks of use the respirator becomes uncomfortable, the test subject shall be given the opportunity to select a different facepiece and to be retested.

12. The employer shall maintain a record of the fit test administered to an employee. The record shall contain at least the following information:

(a) Name of employee;

(b) Type of respirator;

(c) Brand, size of respirator;

(d) Date of test;

(e) Where QNFT is used: the fit factor, strip chart recording or other recording of the results of the test. The record shall be maintained until the next fit test is administered.

13. *Exercise regimen.* Prior to the commencement of the fit test, the test subject shall be given a description of the fit test and the test subject's responsibilities during the test procedure. The description of the process shall include a description of the test exercises that the subject will be performing.

The respirator to be tested shall be worn for at least 5 minutes before the start of the fit test.

14. *Test Exercises.* The test subject shall perform exercises, in the test environment, in the manner described below;

(a) *Normal breathing.* In a normal standing position, without talking, the subject shall breathe normally.

(b) *Deep breathing.* In a normal standing position, the subject shall breathe slowly and deeply, taking caution so as to not hyperventilate.

(c) *Turning head side to side.* Standing in place, the subject shall slowly turn his/her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side.

(d) *Moving head up and down.* Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling).

(e) *Talking.* The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.

(f) *Grimace.* The test subject shall grimace by smiling or frowning.

(g) *Bending over.* The test subject shall bend at the waist as if he/she were to touch his/her toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units which prohibit bending at the waist.

(h) *Normal breathing.* Same as exercise 1.

Each test exercise shall be performed for one minute except for the grimace exercise which shall be performed for 15 seconds.

The test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become uncomfortable, another model of respirator shall be tried.

B. Qualitative Fit Test (QLFT) Protocols.

1. General

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator qualitative fit test program.

(b) The employer shall ensure that persons administering QLFT are able to prepare test solutions, calibrate equipment and perform tests properly, recognize invalid tests, and assure that test equipment is in proper working order.

(c) The employer shall assure that QLFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. Isoamyl Acetate Protocol

(a) Odor threshold screening.

The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.

(1) Three 1 liter glass jars with metal lids are required.

(2) Odor free water (e.g. distilled or spring water) at approximately 25 degrees C shall be used for the solutions.

(3) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.

(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated but shall not be connected to the same recirculating ventilation system.

(5) The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only one day.

(6) A test blank shall be prepared in a third jar by adding 500 cc of odor free water.

(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.

(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."

(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.

(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.

(11) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.

(b) Isoamyl acetate fit test.

(1) The fit test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.

(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.

(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.

(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber.

(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.

(6) Allow two minutes for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of his/her cooperation, and the purpose for the head exercises; or to demonstrate some of the exercises.

(7) If at any time during the test, the subject detects the banana like odor of IAA, the test has failed. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.

(8) If the test has failed, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in B.2.(b) (1) through (7) of this appendix. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.

(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before exiting the chamber.

(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

3. Saccharin Solution Aerosol Protocol

The saccharin solution aerosol QLFT protocol is the only currently available, validated test protocol for use with particulate disposable dust respirators not equipped with high-efficiency filters. The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) Taste threshold screening.

The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) During threshold screening as well as during fit testing, subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾-inch hole in front of the test subject's nose and

mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his/her wide open mouth with tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor shall spray the *Threshold check solution* into the enclosure. This Nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

(5) The *threshold check solution* consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(b) Saccharin solution aerosol fit test procedure.

(1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected in section B.3.(a) of this appendix. The respirator shall be properly adjusted and equipped with a particulate filter(s).

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the wide open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test.

(8) After generating the aerosol the test subject shall be instructed to perform the exercises in section VII. A. 14 of this appendix.

(9) Every 30 seconds the aerosol concentration shall be replenished using one half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried.

4. Irritant Fume Protocol

(a) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.

(b) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor.

(c) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5645, or equivalent. Attach one end of the smoke tube to a low flow air pump set to deliver 200 milliliters per minute.

(d) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep his/her eyes closed while the test is performed.

(e) The test conductor shall direct the stream of irritant smoke from the smoke tube towards the face seal area of the test subject. He/She shall begin at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

(f) The exercises identified in section VII. A. 14 above shall be performed by the test subject while the respirator seal is being challenged by the smoke.

(g) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether he/she reacts to the smoke. Failure to evoke a response shall void the fit test.

(h) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

C. Quantitative Fit Test (QNFT) Protocol.

1. General

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator quantitative fit test program.

(b) The employer shall ensure that persons administering QNFT are able to calibrate equipment and perform tests properly, recognize invalid tests, calculate fit factors properly and assure that test equipment is in proper working order.

(c) The employer shall assure that QNFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. Definitions

(a) Quantitative fit test. The test is performed in a test chamber. The normal air-purifying element of the respirator is replaced by a high-efficiency particulate air (HEPA) filter in the case of particulate QNFT aerosols or a sorbent offering contaminant penetration protection equivalent to high-efficiency filters where the QNFT test agent is a gas or vapor.

(b) Challenge agent means the aerosol, gas or vapor introduced into a test chamber so that its concentration inside and outside the respirator may be measured.

(c) Test subject means the person wearing the respirator for quantitative fit testing.

(d) Normal standing position means standing erect and straight with arms down along the sides and looking straight ahead.

(e) Maximum peak penetration method means the method of determining test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise is taken to be representative of average penetration into the respirator for that exercise.

(f) Average peak penetration method means the method of determining test agent penetration into the respirator utilizing a strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph or by computer integration for each exercise except the grimace exercise. Integrators or computers which calculate the actual test agent penetration into the respirator for each exercise will also be considered to meet the requirements of the average peak penetration method.

3. Apparatus

(a) Instrumentation. Aerosol generation, dilution, and measurement systems using corn oil or sodium chloride as test aerosols shall be used for quantitative fit testing except as provided for by Section I of this Appendix.

(b) Test chamber. The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without disturbing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air, yet uniform in concentration throughout the chamber.

(c) When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

(d) The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of the challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers which integrate the amount of test agent penetration leakage into the respirator for each exercise may be used provided a record of the readings is made.

(e) The combination of substitute air-purifying elements, challenge agent and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of an established exposure limit for the challenge agent at any time during the testing process.

(f) The sampling port on the test specimen respirator shall be placed and constructed so

that no leakage occurs around the port (e.g. where the respirator is probed), a free air flow is allowed into the sampling line at all times and so that there is no interference with the fit or performance of the respirator.

(g) The test chamber and test set up shall permit the person administering the test to observe the test subject inside the chamber during the test.

(h) The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent inside the test chamber constant to within a 10 percent variation for the duration of the test.

(i) The time lag (interval between an event and the recording of the event on the strip chart or computer or integrator) shall be kept to a minimum. There shall be a clear association between the occurrence of an event inside the test chamber and its being recorded.

(j) The sampling line tubing for the test chamber atmosphere and for the respirator sampling port shall be of equal diameter and of the same material. The length of the two lines shall be equal.

(k) The exhaust flow from the test chamber shall pass through a high-efficiency filter before release.

(l) When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

(m) The limitations of instrument detection shall be taken into account when determining the fit factor.

(n) Test respirators shall be maintained in proper working order and inspected for deficiencies such as cracks, missing valves and gaskets, etc.

4. Procedural Requirements

(a) When performing the initial positive or negative pressure test the sampling line shall be crimped closed in order to avoid air pressure leakage during either of these tests.

(b) An abbreviated screening isoamyl acetate test or irritant fume test may be utilized in order to quickly identify poor fitting respirators which passed the positive and/or negative pressure test and thus reduce the amount of QNFT time. When performing a screening isoamyl acetate test, combination high-efficiency organic vapor cartridges/canisters shall be used.

(c) A reasonably stable challenge agent concentration shall be measured in the test chamber prior to testing. For canopy or shower curtain type of test units the determination of the challenge agent stability may be established after the test subject has entered the test environment.

(d) Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half mask or 1 percent for a full facepiece respirator.

(e) A stable challenge concentration shall be obtained prior to the actual start of testing.

(f) Respirator restraining straps shall not be overtightened for testing. The straps shall be adjusted by the wearer without assistance from other persons to give a reasonable comfortable fit typical of normal use.

(g) The test shall be terminated whenever any single peak penetration exceeds 5 percent for half masks and 1 percent for full facepiece respirators. The test subject shall be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

(h) In order to successfully complete a QNFT, three successful fit tests are required. The results of each of the three independent fit tests must exceed the minimum fit factor needed for the class of respirator (e.g. quarter facepiece respirator, half mask respirator, full facepiece respirator) as specified in paragraph (f) of this section.

(i) Calculation of fit factors.

(1) The fit factor shall be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration measured inside the respirator for each test exercise except the grimace exercise.

(2) The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and of the end of the test.

(3) The concentration of the challenge agent inside the respirator shall be determined by one of the following methods:

(i) Average peak concentration

(ii) Maximum peak concentration

(iii) Integration by calculation of the area under the individual peak for each exercise except the grimace exercise. This includes computerized integration.

(j) Interpretation of test results. The fit factor established by the quantitative fit testing shall be the lowest of the three fit factor values calculated from the three required fit tests.

(k) The test subject shall not be permitted to wear a half mask or quarter facepiece respirator unless a minimum fit factor of 100 is obtained, or a full facepiece respirator unless a minimum fit factor of 500 is obtained.

(l) Filters used for quantitative fit testing shall be replaced at least weekly or whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily (when used) or sooner if there is any indication of breakthrough by a test agent.

Appendix B: Recommended Practices (Nonmandatory)

I. Facepiece Seal Checks

A. Positive Pressure Check

Close off the exhalation valve and exhale gently into the facepiece. The face fit is considered satisfactory if a slight positive pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation valve cover before closing off the exhalation valve and then carefully replacing it after the test.

B. Negative Pressure Check

Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s), inhale gently so that the facepiece collapses slightly, and hold the breath for ten seconds. If the facepiece remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

II. Recommended Procedures for Cleaning Respirators

A. Remove filters, cartridges, or canisters. Disassemble facepieces by removing speaking diaphragms, demand and pressure-demand valve assemblies, hoses, or any components recommended by the manufacturer. Discard or repair any defective parts.

B. Wash components in 50 °C water with a mild detergent or with a cleaner recommended by the manufacturer. A stiff bristle (not wire) brush may be used to facilitate the removal of dirt.

C. Rinse components thoroughly in clean, warm (50 °C maximum), preferably running water. Drain.

D. When the cleaner used does not contain a disinfecting agent, respirator components should be immersed for two minutes in one of the following:

1. Hypochlorite solution (50 ppm of chlorine) made by adding approximately one milliliter of laundry bleach to one liter of water at 50 °C; or,

2. Aqueous solution of iodine (50 ppm iodine) made by adding approximately 0.8 milliliters of tincture of iodine (6–8 grams ammonium and/or potassium iodine / 100 cc of 45% alcohol) to one liter of water at 50 °C; or,

3. Other commercially available cleansers of equivalent disinfectant quality when used as directed, unless their use is recommended against by the respirator manufacturer.

E. Rinse components thoroughly in clean, warm (50 °C maximum), preferably running water. Drain. The importance of thorough rinsing cannot be overemphasized. Detergents or disinfectants that dry on facepieces may result in dermatitis. In addition, some disinfectants may cause deterioration of rubber or corrosion of metal parts if not completely removed.

F. Components should be hand-dried with a clean lint-free cloth or air-dried.

G. Reassemble facepiece, replacing filters, cartridges, and canisters where necessary.

H. Test the respirator to ensure that all components work properly.

Appendix C: Medical Evaluation Procedures (Nonmandatory)

This appendix contains recommended elements that should be taken into account during the performance of the required medical evaluation for respirator use. These elements should be evaluated in taking the medical history and performing the medical examination. However, the specific nature of the medical evaluation and the extent of testing performed is left for the responsible physician to determine. This recommended list of elements to be covered is not meant to limit the physician to the testing procedures recommended, since the examining physician is free to perform additional tests if necessary to determine an individual's ability to wear a respirator. This appendix is informational and is not intended, by itself, to create any additional obligations not otherwise imposed or to detract from any existing obligations.

(A) The medical history should include:
(1) Previously diagnosed diseases, particularly stressing known cardiovascular or respiratory diseases;
(2) Problems associated with breathing during normal work activities;
(3) Past problems with respirator use;
(4) Past and current usage of medication;
(5) Any known physical conditions which may interfere with respirator use;
(6) Previous occupations; and,
(7) Use of medications whose side effects might impact upon cardiopulmonary fitness.
(B) The medical examination should assess:
(1) Hearing ability (should be sufficient to assure communication and response to instructions and alarm systems);
(2) Pulmonary function testing including spirometry for FEV_1 and FVC* (presence and degree of restrictive or obstructive disease or perfusion disorders);
(3) Cardiovascular system (evidence of symptomatic coronary artery disease, significant arrhythmias; occurrence of frequent premature ventricular contractions (PVC's) with elevated pulse rates or uncontrolled hypertension symptoms;
(4) Endocrine system (conditions which may result in sudden loss of consciousness or response capability);
(5) Neurological system (inability to perform coordinated movements and conditions affecting response and consciousness);
(6) Psychological condition (claustrophobia; severe anxiety);
(7) Miscellaneous conditions specific to the work situation (skin conditions where occlusive materials may result in symptoms or aggravation of a pre-existing dermatitis); and,
(8) Exercise stress (for those employees who use a self-contained breathing apparatus or rebreather type respirator under strenuous work conditions or in emergencies, particularly in fire and rescue operations).

XV. Proposed Substance Specific Standards Revisions

PART 1910—[AMENDED]

Subpart Z—[Amended]

5. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable, and 29 CFR Part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b), except those substances listed in the Final Rule Limits column of Table Z–1–A, which have identical limits listed in the Transitional Limits columns of Table Z–1–A, Table Z–2 or Table Z–3. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z–1–A, Table Z–2 and Z–3 also issued under 5 U.S.C. 553. Section 1910.1000, Tables Z–1–A, Z–2 and Z–3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust and formaldehyde listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Section 1910.1051 also issued under 29 U.S.C. 653.

Section 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

6. Section 1910.1001 is amended by revising paragraphs (g)(3)(i) and (g)(4)(ii) and by removing and reserving Appendix C as follows:

§ 1910.1001 Asbestos.

* * * * *

(g) * * *

(3) *Respirator program.*

(i) When respiratory protection is required, the employer shall institute a respirator program in accordance with § 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l).

* * * * *

(4) * * *

(ii) For each employee wearing negative pressure respirators or tight fitting positive pressure respirators, employers shall perform either quantitative or qualitative face fit tests at the time of initial fitting and at least every six months thereafter. The qualitative fit tests may be used only for testing the fit of half mask respirators where they are permitted to be worn, and shall be conducted in accordance with Appendix A of § 1910.134. The tests shall be used to select facepieces that provide the required protection as prescribed in Table I of this section.

* * * * *

7. Sections 1910.1003, 1910.1004, and 1910.1006 through 1910.1016 are amended by adding a new paragraph (d)(1) to each section to read as follows:

§ 1910.1003 4-Nitrobiphenyl.

§ 1910.1004 alpha-Naphthylamine.

§ 1910.1006 Methyl chloromethyl ether.

§ 1910.1007 3,3'-Dichlorobenzidine (and its salts).

§ 1910.1008 bis-Chloromethyl ether

§ 1910.1009 beta-Naphthylamine.

§ 1910.1010 Benzidine.

§ 1910.1011 4-Aminodiphenyl.

§ 1910.1012 Ethyleneimine.

§ 1910.1013 beta-Propiolactone.

§ 1910.1014 2-Acetylaminofluorene.

§ 1910.1015 4-Dimethylaminoazobenzene.

§ 1910.1016 N-Nitrosodimethylamine.

* * * * *

(d)(1) *Respirator program.* When respiratory protection is used pursuant to this section, employers shall institute a respiratory protection program in accordance with § 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l).

* * * * *

8. Section 1910.1017 is amended by revising paragraphs (g)(3) and (g)(4) to read as follows:

§ 1910.1017 Vinyl chloride.

* * * * *

(g) * * *

(3) A respiratory protection program meeting the requirements of § 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l) shall be estabished and maintained.

(4) The employer shall make types of respirators available for selection and shall assure that employees use respirators in accordance with the assigned protection factor tables in the NIOSH Respirator Decision Logic published in May 1987. This is available from the NIOSH Publication Dissemination Office, DHHS (NIOSH) Publication No. 87–108, 4676 Columbia Parkway, Cincinnati, Ohio 45226 or from the OSHA Docket Office, Exhibit No. 38–20, Room N2439, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The table that follows shows the NIOSH RDL values.

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* In interpreting spirometry, if the FVC is less than 80 percent or the FEV_1 is less than 70 percent, restriction from respirator use should be considered.

Atmospheric concentration of vinyl chloride	Required respirator
Not in excess of 10 ppm (10x PEL)	(A) Combination type C supplied air respirator, demand type, with half facepiece, and auxiliary self-contained air supply; or (B) Type C supplied air respirator, demand type, with half facepiece; or (C) Any chemical cartridge respirator with an organic vapor cartridge which provides a service life of at least 1 hour for concentrations of vinyl chloride up to 10 ppm.
Not in excess of 25 ppm (25x PEL)	(A) A powered air-purifying respirator with hood, helmet, full or half facepiece, and a canister which provides a service life of at least 4 hours for concentrations of vinyl chloride up to 25 ppm, or (B) Gas mask, front or back mounted canister which provides a service life of at least 4 hours for concentrations of vinyl chloride up to 25 ppm; or (C) Type C supplied air respirator, continuous flow type, with hood or helmet.
Not in excess of 50 ppm (50x PEL)	(A) Combination type C supplied air respirator, demand type, with full facepiece, and auxiliary self-contained air supply; or (B) Open-circuit self-contained breathing apparatus with full facepiece, in demand mode; or (C) Type C supplied air respirator, demand type, with full facepiece; or (D) Type C supplied air respirator, continuous flow type, with half or full facepiece.
Not in excess of 1000 ppm (1000x PEL)	(A) Type C supplied air respirator, pressure demand type, with half facepiece.
Not in excess of 2000 ppm (2000x PEL)	(A) Type C supplied air respirator, pressure demand type, with full facepiece.
Not in excess of 10,000 ppm (10,000x PEL).	(A) Combination type C supplied air respirator, pressure demand type, with full facepiece and auxiliary self-contained air supply; or (B) Open-circuit, self-contained breathing apparatus, pressure demand type, with full facepiece.

* * * * *

9. Section 1910.1018 is amended by revising paragraphs (h)(2)(i), Table I and Table II, (h)(2)(iii), (h)(3)(ii), (h)(3)(iii), and (h)(4)(i) as follows:

§ 1910.1018 Inorganic arsenic.

* * * * * *

(h) * * *

(2) *Respirator selection.* (i) Where respirators are required under this section the employer shall select, provide at no cost to the employee and assure the use of the appropriate respirator or combination of respirators in accordance with the assigned protection factor tables in the NIOSH Respirator Decision Logic published in May 1987. This is available from the NIOSH Publication Dissemination Office, DHHS (NIOSH) Publication No. 87–108, 4676 Columbia Parkway, Cincinnati, Ohio 45226 or from the OSHA Docket Office, Exhibit No. 38–20, Room N2439, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Table I of this section for inorganic arsenic compounds without significant vapor pressure, or Table II of this section for inorganic arsenic compounds which have significant vapor pressure show the NIOSH RDL assigned protection factor values.

(ii) * * *

TABLE I.—RESPIRATORY PROTECTION FOR INORGANIC ARSENIC PARTICULATE EXCEPT FOR THOSE WITH SIGNIFICANT VAPOR PRESSURE

Concentration of inorganic arsenic (as AS) or condition of use	Required respirator
Not greater than 100 $\mu g/m^3$ (10x PEL) ...	(A) Half mask air-purifying respirator, equipped with high efficiency filters; or[1,2] (B) Any half mask supplied air respirator.
Not greater than 250 $\mu g/m^3$ (25x PEL) ...	(A) Powered air-purifying respirator, loose fitting hood or helmet, equipped with high efficiency filters; or (B) Hood or helmet supplied air respirator, operated in continuous flow mode.
Not greater than 500 $\mu g/m^3$ (50x PEL) ...	(A) Full facepiece air-purifying respirator equipped with high efficiency filters; or (B) Powered air-purifying respirator with tight fitting half or full facepiece, equipped with high efficiency filters; or (C) Full facepiece supplied air respirator, operated in demand mode; or (D) Self-contained breathing apparatus, operated in demand mode.
Not greater than 10,000 $\mu g/m^3$ (1000x PEL).	(A) Half facepiece supplied air respirator, operated in pressure demand mode.
Not greater than 20,000 $\mu g/m^3$ (2000x PEL).	(A) Full facepiece supplied air respirator, operated in pressure demand mode.
Not greater than 100,000 $\mu g/m^3$ (10,000x PEL).	(A) Combination full facepiece pressure demand supplied air respirator with auxiliary self-contained air supply; or (B) Full facepiece self-contained breathing apparatus, operated in pressure demand mode.

[1] High efficiency filter—99.97% efficiency against 0.3 micrometer monodisperse diethylhexyl phthalate (DOP) particles.
[2] This category does not include disposable respirators, use of which is not permitted under this standard.

TABLE II.—RESPIRATORY PROTECTION FOR INORGANIC ARSENICALS (SUCH AS ARSENIC TRICHLORIDE[2] AND ARSENIC PHOSPHIDE) WITH SIGNIFICANT VAPOR PRESSURE

Concentration of inorganic arsenic (as AS) or condition of use	Required respirator
Not greater than 100 $\mu g/m^3$ (10x PEL) ...	(A) Half mask[2,3] air-purifying respirator equipped with high efficiency filter[1] and acid gas cartridge. (B) Any half mask[2,3] supplied air respirator.

TABLE II.—RESPIRATORY PROTECTION FOR INORGANIC ARSENICALS (SUCH AS ARSENIC TRICHLORIDE[2] AND ARSENIC PHOSPHIDE) WITH SIGNIFICANT VAPOR PRESSURE—Continued

Concentration of inorganic arsenic (as AS) or condition of use	Required respirator
Not greater than 250 µg/m³ (25x PEL) ...	(A) Powered air-purifying respirator, with loose fitting hood or helmet, equipped with high efficiency filters and acid gas cartridge; or (B) Hood or helmet supplied air respirator, operated in continuous flow mode.
Not greater than 500 µg/m³ (50x PEL) ...	(A) Full facepiece front or back mounted gas mask equipped with high efficiency filters and acid gas canister; or (B) Powered air-purifying respirator with tight fitting half or full facepiece,[2] equipped with high efficiency filters and acid gas canister; or (C) Full facepiece supplied air respirator, operated in demand mode; or (D) Full facepiece self contained breathing apparatus, operated in demand mode.
Not greater than 10,000 µg/m³ (1000x PEL).	(A) Half facepiece supplied air respirator, operated in pressure demand mode.
Not greater than 20,000 µg/m³ (2000x PEL).	(A) Full facepiece supplied air respirator, operated in pressure demand mode.
Not greater than 100,000 µg/m³ (10,000x PEL).	(A) Combination full facepiece pressure demand supplied air respirator with auxiliary self-contained air supply; or (B) Full facepiece self contained breathing apparatus, operated in pressure demand mode.

[1] High efficiency filter—99.97% efficiency against 0.3 micrometer monodisperse diethyl-hexyl phthalate (DOP) particles.
[2] Half mask respirators shall not be used for protection against arsenic trichloride, as it is rapidly absorbed through the skin.
[3] This category does not include disposable respirators, use of which is not permitted under this standard.

(iii) The employer shall select respirators from among those approved by NIOSH.

(3) * * *

(ii) The employer shall perform qualitative fit tests at the time of initial fitting and at least semiannually thereafter for each employee wearing respirators, where quantitative fit tests are not required. The protocols for qualitative fit testing set out in Appendix A to § 1910.134 shall be followed in administering qualitative fit tests pursuant to this section.

(iii) Employers with more than 20 employees wearing respirators shall perform a quantitative face fit test at the time of initial fitting and at least semiannually thereafter for each employee wearing negative pressure respirators. The test shall be used to select facepieces that provide the required protection as prescribed in Table I or II. The protocols for quantitative fit testing set out in Appendix A to § 1910.134 shall be followed in administering quantitative fit tests pursuant to this section.

* * * * *

(4) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with § 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l).

* * * * *

10. *Section 1910.1025 is amended by revising paragraphs (f)(2)(i) and Table II, (f)(2)(iii), (f)(3)(ii) and (f)(4)(i) and the fourth paragraph of section IV of Appendix B and removing Appendix D as follows:*

§ 1910.1025 Lead.

* * * * *

(f) * * *

(2) *Respirator selection.* (i) Where respirators are required under this section the employer shall make types of respirators available for selection and shall assure that employees use respirators in accordance with the assigned protection factor tables in the NIOSH Respirator Decision Logic published in May 1987. This is available from the NIOSH Publication Dissemination Office, DHHS (NIOSH) Publication No. 87–108, 4676 Columbia Parkway, Cincinnati, Ohio 45226 or from the OSHA Docket Office, Exhibit No. 38–20, room N2439, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Table II of this section shows the NIOSH RDL values.

* * * * *

TABLE II.—RESPIRATORY PROTECTION FOR LEAD AEROSOLS

Airborne concentration of lead or condition of use	Required respiratory[1]
Not in excess of 0.5 mg/m³ (10x PEL).	(A) Half mask air-purifying respirator equipped with high efficiency filters[2 3], or (B) Half mask supplied air respirator operated in demand (negative pressure) mode.
Not in excess of 1.25 mg/m³ (25x PEL).	(A) Powered air-purifying respirator with loose fitting hood or helmet, equipped with high efficiency filters;[3] or (B) Hood or helmet supplied air respirator, operated in continuous flow mode.
Not in excess of 2.5 mg/m³ (50x PEL).	(A) Full facepiece air-purifying respirator equipped with high efficiency filters;[3] or (B) Powered air-purifying respirator with tight fitting half mask or full facepiece equipped with high efficiency filters;[3] or (C) Half mask or full facepiece supplied air respirator, operated in demand mode; or (D) Full facepiece self-contained breathing apparatus, operated in demand mode.
Not in excess of 50 mg/m³ (1000x PEL).	(A) Half mask supplied air respirator, operated in pressure demand mode.[2]
Not in excess of 100 mg/m³ (2000x PEL).	(A) Full facepiece supplied air respirator, operated in pressure demand mode.
Note in excess of 500 mg/m³ (10,000x PEL).	(A) Combination full facepiece pressure demand supplied air respirator with auxiliary self-contained air supply; or

TABLE II.—RESPIRATORY PROTECTION FOR LEAD AEROSOLS—Continued

Airborne concentration of lead or condition of use	Required respiratory[1]
	(B) Full facepiece self-contained breathing apparatus, operated in pressure demand mode.

[1] Respirators specified for high concentrations can be used at lower concentrations of lead.
[2] Full facepiece is required if the lead aerosols cause eye or skin irritation at the use concentrations.
[3] A high efficiency particulate filter means 99.97 percent efficiency against 0.3 micron size particles.

* * * * *

(iii) The employer shall select respirators from among those approved for protection against lead dust, fume, and mist by NIOSH.

(3) * * *

(ii) Employers shall perform either quantitative or qualitative face fit tests at the time of initial fitting and at least every six months thereafter for each employee wearing negative pressure respirators. The qualitative fit tests may be used only for testing the fit of half mask respirators where they are permitted to be worn. Quantitative and qualitative fit tests shall be conducted in accordance with Appendix A of §1910.134. The tests shall be used to select facepieces that provide the required protection as prescribed in Table II of this section.

* * * * *

(4) * * *

(i) The employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l).

* * * * *

Appendix B to Section 1910.1025—Employee Standard Summary

* * * * *

IV. Respiratory Protection—Paragraph (F)

* * * * *

Your employer must assure that your respirator facepiece fits properly. Proper fit of a respirator is critical. Obtaining a proper fit on each employee may require your employer to make available two or three different mask types. In order to assure that your respirator fits properly and that facepiece leakage is minimized, your employer must give you either a qualitative or quantitative fit test in accordance with Appendix A of 29 CFR 1910.134.

* * * * *

11. *Section 1910.1029 is amended by revising paragraphs (g)(2)(i) and Table I, (g)(2)(iii) and (g)(3) to read as follows:*

§ 1910.1029 Coke oven emissions.

* * * * *

(g) * * *

(2) *Selection.* (i) Where respirators are required under this section, the employer shall make types of respirators available for selection and shall assure that employees use respirators in accordance with the assigned protection factor tables in the NIOSH Respirator Decision Logic published in May 1987. This is available from the NIOSH Publication Dissemination Office, DHHS (NIOSH) Publication No. 87–108, 4676 Columbia Parkway, Cincinnati, Ohio 45226 or from the OSHA Docket Office, Exhibit No. 38–20, Room N2439, 200 Constitution Avenue, NW., Washington, DC 20210. Table I of this section shows the NIOSH RDL values.

TABLE I.—RESPIRATORY PROTECTION FOR COKE OVEN EMISSIONS

Airborne concentration of coke oven emissions	Required respirator
(a) not in excess of 1500 µg/m³ (10x PEL).	(1) Any particulate filter respirator for dust and mist except single-use respirator; or (2) Any particulate filter respirator or combination chemical cartridge and particulate filter respirator for coke oven emissions; or (3) Half mask supplied air respirator, operated in demand mode; or (4) Any respirator listed in paragraph (g)(2)(i)(b) through (f) of this section.
(b) not in excess of 3750 µg/m³ (25x PEL).	(1) Powered air-purifying respirator with loose fitting hood or helmet equipped with high efficiency filters; or (2) Hood or helmet supplied air respirator, operated in continuous flow mode.
(c) not in excess of 7500 µg/m³ (50x PEL).	(1) Full facepiece air-purifying respirator equipped with high efficiency particulate filters or combination chemical cartridge and high efficiency particulate filter for coke oven emissions; or (2) Powered air-purifying respirator with tight fitting half mask or full facepiece equipped with high efficiency particulate filters or combination chemical cartridge and high efficiency particulate filter for coke oven emissions; or (3) Full facepiece supplied air respirator, operated in demand mode; or (4) Full facepiece supplied air respirator, operated in continuous flow mode. (5) Self-contained breathing apparatus with full facepiece, operated in demand mode.
(d) not in excess of 150 mg/m³ (1000x PEL).	(1) Half mask supplied air respirator, operated in pressure demand mode.
(e) not in excess of 300 mg/m³ (2000x PEL).	(1) Full facepiece supplied air respirator, operated in pressure demand mode.
(f) not in excess of 1500 mg/m³ (10,000x PEL).	(1) Combination full facepiece pressure demand supplied air respirator with auxiliary self-contained air supply; or (2) Full facepiece self-contained breathing apparatus, operated in pressure demand mode.

* * * * *

(ii) * * *

(iii) The employer shall select respirators from among those approved for protection against coke oven emissions by NIOSH.

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with § 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l).

* * * * *

12. *Section 1910.1043 is amended by revising paragraphs (f)(2)(i), deleting Table I, revising (f)(2)(ii), (f)(2)(iii) and (f)(3), and adding a new Appendix F to read as follows:*

* * * * *

§ 1910.1043 Cotton dust.

* * * * *

(f) * * *

(2) *Respirator selection.* (i) Where respirators are required under this section, the employer shall make types of respirators available for selection and shall assure that employees use respirators in accordance with the assigned protection factor tables in the NIOSH Respirator Decision Logic published in May 1987. This is available from the NIOSH Publication Dissemination Office, DHHS (NIOSH) Publication No. 87–108, 4676 Columbia Parkway, Cincinnati, Ohio 45226 or from the OSHA Docket Office, Exhibit No. 38–20, Room N2439, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Table 1 of Appendix F of this section shows the NIOSH RDL values.

(ii) The employer shall select respirators from those tested and certified for protection against dust by NIOSH.

(iii) Whenever negative pressure air-purifying respirators are required by this section, the employer shall, upon the request of the employee, provide the appropriate powered air-purifying respirator with a high efficiency particulate filter selected pursuant to Table 1 of this section in lieu of the negative pressure air-purifying respirator specified in Table 1 of this section.

* * * * *

(3) *Respirator program.* The employer shall institute a respiratory protection program in accordance with § 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l).

* * * * *

Appendix F—Respirator Selection

TABLE I.—RESPIRATORY PROTECTION FOR COTTON DUST

Airborne concentration of cotton dust	Required respirator
Not greater than:	
(a) 5 times the PEL	Single use or quarter mask respirator.
(b) 10 times the PEL	Half mask or full facepiece air-purifying respirator equipped with any type of particulate filter. Half mask supplied-air respirator operated in a demand (negative pressure) mode.
(c) 25 times the PEL	Hood or helmet powered air-purifying respirator equipped with any type particulate filter. Supplied-air respirator equipped with a hood or helmet and operated in a continuous flow mode.
(d) 50 times the PEL	Full facepiece air-purifying respirator equipped with a high efficiency filter. Powered air-purifying respirator equipped with a tight-fitting facepiece and a high efficiency filter. Full facepiece supplied-air respirator operated in a demand mode. Supplied-air respirator with tight-fitting facepiece operated in a continuous flow mode. Full facepiece self-contained respirator operated in a demand mode.
(e) 1,000 times the PEL	Half mask supplied-air respirator operated in a pressure demand or other positive pressure mode.
(f) 2,000 times the PEL	Full facepiece supplied-air respirator operated in a pressure demand or other positive pressure mode.
(g) 10,000 times the PEL	Full facepiece self-contained respirator operated in a pressure demand or other positive pressure mode. Full facepiece supplied-air respirator operated in a pressure demand or other positive pressure mode in combination with an auxiliary self-contained breathing apparatus operated in a pressure demand or other positive pressure mode.

13. *Section 1910.1044 is amended by revising paragraphs (h)(2)(i), (h)(2)(ii) and Table 1, and (h)(3)(i) to read as follows:*

§ 1910.1044 1,2-dibromo-3-chloropropane.

* * * * *

(h) * * *

(2) *Respirator selection* (i) Where respirators are required under this section, the employer shall select, provide at no cost to the employee, and assure that the employee uses the appropriate respirator in accordance with the assigned protection factor tables in the NIOSH Respirator Decision Logic published in May 1987. This is available from the NIOSH Publication Dissemination Office, DHHS (NIOSH) Publication No. 87–108, 4676 Columbia Parkway, Cincinnati, Ohio 45226 or from the OSHA Docket Office, Exhibit No. 38–20, Room N2439, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Table 1 shows the NIOSH RDL values.

(ii) The employer shall select respirators from among those approved by NIOSH.

TABLE 1.—RESPIRATORY PROTECTION FOR DBCP

Airborne concentration of DBCP or condition of use	Respirator type
(a) Less than or equal to 10 ppb (10x PEL).	(1) Half mask supplied-air respirator operated in demand mode; or (2) Half mask self-contained breathing apparatus operated in demand mode.
(b) Less than or equal to 25 ppb (25x PEL).	(1) Hood or helmet supplied-air respirator operated in continuous flow mode.
(c) Less than or equal to 50 ppb (50x PEL).	(1) Full facepiece supplied-air respirator operated in demand mode; or (2) Full facepiece self-contained breathing apparatus operated in demand mode; or (3) Half mask or full facepiece supplied air-respirator operated in continuous flow mode.
(d) Less than or equal to 1000 ppb (1000x PEL).	(1) Half mask supplied air-respirator operated in pressure demand or other positive pressure mode.
(e) Less than or equal to 2000 ppb (2000x PEL).	(1) Full facepiece supplied air-respirator operated in pressure demand or other positive pressure mode.

TABLE 1.—RESPIRATORY PROTECTION FOR DBCP—Continued

Airborne concentration of DBCP or condition of use	Respirator type
(f) Less than or equal to 10,000 ppb (10,000x PEL).	(1) Combination full facepiece pressure demand supplied air-respirator with auxiliary self-contained air supply. (2) Full facepiece self-contained breathing apparatus operated in pressure demand or other positive pressure mode.
(g) Firefighting	(1) Full facepiece self-contained breathing apparatus operated in pressure demand or other positive pressure mode.

* * * * *

(3) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with § 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l).

* * * * *

14. *Section 1910.1045 is amended by revising paragraphs (h)(2)(i) and Table 1, (h)(2)(ii), (h)(3)(i) and (h)(3)(iii) to read as follows:*

§ 1910.1045 Acrylonitrile.

* * * * *

(h) * * *

(2) *Respirator selection.* (i) Where respiratory protection is required under this section, the employer shall select, provide at no cost to the employee, and assure that the employee uses the appropriate respirator in accordance with the assigned protection factor tables in the NIOSH Respirator Decision Logic published in May 1987. This is available from the NIOSH Publication Dissemination Office, DHHS (NIOSH) Publication No. 87–108, 4676 Columbia Parkway, Cincinnati, Ohio 45226 or from the OSHA Docket Office, Exhibit No. 38–20, Room N2439, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Table 1 shows the NIOSH RDL values.

TABLE I.—RESPIRATORY PROTECTION FOR ACRYLONITRILE (AN)

Concentration of AN or condition of use	Respirator type
(a) Less than or equal to 20 ppm (10x PEL).	(1) Chemical cartridge respirator with organic vapor cartridge(s) and half mask facepiece; or (2) Supplied air respirator with half mask facepiece.
(b) Less than or equal to 50 ppm (25x PEL).	(1) Hood or helmet powered air purifying respirator with organic vapor cartridge(s); or (2) Hood or helmet supplied air respirator operated in continuous flow mode.
(c) Less than or equal to 100 ppm or maximum use concentration (MUC) of cartridges or canisters, whichever is lower (50x PEL).	(1) Full facepiece respirator with (A) organic vapor cartridges, (B) organic vapor gas mask chin style, or (C) organic vapor gas mask canister, front or back mounted; or (2) Half mask or full facepiece powered air purifying respirator with organic vapor cartridge/canisters; or (3) Supplied air respirator with full facepiece operated in demand mode; or (4) Self-contained breathing apparatus with full facepiece operated in demand mode; or (5) Half mask or full facepiece supplied air respirator operated in continuous flow mode.
(d) Less than or equal to 2000 ppm (1000x PEL).	(1) Half mask supplied air respirator operated in pressure demand or other positive pressure mode.
(e) Less than or equal to 4000 ppm (2000x PEL).	(1) Full facepiece supplied air respirator operated in pressure demand or other positive pressure mode.
(f) Less than or equal to 20,000 ppm (10,000x PEL).	(1) Combination full facepiece supplied air respirator with auxiliary self-contained breathing apparatus operated in pressure demand or other positive pressure mode; or (2) Self-contained breathing apparatus with full facepiece operated in pressure demand or other positive pressure mode.
(g) Firefighting	(1) Self-contained breathing apparatus with full facepiece operated in pressure demand or other positive pressure mode.
(h) Escape	(1) Any organic vapor respirator; or (2) Any self-contained breathing apparatus.

(ii) The employer shall select respirators from among those approved for use with organic vapors by NIOSH.

(3) *Respirator program.* (i) The employer shall institute a respiratory protection program in accordance with § 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l).

* * * * *

(iii) *Testing.* Fit testing of respirators shall be performed to assure that the respirator selected provides the protection required by Table 1. Fit testing shall be performed pursuant to the protocols set out in Appendix A to § 1910.134.

(A) *Qualitative fit.* The employer shall perform qualitative fit tests at the time of initial fitting and at least semiannually thereafter for each employee wearing respirators.

(B) *Quantitative fit.* Each employer with more than 10 employees wearing negative pressure respirators shall perform quantitative fit testing at the time of initial fitting and at least semiannually thereafter for each such employee.

* * * * *

15. *Section 1910.1047 is amended by revising paragraphs (g)(2)(i), (g)(2)(ii) and (g)(3) and redesignating Table 1 of paragraph (h)(2) introductory text as Table 1 of paragraph (g)(2)(i) and revising Table 1 to read as follows:*

§ 1910.1047 Ethylene oxide.

* * * * *

(g) * * *

(2) *Respirator selection.* (i) Where respiratory protection is required under this section, the employer shall select, provide at no cost to the employee, and assure that the employee uses the appropriate respirator in accordance with the assigned protection factor tables in the NIOSH Respirator Decision Logic published in May 1987. This is available from the NIOSH Publication Dissemination Office, DHHS (NIOSH) Publication No. 87–108, 4676 Columbia

Parkway, Cincinnati, Ohio 45226 or from the OSHA Docket Office, Exhibit No. 38–20, Room N2439, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Table 1 shows the NIOSH RDL values.

TABLE I.—MINIMUM REQUIREMENTS FOR RESPIRATORY PROTECTION FOR AIRBORNE EtO

Condition of use or concentration of airborne EtO (ppm)	Minimum required respirator
Equal to or less than 25 ppm (25x PEL).	(a) Hood or helmet supplied air respirator operated in continuous flow mode. (b) Hood or helmet powered air purifying respirator with EtO approved cartridge/canisters.
Equal to or less than 50 ppm (50x PEL).	(a) Full facepiece air purifying respirator with EtO approved canister, front or back mounted; or (b) Full facepiece powered air purifying respirator with EtO approved cartridge/canisters; or (c) Full facepiece supplied air respirator operated in demand mode; or (d) Full facepiece self contained breathing apparatus operated in demand mode; or
Equal to or less than 2000 ppm (2000x PEL).	(a) Full facepiece supplied air respirator operated in pressure demand mode.
Equal to or less than 10,000 ppm (10,000x PEL).	(a) Combination full facepiece pressure demand supplied air respirator with auxiliary self-contained air supply; or (b) Full facepiece self-contained breathing apparatus operated in pressure demand mode.
Firefighting	(a) Pressure demand self-contained breathing apparatus equipped with full facepiece.
Escape	(a) Any respirator described above.

Note—Respirators approved for use in higher concentrations are permitted to be used in lower concentrations.

(ii) The employer shall select respirators from among those approved for protection against EtO by NIOSH.

(3) *Respirator program.* Where respiratory protection is required by this section, the employer shall institute a respirator program in accordance with 29 CFR 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l).

* * * * *

16. *The authority citation for Subpart D of Part 1926 continues to read as follows:*

Authority: Secs. 4, 5, 6, 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333; and Secretary of Labor's Orders 12–17 (36 FR 8754, 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable. Sections 1926.55(c) and 1926.1101 also issued under 29 CFR Part 1911.

17. *Section 1926.1101 is amended by revising paragraphs (h)(3)(i) and (h)(4)(ii) and removing and reserving Appendix C as follows:*

§ 1926.1101 Asbestos.

* * * * *

(h) * * *

(3) * * * (i) Where respiratory protection is used the employer shall institute a respirator program in accordance with § 1910.134 (b), (c), (d), (f), (g), (h), (i), (j), (k), and (l).

* * * * *

(4) * * * (i) * * *

(ii) For each employee wearing negative pressure respirators or tight fitting positive pressure respirators, employers shall perform either quantitative or qualitative face fit tests at the time of initial fitting and at least every six months thereafter. The qualitative fit tests may be used only for testing the fit of half mask respirators where they are permitted to be worn, and shall be conducted in accordance with Appendix A of § 1910.134. The tests shall be used to select facepieces that provide the required protection as prescribed in Table I of this section.

* * * * *

18. *Section 1926.103 is revised to read as follows:*

§ 1926.103 Respiratory protection.

Respiratory protection for construction employment is covered by 29 CFR 1910.134.

19. *The authority citation for Part 1915 continues to read as follows:*

Authority: Sec. 41, Longshoremen's and Harbor Worker's Compensation Act (33 U.S.C. 941), secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–72 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

20. *29 CFR Part 1915 is amended by revising Subpart I to read as follows:*

Subpart I—Personal Protective Equipment

§ 1915.152 Respiratory protection.

Respiratory protection for shipyard employment is covered by 29 CFR 1910.134.

21. *The authority citation for Subpart G of Part 1910 continues to read as follows:*

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.94 and 1910.99 also issued under 29 CFR Part 1911.

22. *Section 1910.94 is amended by revising paragraphs (a)(5)(i), (a)(5)(iv), (a)(6), (c)(6)(iii)(a), and (d)(9)(vi) to read as follows:*

§ 1910.94 Ventilation.

* * * * *

(a) * * *

(5) *Personal protective equipment.* (i) Only respiratory protective equipment approved by the National Institute for Occupational Safety and Health (NIOSH) shall be used for protection of personnel against dusts produced during abrasive-blasting operations.

* * * * *

(iv) A respiratory protection program as defined and described in § 1910.134 shall be established wherever it is necessary to use respiratory protective equipment.

* * * * *

(6) *Air supply and air compressors.* The air for abrasive-blasting respirators shall be free of harmful quantities of dusts, mists, or noxious gases, and shall meet the requirements for supplied air quality and use contained in § 1910.134(i).

* * * * *

(c) * * *

(6) * * *

(iii)

(*a*) When an operator must position himself in a booth downstream of the object being sprayed, an air supplied respirator or other type of respirator approved by the National Institute for Occupational Safety and Health (NIOSH) for the material being sprayed shall be used by the operator.

* * * * *

(d) * * *

(9) * * *

(vi) When, during emergencies as described in paragraph (d)(11)(v) of this section, workers must be in areas where concentrations of air contaminants are greater than the limit set by paragraph (d)(2)(iii) of this section or oxygen concentrations are less than 19.5 percent, they shall be required to wear respirators adequate to reduce their exposure to a level below these limits, or to provide adequate oxygen. Such respirators shall also be provided in marked, quickly accessible storage compartments built for the purpose, when there exists the possibility of accidental release of hazardous concentrations of air contaminants. Respirators shall be approved by the National Institute for Occupational Safety and Health (NIOSH) and shall be selected by a competent industrial hygienist or other technically qualified source. Respirators shall be used in accordance with § 1910.134, and persons who may require them shall be trained in their use.

* * * * *

23. *The authority citation for Subpart H of Part 1910 continues to read as follows:*

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.106, 1910.107, 1910.108 and 1910.109 also issued under 29 CFR Part 1911.

24. *Section 1910.111 is amended by revising paragraphs (a)(2)(x) and (b)(10)(ii) to read as follows:*

§ 1910.111 Storage and handling of anhydrous ammonia

(a) * * *

(2) * * *

(x) *Gas mask*—Gas masks approved by the National Institute for Occupational Safety and Health (NIOSH) for anhydrous ammonia.

* * * * *

(b) * * *

(10) * * *

(ii) All stationary storage installations shall have at least two suitable gas masks in readily accessible locations. Full face masks with ammonia canisters as approved by the National Institute for Occupational Safety and Health (NIOSH) are suitable for emergency action for most leaks, particularly those that occur outdoors. For protection in concentrated ammonia atmospheres self-contained breathing air apparatus is required.

* * * * *

25. *The authority citation for Subpart Q of Part 1910 continues to read as follows:*

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Section 1910.252 also issued under 29 CFR Part 1911.

26. *Section 1910.252 is amended by revising paragraphs (c)(4)(ii), (c)(4)(iii), (c)(7)(iii), (c)(9)(i), and (c)(10) to read as follows:*

§ 1910.252 General requirements.

* * * * *

(c) * * *

(4) * * *

(ii) *Airline respirators.* In such circumstances where it is impossible to provide such ventilation, airline respirators or hose masks approved by the National Institute for Occupational Safety and Health (NIOSH) for this purpose shall be used.

(iii) *Self-contained units.* In areas immediately hazardous to life, a full facepiece pressure demand self-contained breathing apparatus or combination full facepiece pressure demand supplied air respirator with auxiliary self-contained air supply approved by NIOSH shall be used.

* * * * *

(7) * * *

(iii) *Local ventilation.* In confined spaces or indoors, welding or cutting involving metals containing lead, other than as an impurity, or involving metals coated with lead-bearing materials, including paint shall be done using local exhaust ventilation or airline respirators. Outdoors such operations shall be done using respiratory protective equipment approved by the National Institute for Occupational Safety and Health (NIOSH) for such purposes. In all cases, workers in the immediate vicinity of the cutting operation shall be protected by local exhaust ventilation or airline respirators.

* * * * *

(9)* * *

(i) *General.* Welding or cutting indoors or in confined spaces involving cadmium-bearing or cadmium-coated base metals shall be done using local exhaust ventilation or airline respirators unless atmospheric tests under the most adverse conditions have established that the workers' exposure is within the acceptable concentrations defined by § 1910.1000. Outdoors such operations shall be done using respiratory protective equipment such as fume respirators approved by the National Institute for Occupational Safety and Health (NIOSH) for such purposes.

* * * * *

(10) *Mercury.* Welding or cutting indoors or in a confined space involving metals coated with mercury-bearing materials including paint, shall be done using local exhaust ventilation or airline respirators unless atmospheric tests under the most adverse conditions have established that the workers' exposure is within the acceptable concentrations defined by § 1910.1000. Outdoors such operations shall be done using respiratory protective equipment approved by the National Institute for Occupational Safety and Health (NIOSH) for such purposes.

* * * * *

27. *The authority citation for Subpart R of Part 1910 continues to read as follows:*

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059) or 9–83 (48 FR 35736), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.267, 1910.268, 1910.269, 1910.274 and 1910.275 also issued under 29 CFR Part 1911.

28. *Section 1910.261 is amended by revising paragraphs (b)(2), (g)(10), (h)(2)(iii) and (h)(2)(iv) to read as follows:*

§ 1910.261 Pulp, paper, and paperboard mills.

* * * * *

(b) * * *

(2) *Personal protective clothing and equipment.* Foot protection, shin-guards, hard hats, noise attenuation devices, or other personal protective clothing and equipment shall be worn when the extent of the hazard is such as to warrant their use. Such equipment shall be worn whenever specifically required by other paragraphs of this section. All equipment shall be maintained in accordance with applicable American National Standards. Respirators, goggles, and protective masks, rubber gloves, rubber boots, and other such equipment shall be cleaned and disinfected before being used by another employee. Eye, head, and ear protection, where specified, shall conform to American National Standards Z24.22–1957, Z87.1–1968, and Z89.1–1969. Respiratory protection shall conform to the requirements of § 1910.134.

* * * * *

(g) * * *

(10) *Gas masks (digester building).* Gas masks shall be available. These masks shall furnish adequate protection against sulfurous acid and chlorine gases, and shall be inspected and tested at frequent intervals, not to exceed 1

month, in accordance with American National Standard Z87.1–1968, and § 1910.134.

* * * * *

(h) * * *

(2) * * *

(iii) Gas masks shall be provided for emergency use, in accordance with § 1910.134.

(iv) For emergency and rescue work, a self-contained breathing apparatus or supplied air respirator in accordance with the requirements of § 1910.134 shall be provided.

* * * * *

[FR Doc. 94–27197 Filed 11–14–94; 8:45 am]

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November 15, 1994

Part III

Environmental Protection Agency

40 CFR Parts 50 and 53
National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)—Reproposal; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 53

[AD–FDL–5103–1]

RIN 2060–AA61

National Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide)—Reproposal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA today is proposing not to revise the current 24-hour and annual primary standards but is also soliciting comment on the possible need to adopt additional regulatory measures to address short-term peak (SO_2) exposures and thereby further reduce the health risk to exercising asthmatic individuals. The alternatives under consideration include: revising the existing national ambient air quality standards (NAAQS) by adding a new 5-minute standard of 0.60 ppm, 1 expected exceedance; establishing a new regulatory program under section 303 of the Clean Air Act to supplement the protection provided by the existing NAAQS; and augmenting implementation of the existing standards by focusing on those sources or source types likely to produce high 5-minute peak SO_2 concentrations.

Included in this document are proposals to incorporate certain associated technical changes to the requirements for Ambient Air Monitoring Reference and Equivalent Methods (40 CFR part 53) and other minor technical changes regarding the 40 CFR part 50 regulations.

A related document will be published shortly in the **Federal Register** that proposes for comment the requirements for implementing the alternative regulatory measures. Included in that document are technical revisions to 40 CFR parts 51 and 58.

DATES: Written comments on this proposal must be received by February 13, 1995. The EPA will hold a public hearing on this notice in approximately 30 days. The time and place will be announced in a subsequent **Federal Register** document.

ADDRESSES: Submit comments on the proposed action on the NAAQS (40 CFR part 50) (duplicate copies are preferred) to: Air & Radiation Docket Information Center (6102), Room M–1500, Environmental Protection Agency, Attn: Docket No. A–84–25, 401 M Street, SW., Washington, DC 20460. Comments on the proposed revisions to the Ambient Air Monitoring Reference and Equivalent Methods (40 CFR part 53) should be separated from those pertaining to the standards and sent to the same address, Attn: Docket No. A–94–42. These dockets are located in the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Room M–1500, 401 M St., SW., Washington, DC. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying. For the availability of related information, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Part 50 Notice—Mr. John H. Haines, Air Quality Strategies and Standards Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5533. Part 53 Notice—Mr. Frank McElroy, Atmospheric Research and Exposure Assessment Laboratory (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–2622.

SUPPLEMENTARY INFORMATION:

Background

In 1971, the EPA promulgated primary and secondary NAAQS for sulfur oxides (measured as SO_2). The primary standards were set at 365 micrograms per cubic meter ($\mu g/m^3$) (0.14 part per million (ppm)), averaged over a 24-hour period and not to be exceeded more than once per year, and 80 $\mu g/m^3$ (0.030 ppm) annual arithmetic mean. The secondary standard was set at 1300 $\mu g/m^3$ (0.5 ppm) averaged over a period of 3 hours and not to be exceeded more than once per year. In accordance with sections 108 and 109 of the Act, EPA reviewed and revised the health and welfare criteria upon which these primary and secondary SO_2 standards were based.

On April 26, 1988 (53 FR 14926), the EPA announced its proposed decision not to revise these standards. In that notice, the Administrator also solicited comment on an alternative of adding a 1-hour primary standard of 0.4 ppm. The EPA also sought comment on additional revisions in the event a 1-hour standard was promulgated. At that time, the EPA also proposed to revise the significant harm levels, associated episode contingency plan guidance (40 CFR part 51), and the Pollutant Standard Index for SO_2 (40 CFR part 58). The EPA also proposed revisions to certain monitoring and reporting requirements (40 CFR part 58).

On April 21, 1993, the EPA announced its final decision that revision of the secondary standard was not appropriate (58 FR 21351).

Availability of Related Information

The revised criteria document, Air Quality Criteria for Particulate Matter and Sulfur Oxides (three volumes, EPA–600/8–82–029af-cf, December 1982; Volume I, NTIS # PB–84–120401, $36.50 paper copy and $9.00 microfiche; Volume II, NTIS # PB–84–120419, $77.00 paper copy and $9.00 microfiche; Volume III, NTIS # PB–84–120427, $77.00 paper copy and $20.50 microfiche); the criteria document addendum, Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of Newly Available Health Effects Information (EPA/600/8–86–020–F, NTIS # PB–87–176574, $36.50 paper copy and $9.00 microfiche); the criteria document supplement, Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of New Findings on Sulfur Dioxide Acute Exposure Health Effects in Asthmatic Individuals (1994) (EPA–600/FP–93/002); the 1982 staff paper, Review of the National Ambient Air Quality Standards for Sulfur Oxides: Assessment of Scientific and Technical Information (EPA–450/5–82–007, November 1982; NTIS # PB–84–102920, $36.50 paper copy and $9.00 microfiche); the staff paper addendum, Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information (EPA–450/05–86–013, December 1986; NTIS # PB–87–200259, $19.50 paper copy and $9.00 microfiche) and the staff paper supplement, Review of the National Ambient Air Quality Standards For Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum (1994) (EPA–452/R–94–013) are available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, or call 1–800–553–NTIS. (Add $3.00 handling charge per order.) A limited number of copies of other documents generated in connection with this standard review, such as the control techniques document, can be obtained from: U.S. Environmental Protection Agency Library (MD–35), Research Triangle Park, NC 27711, telephone (919) 541–2777. These and other related documents are also available in the EPA dockets identified above.

Table of Contents

I. Background

A. Legislative Requirements Affecting This Rule

1. The Primary Standards

Two sections of the Act govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify pollutants which "may reasonably be anticipated to endanger public health or welfare" and to issue air quality criteria for them. These air quality criteria are to "reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of (a) pollutant in the ambient air. * * *"

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one "the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria and allowing an adequate margin of safety, (is) requisite to protect the public health."

The U.S. Court of Appeals for the D.C. Circuit has held that the requirement for an adequate margin of safety for primary standards was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association* v. *EPA*, 647 F.2d 1130, 1154 (D.C. Cir. 1980), *cert. denied*, 101 S. Ct. 621 (1980); *American Petroleum Institute* v. *Costle*, 665 F.2d 1176, 1177 (D.C. Cir. 1981), *cert. denied*, 102 S. Ct. 1737 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, by selecting primary standards that provide an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful, but also to prevent lower pollutant levels that she finds pose an unacceptable risk of harm, even if that risk is not precisely identified as to nature or degree.

In selecting a margin of safety, the EPA has considered such factors as the nature and severity of the health effects involved, the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties that must be addressed. Given that the "margin of safety" requirement by definition only comes into play where no conclusive showing of harm exists, such factors, which involve unknown or only partially quantified risks, have their inherent limits as guides to action. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association* v. *EPA*, *supra*, 647 F.2d at 1161–62.

Section 109(d) of the Act (42 U.S.C. 7409(d)) requires periodic review and, if appropriate, revision of existing criteria and standards. The process by which the EPA has reviewed the original criteria and standards for sulfur oxides under section 109(d) is described in a later section of this notice.

2. Related Control Requirements

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once the EPA has established them. Under section 110 (42 U.S.C. 7410) and part D of title I of the Act (42 U.S.C. 7501–7515), States are to submit, for EPA approval, State implementation plans (SIP's) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with the EPA, also administer the prevention of significant deterioration program (42 U.S.C. 7470–7479) for these pollutants. In addition, Federal programs provide for nationwide reductions in emissions of these and other air pollutants through the Federal motor vehicle control program under title II of the Act (42 U.S.C. 7521–7574), which involves controls for automobile, truck, bus, motorcycle, and aircraft emissions; new source performance standards under section 111 (42 U.S.C. 7411); National Emission Standards for Hazardous Air Pollutants under section 112 (42 U.S.C. 7412); and title IV of the Clean Air Act Amendments of 1990 (42 U.S.C. 7651–76510), which specifically provides for major reductions in SO_2 emissions.

B. Sulfur Oxides and Existing Standards for SO_2

The principal focus of this standard review is on the health effects of SO_2, alone and in combination with other pollutants. Other sulfur oxide (SO_x) vapors (e.g., sulfur trioxide, SO_3) are not commonly found in the atmosphere. Information on the effects of the principal atmospheric transformation products of SO_2 (i.e., sulfuric acid and sulfates) was considered in the review of the particulate matter standards and addressed in the revisions to these standards promulgated on July 1, 1987 (52 FR 24634); it will be considered again in the next review of the particulate matter standards, the commencement of which was announced on April 12, 1994 (59 FR 17375).

Sulfur dioxide is a rapidly diffusing reactive gas that is very soluble in water. It is emitted principally from combustion or processing of sulfur-containing fossil fuels and ores. Sulfur dioxide occurs in the atmosphere with a variety of particles and other gases, and undergoes chemical and physical

interactions with them forming sulfates and other transformation products. At elevated concentrations, SO_2 can adversely affect human health. Annual average SO_2 levels range from less than 0.004 ppm in remote rural sites to over 0.03 ppm in the most polluted urban industrial areas. The highest short-term values are found in the vicinity (<20 km) of major point sources. In the absence of adequate controls, maximum levels at such sites for 24-hour, 3-hour, and 1-hour averages can reach or exceed 0.4 ppm, 1.4 ppm, and 2.3 ppm, respectively. The origins, relevant concentrations and potential effects of SO_2 are discussed in more detail in the revised criteria document (EPA, 1982a), in the staff paper (EPA, 1982b), in the criteria document addendum (EPA, 1986a), and the staff paper addendum (EPA, 1986b).

On April 30, 1971, the EPA promulgated the primary NAAQS for SO_2 under section 109 of the Act (36 FR 8186). The existing primary standards for sulfur oxides, measured as SO_2, are 365 $\mu g/m^3$ (0.14 ppm), averaged over a period of 24 hours and not to be exceeded more than once per year, and 80 $\mu g/m^3$ (0.030 ppm) annual arithmetic mean. The scientific and technical bases for the current standards are contained in the original criteria document, Air Quality Criteria for Sulfur Oxides (DHEW, 1970).

Implementation of SO_2 air quality standards by the States and the EPA, together with fuel use shifts and siting decisions motivated by changing economic conditions, have resulted in substantial improvements in ground level air quality. Annual emissions decreased significantly between 1975 and 1982, from 25.7 to 21.4 million metric tons/year. During the mid to late eighties and early nineties, however, annual emissions of SO_2 have remained basically the same, at approximately 20.6 million metric tons/year (EPA, 1993a).

Title IV of the Act, the acid rain program, requires that electric utilities reduce annual SO_2 emissions by 10 million short tons (9 million metric tons) per year from the 1980 baseline of 23.3 million metric tons. This reduction will be implemented in two phases. The phase 1 reductions are to be accomplished by 1995, and the bulk of the phase 2 reductions are to be accomplished by the year 2000, with an expected annual emission rate of 16.38 million metric tons that year. Total expected reductions from title IV will result in an annual emission rate of 14.22 metric tons in the year 2015.

Ambient air SO_2 trends over the decade from 1983 to 1992 show a definite downward trend, though the rate of decline has slowed over the last few years. Annual mean SO_2 decreased at a median rate of approximately 2 percent per year, resulting in a total drop of 23 percent. The annual second highest 24-hour values over this same time period decreased 31 percent, at an average rate of 4 percent per year (EPA, 1993a). The most recent trends of SO_2 measured in the ambient air have continued to show improvement. Annual mean concentrations decreased a total of 11 percent between 1990 to 1992. Over the last 2 years, the average annual mean SO_2 decrease was 7 percent. Second maximum 24-hour SO_2 concentrations declined 12 percent between 1990 and 1992 and 4 percent between 1991 and 1992 (EPA, 1993a).

C. Development of Revised Air Quality Criteria for Sulfur Oxides and Review of the Standards: Development of the Staff Paper

On October 2, 1979, the EPA announced it was revising the original criteria document for sulfur oxides concurrently with that for particulate matter to produce a combined particulate matter/sulfur oxides (PM/SOx) criteria document (44 FR 56731). A more complete history of the revisions and addenda to the criteria document and staff paper, as well as the text of all CASAC closure letters, is presented in the 1988 proposal (53 FR 14926, April 26, 1988). A brief synopsis appears below.

The EPA provided a number of opportunities for review and comment on the revised criteria document by organizations and individuals outside the Agency. Three drafts of the revised criteria document, prepared by the EPA's Environmental Criteria and Assessment Office (ECAO), were made available for external review (45 FR 24913, April 11, 1980; 46 FR 9746, Jan. 29, 1981; 46 FR 53210, Oct. 28, 1981). The EPA received and considered numerous and often extensive comments on each of these drafts, and CASAC has held three public meetings (August 20–22, 1980; July 7–9, 1981; November 16–18, 1981) to review successive drafts of the document. Transcripts of these meetings have been placed in the docket for the criteria document (ECAO CD 79–1). In addition, five public workshops were held at which the EPA, its consulting authors and reviewers, and other scientifically and technically qualified experts selected by the EPA discussed the various chapters of the draft document and suggested ways of resolving outstanding issues (45 FR 74047, Nov. 7, 1980; 45 FR 76790, Nov. 20, 1980; 45 FR 78224, Nov. 26, 1980; 45 FR 80350, Dec. 4, 1980; 46 FR 1775, Jan. 7, 1981). The comments received were considered in the preparation of the final document. A CASAC "closure" memorandum indicating the Committee's satisfaction with the final draft of the criteria document and outlining key issues and recommendations was issued in December 1981.

Following closure, a number of scientific articles were published, or accepted for publication, that appeared to be of sufficient importance to the development of criteria for the primary standards for SO_2 to necessitate an addendum to the criteria document. Two drafts of the addendum were reviewed by CASAC and members of the public in two public meetings (April 26–27, 1982; August 30–31, 1982), and transcripts of the meetings have been placed in the docket. The addendum was included as Appendix A to Volume I of the criteria document (EPA, 1982a) when the document was issued on March 20, 1984 with the proposed revisions to the ambient air quality standards for particulate matter (49 FR 10408, Mar. 20, 1984).

As part of this process, the EPA's Office of Air Quality Planning and Standards (OAQPS) in the spring of 1982 prepared the first draft of a staff paper, "Review of the National Ambient Air Quality Standards for Sulfur Oxides: Assessment of Scientific and Technical Information-OAQPS Staff Paper." The first draft and a second draft of the staff paper were reviewed at CASAC meetings on April 26–27, 1982 (47 FR 16885, April 20, 1982), and August 30–31, 1982 (47 FR 34855, Aug. 10, 1982), respectively, and transcripts of these meetings have been placed in the docket (Docket No. A–79–28). Numerous written and oral comments were received on the drafts from CASAC, representatives of organizations, individual scientists, and other interested members of the public, and some revisions engendered by these comments are discussed in an August 5, 1982 letter to CASAC (Padgett, 1982), as well as the executive summary of the staff paper. The EPA released the final OAQPS staff paper (EPA, 1982b), upon receipt of the formal CASAC closure letter in August 1983 (Goldstein, 1983), accompanied by a minority statement by one member (Higgins, 1983).

In 1984, the Administrator reviewed the standards in light of the above information and decided, at that time, not to propose any revision of the standards.

In 1986, in response to the publication in the scientific literature of a number of additional studies on the

health effects of SO_2 (as well as some new particulate matter studies), ECAO commenced a second addendum to the PM/SO_x criteria document (51 FR 11058, Apr. 1, 1986). An external review draft was made available for public comment (51 FR 24392, Jul. 3, 1986) and CASAC held a public meeting on October 15–16, 1986 to review the criteria document addendum (transcript in public docket No. A–82–37). When development of a second addendum of the criteria document was initiated in 1986, OAQPS decided to simultaneously commence an addendum to the staff paper as well (51 FR 24392, Jul. 3, 1986). An external review draft of the addendum to the staff paper was also issued, and the staff paper was reviewed at the same public CASAC meeting at which the second addendum to the criteria document was considered.

The CASAC sent a closure letter on the criteria document addendum to the Administrator dated December 15, 1986, and another on the staff paper, dated February 1987. The closure letter on the staff paper addendum, which also discusses major issues addressed by the CASAC and the Committee's recommendations, is reprinted in Appendix 1 to this notice. The final addenda to the criteria document (EPA, 1986a) and the staff paper (EPA, 1986b), are available from the address listed above. Where there are differences between the 1982 criteria document and staff paper and the more recent addenda, the addenda supersede the earlier documents.

D. Rulemaking Docket

The EPA established a standard review docket for the sulfur oxides review in July 1979. The EPA also established a rulemaking docket (Docket No. A–84–25) for the April 26, 1988 proposal as required by section 307(d) of the Act. The standard review docket (Docket No. A–79–28) and a separate docket established for criteria document revision (Docket No. ECAO–CD–79–1) have been incorporated into the rulemaking docket.

II. Summary of the 1988 Proposed Decision Not To Revise the Current Standards

On April 26, 1988 (53 FR 14926), the EPA announced its proposed decision not to revise the existing primary and secondary SO_x standards (measured as SO_2). In reaching the provisional conclusion that the current standards provided adequate protection against the health and welfare effects associated with SO_2, the EPA was mindful of uncertainties in the available evidence concerning the risk that elevated short-term (<1-hour) SO_2 concentrations pose to asthmatic individuals exercising in ambient air. Therefore, the EPA specifically requested broad public comment on the alternative of revising the current standards and adding a new 1-hour primary standard of 0.4 ppm. The notice also announced that if a 1-hour primary standard were adopted, consideration would be given to replacing the current 3-hour secondary standard (1,300 $\mu g/m^3$ (0.5 ppm)) with a 1-hour secondary standard set equal to the primary standard, and adopting an expected-exceedance form for all of the standards.

The EPA also concluded in the April 26, 1988 notice, based upon the then-current scientific understanding of the acidic deposition problem, that it would not be appropriate, at that time, to propose a separate secondary SO_x standard to provide increased protection against the acidic deposition-related effects of SO_x. The notice added that when the fundamental scientific uncertainties had been reduced through ongoing research activities, the EPA would draft and support an appropriate set of control measures.

The EPA also proposed minor technical revisions to the standards, including restating the levels for the primary and secondary standards in terms of ppm rather than $\mu g/m^3$, adding explicit rounding conventions, and specifying data completeness and handling conventions. The EPA also announced its intention to retain the block averaging convention for the 24-hour, annual, and 3-hour standards and proposed to eliminate any future questions in this regard by adding clarifying language to 40 CFR 50.4 and 50.5. Based on its assessment of the SO_2 health effects information, the EPA also proposed to revise the significant harm levels for SO_2 and the associated example air pollution episode levels (40 CFR part 51). Finally, the EPA proposed some minor modifications to the ambient air quality surveillance requirements (40 CFR part 58).

The April 26, 1988 (53 FR 14926) notice sets forth in detail the rationale for the proposals discussed above and provides other background information.

III. Post-Proposal Developments

A. Opportunities for Public Comment

Following the publication of the proposal, the EPA held a public meeting in Washington on June 10, 1988 to receive comment on the April 26, 1988 proposal. A transcript of the meeting has been placed in the public docket (Docket No. A–84–25). On July 20, 1988, the EPA announced an extension of the public comment period from July 25, 1988 to September 23, 1988 (53 FR 27362). The EPA issued a second notice on September 21, 1988 (53 FR 36587) to clarify that issues concerning block versus running averaging conventions should be fully aired in the sulfur dioxide rulemaking initiated by the April 26, 1988 notice (53 FR 14926). At the same time, the EPA extended the comment period until November 22, 1988 to provide ample opportunity for the public to comment.

B. Legislative Activity

In July 1989, legislative proposals for amending the Act were submitted to Congress. This initiative included a comprehensive program to address the acidic deposition problem. After extensive deliberation, the 1990 Amendments, including the title IV acid rain provisions, were passed by Congress and signed into law by the President on November 15, 1990. As discussed earlier in section I.B., and below, title IV of the 1990 Amendments was developed specifically to address the acidic deposition problem but will have an attendant benefit of reducing SO_2-related health effects.

C. Litigation on Secondary Standard

Prior to the 1988 proposal, the Environmental Defense Fund and other plaintiffs had sued the EPA under section 304 of the Act to compel review and revision of the NAAQS for SO_x under section 109(d)(1) of the Act, *Environmental Defense Fund* v. *Reilly*, No. 85 C.V. 9507 (S.D.N.Y.). In response to a decision of the U.S. Court of Appeals for the Second Circuit in 1989, *Environmental Defense Fund* v. *Thomas*, 870 F.2d 892 (2d Cir. 1989), the EPA and the plaintiffs ultimately entered into a consent decree as an alternative to further litigation. The decree required the EPA to take final action by April 15, 1993 on the secondary standard portion of the 1988 proposed rulemaking.

D. Decision on Secondary Standard

A final decision under section 109(d)(1) of the Act that revision of the secondary standard was not appropriate was signed on April 15, 1993 and was published in the *Federal Register* on April 21, 1993 (58 FR 21351). The rationale for the decision is set forth in the April 21, 1993 notice. At that time it was also announced that when action was completed on the primary standards portion of the 1988 proposal, the EPA would decide whether to adopt minor technical changes discussed in the 1988 proposal.

E. Litigation on Primary Standard

In 1992, the American Lung Association sued the EPA to compel review and, if appropriate, revision of the primary standards for SO_x, *American Lung Association* v. *Browner*, No. 92–CV–5316 (ERK) (E.D.N.Y.). The U.S. District Court for the Eastern District of New York subsequently issued an order requiring that the EPA by November 1, 1994: take final action on the 1988 proposed decision not to revise the primary standards, or repropose and take final action on the reproposal within 1 year after the close of the public comment period.

F. Supplementation of the Criteria Document and the Staff Paper

In response to the more recent publication of controlled human studies on the health effects of short-term peaks of SO_2 on asthmatic individuals, the ECAO commenced preparation of a supplement to the second addendum to the PM/SO_2 criteria document in 1992. The OAQPS prepared a draft of a supplement to the staff paper addendum to update its assessment of the new information contained in the Criteria Document Supplement and to take into account more recent air quality and exposure information. Initial drafts of these documents were completed in June, 1993. The EPA announced the availability of an external review draft of both documents for public comment on July 30, 1993 (58 FR 40818), and the documents were reviewed by the CASAC at a public meeting on August 19, 1993. Recommended changes were made, and revised drafts of both documents were made available for public comment (59 FR 11985, March 15, 1994). Both documents were reviewed at a public CASAC meeting on April 12, 1994. The CASAC provided its advice and recommendations to the Administrator in a letter dated June 1, 1994 that is reprinted in Appendix 2.

IV. Summary of Public Comments as to Primary Standards and Associated Technical Changes

The following discussion summarizes in general terms the comments received from the public regarding the key aspects of the April 26, 1988 notice as they pertain to the primary standards and associated technical changes. The individual comments have been entered into the public docket (Docket No. A–84–25). For a summary of public comments on the secondary standard, see 58 FR 21354, Apr. 21, 1993.

Extensive written comments were received on the 1988 proposal. Of some 90 written submissions, 33 were provided by individual industrial concerns or industry groups, 14 by State, local and Federal government agencies and organizations, 14 by environmental and public interest groups, and 29 by individual private citizens.[1] The comments on the key aspects of the April 26, 1988 notice pertaining to the primary standard and associated part 50 technical changes are summarized below.

A. Current 24-Hour and Annual Standards

Virtually all of the comments that specifically addressed the adequacy of the current standards supported the Administrator's 1988 finding that the current primary SO_2 standards are adequate to protect the public health from the effects associated with 24-hour and annual average SO_2 concentrations in the atmosphere. As discussed below, the principal exceptions were the comments submitted on the issue of the averaging convention of the standards. These commenters maintained that the current primary standards would not provide adequate protection against adverse health effects if measurements of the currently prescribed concentration levels were restricted to the block averaging convention.

B. Averaging Convention for the Current Standards

Comments on the Administrator's decision to retain the block averaging convention for the 3-hour, 24-hour, and annual standards were sharply divided. The industry comments on this issue strongly supported the proposed decision to retain the block averaging convention as the appropriate method for determining compliance with the current standards. In support of this position, these commenters typically took note of the text of the 1971 promulgation notice, the Air Quality Criteria for Sulfur Oxides (DHEW, 1970), contemporaneous papers that discussed how the measurements were to be collected and analyzed, and the fact that implementation of the standards for the most part has been based on block averaging. The environmental groups maintained, however, that the wording of the original standards clearly did not preclude the use of the running averaging convention; that the EPA's monitoring capabilities, guidance, and implementation practice demonstrated that the standards were not restricted to block averaging; and accordingly that the use of running averaging would not represent a tightening of the standards. Several State agencies supported the adoption of a running interpretation or requested that the EPA remain silent so as not to undercut the States' use of running averages, while other States and municipalities supported the EPA's proposed decision.

C. 1-Hour Standard Alternative

Discussion on this subject was highly polarized. Industry groups and their representatives uniformly opposed a short-term standard, while environmental groups, private citizens, and most State and local agencies that commented strongly favored the adoption of such a standard. Industry maintained that the clinical studies of asthmatics used to support the possible need for a short-term standard failed to show effects that were of such medical significance as to be considered "adverse" under the Act. Environmental groups argued that the effects seen were medically significant and "adverse" at concentrations below 0.5 ppm and called for a standard to be set at levels considerably below the 0.4 ppm, 1-hour alternative that was presented for comment. The nature of the comments were such that there was virtually no consensus over the significance of effects among industry, environmental groups, and the different medical experts that commented on the issue.

In support of their position that a short-term standard was not needed, industry groups placed great weight on the results of the exposure analysis presented in the April 26, 1988 notice. They maintained that the analysis demonstrated that the current standards provided considerable protection against short-term peak exposures and that the remaining risk did not pose a significant public health problem. Some environmental groups took exception to the EPA's use of the exposure analysis. They maintained that a large under-counting of exposures occurred because the analysis did not address potential exposures from nonutility sources such as nonferrous smelters, paper mills, and petroleum refineries. Some also argued that the EPA's reliance on the exposure analysis as a basis for retaining the existing standards was without legal authority. These commenters were also critical of the Agency's use of typical activity patterns and maintained that other aspects of the analysis were deficient. Industry groups generally supported the use of exposure analyses

[1] The numerical distribution of comments in each category should be viewed with caution. Industry groups typically submit comments on behalf of their member companies in lieu of having each of their member companies sending separate comments. Similarly, comments from environmental or other interest groups represent the views of a number of individuals.

in the standard setting process and maintained that the EPA's focus on utilities was appropriate given that they are the largest emitters of SO_2.

Environmental groups and private citizens also expressed concern that the significance of asthma episodes were being downplayed and raised concerns about exposures of children, who were dependent on adults for medication and care. They were also highly critical of the EPA's characterization of the number of asthmatics (up to 100,000) potentially at risk to SO_2 peak exposures as small.

State and local agencies that commented mostly supported the adoption of a short-term 1-hour standard.

Finally, environmental groups maintained that the 1-hour alternative would not protect against short-term 2- to 10-minute peak SO_2 concentrations. In support of their position, data were submitted showing that certain types of SO_2 sources may have very high 5-minute peaks (>1 ppm) and still have hourly averages below 0.4 ppm even when the current standards are being attained. One of the industry commenters also noted that an averaging time shorter than 1 hour would be needed to protect against very high 3- to 5-minute peak SO_2 levels and cited an instance where a 3- to 5-minute peak of 3.7 ppm SO_2 occurred, yet the 1-hour average was only 0.29 ppm. This commenter went on to suggest, however, that such problems would be better addressed through a properly designed program under the authority of section 303 of the Act rather than through the adoption of a new short-term ambient air quality standard.

D. Other Changes to Standards

While a number of commenters favored the adoption of a new 1-hour standard, little, if any, support was voiced for the associated revisions that the EPA indicated it was considering if a 1-hour standard was adopted. Few, if any, commenters supported the adoption of an expected exceedance form for all of the standards. While several commenters recognized that a statistical form had certain technical advantages, they expressed concern that its adoption would reduce the protection afforded by the current 3-hour, 24-hour and annual standards.

E. Technical Revisions to 40 CFR 50.4 and 50.5

There was general support for the EPA's proposal to restate the levels of the standards in terms of ppm rather than $\mu g/m^3$ and for adding explicit rounding conventions and data completeness and handling conventions to the regulations.

V. Rationale for Proposed Decisions

A. Basis for the Current 24-Hour and Annual Standards

The rationale for retaining the current 24-hour and annual primary standards was presented in some detail in the 1988 proposal (53 FR 14930, Apr. 26, 1988) and remains unchanged. At that time, the EPA concluded that the current 24-hour and annual standards appeared to be both necessary and adequate to protect human health against SO_2 concentrations associated with those averaging periods. The EPA also concluded that retaining the current 24-hour and annual standards was consistent with the scientific data assessed in the criteria document and staff paper and their addenda and with the advice and recommendations of the staff and the CASAC.

The EPA again provisionally concludes, based on the information assessed in the criteria document and staff paper and their addenda, that the current 24-hour and annual primary standards provide adequate health protection against the effects associated with those averaging periods. In reaching this proposed decision, the EPA takes note that the health effects information on 24-hour and annual SO_2 exposures remains largely unchanged since 1988. When newer information becomes available and has undergone the rigorous and comprehensive assessment, including CASAC review, necessary for incorporation into a new criteria document, it will provide the basis for the next periodic review of the 24-hour and annual primary standards.

B. Consideration of Short-Term Peak SO_2 Exposures

A number of new studies have become available since 1988 that examine the potential health effects on asthmatic individuals associated with short-term (≤1-hour) exposures to SO_2. In view of these new studies and other relevant new information, the EPA prepared a "Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of New Findings on Sulfur-Dioxide Acute Exposure Health Effects in Asthmatic Individuals" ("Criteria Document Supplement") (EPA, 1994a) and an associated staff paper supplement "Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information—Supplement to the 1986 OAQPS Staff Paper Addendum" ("Staff Paper Supplement") (EPA, 1994b). These two documents, together with the 1986 addenda, provide the primary basis for the EPA's present assessment of the health effects and related information on short-term SO_2 exposures and the Administrator's consideration of appropriate regulatory responses. The discussion below summarizes the basis for considering alternative regulatory responses to address the potential effects associated with short-term peak SO_2 exposures.

1. Assessment of Health Effects Associated With Short-Term SO_2 Exposures

a. *Sensitive Populations.* It is clear that healthy nonasthmatic individuals are essentially unaffected by acute exposures to SO_2 at concentrations below 2 ppm and do not constitute a population of concern for short-term, acute SO_2 exposure effects.

Based on the assessment in the Criteria Document Supplement (EPA, 1994a), the EPA concludes that mild and moderate asthmatic children, adolescents, and adults that are physically active outdoors represent the population segments at most risk for acute SO_2 induced respiratory effects. Individuals with more severe asthmatic conditions have poor exercise tolerances; as a result, they are very unlikely to engage in sufficiently intense outdoor activity to achieve the requisite breathing rates for SO_2-induced respiratory effects to occur and therefore maybe at somewhat lower risk. While current studies are suggestive of greater SO_2 responsiveness among those asthmatic patients with more severe disease, this issue cannot be unequivocally resolved. However, because of the lower baseline function in moderate and severe asthmatic persons, especially those lacking optimal medication, any effect of SO_2 would further reduce their lung function toward levels that may become cause for medical concern (EPA, 1994a, p. 44).

While it has been suggested that nonasthmatic atopic individuals may also represent a broader population group at increased risk (White, 1994; 53 FR 14931–14932, Apr. 26, 1988), other assessments have not found evidence establishing the atopic group to be particularly responsive to SO_2 (EPA, 1994a, p. 52; EPA, 1994b, p. 10; Linn et al., 1987).

b. *Asthma.* About 10 million people or 4 percent of the population of the United States are estimated to have asthma (NIH, 1991). The true prevalence may be as high as 7 to 10 percent of the

population (Evans et al., 1987), because some individuals with mild asthma may be unaware that they have the disease and thus go unreported. The prevalence is higher among African-Americans, older (8- to 11-year-old) children, and urban residents (Schwartz et al., 1990).

The Expert Panel Report from the National Asthma Education Program of the National Heart, Lung and Blood Institute (NIH, 1991) has recently defined asthma as "a lung disease with the following characteristics: (1) Airway obstruction that is reversible (but not completely so in some patients) either spontaneously or with treatment, (2) airway inflammation, and (3) increased airway responsiveness to a variety of stimuli." Common symptoms include cough, wheezing, shortness of breath, chest tightness, and sputum production. Asthma is characterized by an exaggerated bronchoconstrictor response to many physical challenges (e.g., cold or dry air, exercise) and chemical and pharmacologic agents (e.g., histamine or methacholine).

Daily variability in lung function measurements is a typical feature of asthma, with the poorest function (i.e., lowest forced expiratory volume in 1 second (FEV_1) and highest specific airway resistance (SRaw) being experienced in the early morning hours and the best function (i.e., highest FEV_1 and lowest SRaw) occurring in the mid-afternoon.

The degree of exercise tolerance varies with the severity of disease. Mild asthmatic individuals have good exercise tolerance but may not tolerate vigorous exercise such as prolonged running. Moderate asthmatic individuals have diminished exercise tolerance and individuals with severe disease have very poor exercise tolerance that markedly limits physical activity.

Exercise-induced bronchoconstriction is followed by a refractory period of several hours during which an asthmatic individual is less susceptible to bronchoconstriction (Edmunds et al., 1978). This refractory period may alter an asthmatic individual's responsiveness to SO_2 or other inhaled substances.

Data from the United Kingdom and United States suggest an incidence rate of asthma attacks requiring medical attention of <1 asthmatic patient-year. It is estimated that the incidence rate of hospitalization due to asthma for all asthmatic individuals in the United States is about 45 per 1,000 asthmatics per year (NIH, 1991). Death due to asthma is a rare event: about one per 10,000 asthmatic individuals per year. Mortality rates are higher among males and about 100 percent higher among nonwhites (EPA, 1994a).

In assessing the results from the controlled human exposure studies, it should be noted that the individuals who participate in such studies typically have mild allergic asthma and can go without medication altogether or can discontinue medication for brief periods of time if exposures are conducted outside their normal allergy season. In addition, African-American and Hispanic adolescents and young adults have not been studied systematically. Finally, subjects who participate in controlled exposure studies are also generally self-selected and this may introduce some bias. Thus, the extent to which the participants in the studies reflect the characteristics of the asthmatic population at large is not known. Nevertheless, the high degree of consistency among studies suggests that the subjects are generally representative of the population at risk or that any selection bias is consistently present across a diverse group of laboratories (EPA, 1994a).

c. *Short-Term Health Effects.* The basis for considering whether additional regulatory measures are needed to reduce the occurrence of short-term peaks of SO_2 rests primarily on the extensive literature involving brief (2- to 10-min) controlled exposures of persons with mild (and in some cases more moderate) asthma to concentrations of SO_2 in the range of 0.1 ppm to 2 ppm while at elevated ventilation. The major effect of SO_2 on sensitive asthmatic individuals is bronchoconstriction, usually evidenced in these studies by increased specific airway resistance (SRaw) or decreased forced expiratory volume (FEV_1), and the occurrence of clinical symptoms such as wheezing, chest tightness, and shortness of breath. The magnitude of the response and likely occurrence of symptoms increase at higher SO_2 concentrations and ventilation levels and are relatively brief in duration. Numerous studies have shown that lung function typically returns to normal for most subjects within an hour of exposure. No substantial "late phase" responses have been noted for SO_2, unlike the case for more specific stimuli (e.g., pollen, dust mites, or other allergens) in which "late phase" inflammatory responses often occur 4–8 hours after exposure and are often much more severe and dangerous than earlier immediate responses.

In a summary of the literature up to 1986 in the Staff Paper Addendum (EPA, 1986b), the staff concluded that changes in lung function (Δ SRaw 70 percent) accompanied by symptoms could be observed in some free-breathing asthmatics at 0.4 ppm at "moderate-heavy exercise." At 0.5 ppm, slightly larger functional changes on individual and group basis were seen at moderate exercise (Δ SRaw 50—100 percent), while at 0.6–0.75 ppm SO_2 functional changes and symptoms could be observed at light-moderate exercise (Δ SRaw 120–260 percent), with the effects being judged "indicative of clinical significance." Effects at 1–2 ppm SO_2 were seen as even more pronounced, ranging from "moderate" to "incapacitating" for some individuals (53 FR 14948, April 26, 1988). As the concentration increases within the range studied, effects are more pronounced and the fraction of asthmatic subjects who respond increases (53 FR 14947, April 26, 1988).

Since 1986 several new studies have been published providing pertinent information on: (1) The response of individuals with more moderate asthma to SO_2, (2) the duration of exposure necessary to provoke a response to SO_2, and (3) the effects of medication on the SO_2 response. Much of these data also provide a more thorough picture of the magnitude of responses in the range of 0.4 to 1.0 ppm, the range previously identified as being of interest (53 FR 14948, April 26, 1988). Data from several of these recent large-scale chamber studies were reexamined to provide a better understanding of the response observed in more sensitive subjects. Forced expiratory volume in one second was used as a measure of lung function, in addition to specific airway resistance, and other endpoints examined included symptoms, alteration of workload, and medication usage occurring as a consequence of these exposures.

Table B–1 of the Criteria Document Supplement (EPA, 1994a) summarizes the lung function changes in response to SO_2 concentrations in the range of 0.6–1.0 ppm from controlled human exposure studies. Because different studies used different measures of lung function (FEV_1 or SRaw), and different concentrations of SO_2, the discussion that follows will describe group mean changes first for the studies that used the measure SRaw, then group mean changes for studies that used FEV_1, and then finally the individual responses.

The data indicate that, in terms of group mean changes, total SRaw changes[2] were approximately twice as

[2] Since elevated ventilation sufficient for oronasal breathing to occur is a requirement for most asthmatic persons to respond to SO_2, and because many asthmatic individuals experience bronchoconstriction responses to exercise alone, it is useful to distinguish between the two different effects. Any measure of lung function such as FEV_1

great at 0.6 ppm and above as at 0.5 ppm and below. The differences were even more pronounced when the changes in airway resistance due to SO_2 alone (i.e., after correction for the effects of exercise) were considered.

For FEV_1, the difference in responses between 0.4 ppm and 0.6 ppm SO_2 were not as pronounced. At 0.6 ppm SO_2, group mean decreases in total FEV_1 of approximately 20 percent were observed in the mild and moderate asthmatics studied. The changes in FEV_1 due to SO_2 alone resulted in decreases in FEV_1 of approximately 15 percent (EPA, 1994a, Table B–1).

In addition, at 0.6 ppm SO_2, 25 percent or more of the subjects had pronounced individual responses (either a 200 percent or greater increase in SRaw or a 20 percent or greater decrease in FEV_1) due to SO_2 alone (total changes in lung function for these individuals would be expected to be even greater). In contrast, at ≤0.5 ppm SO_2 these more pronounced individual responses were less frequent, occurring in fewer than 25 percent of the subjects for both measures of lung function for all but one group studied (EPA, 1994a, p. B–2).

While not examined in as much detail as lung function, other indicators of severity also tend to increase with increasing SO_2 concentration. For instance, in one study, four of 24 moderate/severe asthmatic subjects were required to reduce their exercise level because of asthma symptoms at 0.6 ppm SO_2. This occurred only once at each of the lower concentrations (EPA, 1994a). Two recent studies which considered medication used to mitigate the effects of SO_2 as a health endpoint and which followed the subjects' medication use in detail, found approximately twice as many subjects took medication immediately after exposure to 0.6 ppm SO_2 than after exposure to 0.3 ppm SO_2 (EPA, 1994a, Table 7, p. 40).

Considering the variety of endpoints for which information is available, clearly the effects beginning at 0.6 ppm and up to 1.0 ppm are more pronounced than those at lower concentrations. This is in agreement with the conclusions reached in the Staff Paper Addendum (EPA, 1986b), which stated that there were "clearer indications of clinically or physiologically significant effects at 0.6 to 0.75 ppm SO_2 and above" (53 FR 14947, Apr. 26, 1988).

d. *Significance of Effects.* Opinions on the significance of the effect expressed by CASAC and others have been widely divergent. Some CASAC members and outside commenters feel that the responses reported in the range of 0.6 to 1.0 ppm SO_2 are not significant, especially when viewed in the context of the frequency with which asthmatics ordinarily experience similar effects in the course of their daily lives. Other CASAC members and commenters strongly felt that bronchoconstriction of the degree reported in this range of exposure is of medical significance and likely to place an exposed asthmatic at an unacceptable risk of harm.

The frequency of SO_2 induced asthmatic episodes relative to those provided by other stimuli (such as cold/dry air or moderate exercise) would be expected to vary from one asthmatic individual to another and from one location to another. As such, the relative contribution of SO_2 to acute episodes of asthma cannot be precisely assessed. However, staff did compare the effects of SO_2 observed in the recent controlled human exposure studies to the effects of moderate exercise, typical daily variation in lung function, and the severity of frequently experienced asthma symptoms. The effects of 0.6 ppm SO_2 exposure at moderate exercise, as measured by FEV_1, exceeded either the typical effect of exercise alone or typical daily variations in FEV_1 (EPA, 1994a, sections 4.3 and 5.3). For symptomatic responses, two to eight times as many subjects after exposure at exercise to 0.6 ppm SO_2 experienced symptoms of at least moderate severity (13–62 percent of subjects) than after exercise in clean air alone (4–19 percent of subjects) (EPA, 1994a, p. B–12). In addition, a significant portion of subjects (approximately 15 to 60 percent, depending on asthma status) participating in certain controlled human exposure studies seemed to experience symptoms more frequently in response to 0.6 ppm SO_2 than reported at any other time during the majority of the weeks during which they participated in the study (EPA, 1994a, p. B–12).

Furthermore, the response seen in the most sensitive 25 percent of responders at 0.6 ppm equaled or exceeded approximately a 30 percent decline in FEV_1 for mild asthmatic subjects and approximately a 40 percent decline for moderate asthmatic individuals. By comparison, during clinical bronchoprovocation testing changes are not usually induced beyond a 20 percent decrease in FEV_1.

In addition, while at least some subjects can experience such a 20 percent decline without experiencing symptoms, in recent studies focusing on effects at 0.6 ppm SO_2, from 33 percent to 43 percent of moderate asthmatics and from 6 percent to 35 percent of mild asthmatics experienced at least a 20 percent decrease in total FEV_1 in conjunction with symptoms rated as being of moderate severity or worse. Also deserving consideration is the fact that moderate/severe asthmatic subjects start an exposure with compromised lung function compared to mild asthmatic subjects. Thus, it is not clear that similar functional declines beginning from a different baseline have the same biological importance (EPA, 1994a, pp. 21–25).

In the Staff Paper Addendum, "bronchoconstriction . . . accompanied by at least noticeable symptoms," was seen as an appropriate measure of concern (EPA, 1986b, p. 37). However, a substantial proportion of the subjects in these more recent studies are experiencing greater effects, bronchoconstriction with at least moderate symptoms, beginning at 0.6 ppm SO_2 (EPA, 1994a).

Considering the recent body of evidence along with previous studies, the Criteria Document Supplement (EPA, 1994a) concluded that substantial percentages (≥23 percent) of mild or moderate asthmatic individuals exposed to 0.6 to 1.0 ppm SO_2 during moderate exercise would be expected to have respiratory function changes and severity of symptoms that distinctly exceed those experienced as typical daily variation in lung function or in response to other stimuli, such as moderate exercise. The severity of effects for many of the responders is likely to be of sufficient concern to cause disruption of ongoing activities, use of bronchodilator medication, and/or possible seeking of medical attention. At most, only 10 to 20 percent of mild or moderate asthmatic individuals are likely to exhibit lung function decrements in response to SO_2 exposures of 0.2 to 0.5 ppm that would be of distinctly larger magnitude than typical diurnal variation in lung function or changes in lung function experienced by them in response to other often encountered stimuli. Furthermore, it appears likely that only the most sensitive responders might experience sufficiently large lung function changes and/or respiratory

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or SRaw can be expressed as the "Total FEV_1 or SRaw," which is the total change in lung function experienced by the subject as a result of an exposure to SO_2 while at exercise, or broken down to "the effect of changes due to SO_2 alone," which represents the total lung function change observed minus the change seen for that subject from a control exposure at exercise in clean air. Both measures have their utility: total FEV_1 or SRaw indicates the magnitude of overall lung function change actually experienced by the subject, while the change due to SO_2 alone indicates how much of this total change is attributable to the pollutant itself.

symptoms of such severity as to be of potential health concern, that is leading to the disruption of ongoing activities, the need for bronchodilator medication, or seeking of medical attention.

Based on the staff's assessment, a number of additional factors are important in assessing the significance of effects resulting from SO_2 exposures and determining appropriate concentrations of concern.

Time Course of Response. If an asthmatic individual is at elevated ventilation and encounters a brief SO_2 peak concentration, the onset of the effect can be very rapid although the response does not typically approach maximal levels until 5 minutes of exposure. For example, the total lung function response from a 2-minute exposure was reported to be only 50 percent of that observed after 5 minutes of exposure (Horstman et al., 1988). Balmes (1987) reported (in a mouthpiece exposure study) the response after 3 minutes of exposure was 67 percent of that observed after 5 minutes. After 5 minutes of exposure the magnitude of the response does not appear to significantly increase based on comparisons of lung function changes after 5-minute and 10-minute exposures (Linn, 1983b; EPA, 1986b, p. A–1).

The response is also generally brief in duration; numerous studies have shown that lung function typically returns to normal for most subjects within an hour of exposure. This duration is similar to that experienced in response to exercise and somewhat less than experienced in response to allergens (EPA, 1994b, p. 18). Even if exposure continues beyond the initial 5–10 minutes, lung function may still return to normal as long as the subject ceases to exercise and their ventilation rate decreases to resting levels (Hackney et al., 1984; Schachter et al., 1984).

Effect of Varying Temperature and Humidity. Broncho-constriction in response to SO_2 and exercise is: (a) Reduced by warm or humid conditions, and (b) exacerbated by cold or dry conditions. Thus, the observed effects such as those described above could be either more pronounced, less pronounced, or similar depending on the ambient conditions present during exposure at elevated ventilation.

Effect of Varying Ventilation Rate and Breathing Mode. Another factor that can affect the magnitude of the SO_2 induced response is ventilation rate. At higher ventilation rates the responses are likely to be more pronounced at any given SO_2 concentration than those observed at lower ventilation rates. The effects of SO_2 increase with both increased overall ventilation rates and an increased proportion of oral ventilation in relation to total ventilation (EPA, 1986a, p. 11). Oral ventilation is thought to accentuate the response because the scrubbing of SO_2 by the nasal passageways is bypassed. Based on its assessment of the available data, the staff concluded that the ventilation rates of concern begin at 35–50 L/min, when most individuals generally switch to oronasal breathing.

Ventilation rates in the range of 35–40 L/min are comparable to ventilation rates induced by climbing three flights of stairs, light cycling, shoveling snow, light jogging, or playing tennis, and can be induced in a laboratory by walking at 3.5 mph up a 4 percent grade. Ventilation rates in the range of 45–50 L/min are equivalent to moderate cycling, chopping wood, light uphill running, and can be induced by walking at 3.5 mph up an 8 percent grade (EPA, 1994b, p. 20).

While the SO_2 effects reported for mild or moderate asthmatic individual are likely to be more pronounced if an individual asthmatic is at a ventilation rate higher than 35–50 L/min (EPA, 1994b, p. 19), the available activity and ventilation data indicate that individuals engage in outdoor activities that induce ventilation rates of 35–50 L/min only a small percentage of the time (EPA, 1994b, p. 20). Thus, it is unlikely that asthmatic individuals in general would attain sufficiently high ventilation rates (i.e., greater than 35–50 L/min) frequently enough to markedly increase the health risk posed by peak SO_2 exposures.

Use of Medication. The extent to which an asthmatic individual is already medicated for protection against other bronchoconstriction inducing stimuli (e.g., cold dry air, allergens, etc.) and thus would be protected against SO_2, has been considered relevant in assessing (a) the likelihood of experiencing a bronchoconstriction response to SO_2 and, by extension, (b) the significance of these effects (53 FR 14932, Apr. 26, 1988). The available data now indicate that most types of regularly administered asthma medications are not very effective in blocking the SO_2 response. The exception, however, is the most commonly used class of asthma medications, the β-sympathomimetic drugs (beta-agonist bronchodilator), which are usually highly effective in preventing the SO_2 response from developing if taken shortly before exposure.

Prophylactic use of beta-agonist bronchodilators to prevent the effects of SO_2 requires either anticipation of exposure or routine use prior to engaging in vigorous outdoor activities. While some asthmatic persons do premedicate before exercise, available published data suggest infrequent bronchodilator use in general among mild asthmatic persons and a wide range of compliance rates (from very low to full) among regularly medicated asthmatic persons as a whole (EPA, 1994a, section 2.2). The staff's assessment of this also found low use of beta-agonist bronchodilators among asthmatic subjects participating in some of the clinical studies evaluating SO_2 effects, as well as the relative absence of routine medication use before exercise among such subjects (EPA, 1994a). Given the infrequent use of medication by many mild asthmatic individuals and the poor medication compliance of 30 to 50 percent of the "regularly medicated" asthmatic patients, it appears that a substantial proportion of asthmatic subjects would not likely be "protected" by medication use from impacts of environmental factors on their respiratory health. However, the frequency of use of medication (bronchodilators) specifically prior to engaging in outdoor activity cannot be confidently extrapolated from epidemiologic data on medication compliance. Thus, the relative number of persons who may be protected by medication prior to exercise is unclear (EPA, 1994a, pp. 9–10).

It also should be noted that beta-agonist bronchodilators are effective in ameliorating SO_2-induced bronchoconstriction if an asthmatic individual has immediate access to such medication after exposure.

Effect of Other Pollutants. It has been suggested by one study (Koenig et al., 1990) that prior exposure to ozone may result in greater SO_2 effects, at any given SO_2 concentration, than those reported in the controlled human exposure studies that examined the effects of SO_2 alone. In the ambient situation, however, potential ozone (O_3)-induced increases in SO_2 effects may be at least partially attenuated by the hot humid weather that is often associated with elevated O_3 concentrations.

Data on whether prior nitrogen dioxide exposure produces an increased response to SO_2 are unclear, with a mouthpiece study showing positive effects (Jörres et al., 1990), while a chamber study of younger subjects showed no effects of NO_2 on responsiveness to SO_2 (Rubenstein et al., 1990). It appears that a pollutant that increases nonspecific bronchial responsiveness may also increase airway responses to SO_2 (EPA, 1994a, p. 48).

Epidemiological Evidence. Available epidemiological studies show no evidence of significant associations between either 24-hour or 1-hour average ambient air SO_2 concentrations above 0.1 ppm and increased visits to hospital emergency rooms for asthma (EPA, 1994a, p. 52). However, it is not clear to what extent epidemiologic studies could detect possible associations between very brief (≤10-minute), geographically localized, peak SO_2 exposures and respiratory effects in asthmatic individuals. In the absence of such data, it is not possible to associate peak ambient SO_2 concentrations with excess asthma mortality rates reported to be observed among nonwhite population groups in large urban areas.

Frequency of Exposure Considerations. Based on this assessment of the available health effects information, the authors of the Criteria Document Supplement (EPA, 1994a) concluded that an important consideration in determining the public health significance of the reported SO_2 induced effects is the likely frequency that an asthmatic individual would be exposed to a 5-minute peak SO_2 concentration ≥0.6 ppm. Because asthmatic individuals must be at elevated ventilation in order to experience significant bronchoconstriction in response to peak SO_2 concentrations, any analysis undertaken to estimate the size of the asthmatic population potentially at risk from such exposures must account for both the likelihood that an asthmatic individual will be outdoors at sufficient ventilation and the likelihood that he or she will encounter an SO_2 concentration of concern.

2. Air Quality and Exposure Considerations

A central issue raised during the comment period on the 1988 proposal concerned whether a 1-hour standard of 0.4 ppm, based on a typical peak-to-mean ratio of approximately 2 to 1, would provide adequate protection from high 5-minute peak SO_2 levels near all sources. Based on examination of more recent data, the staff concluded (EPA, 1994b) that no typical peak-to-mean ratio exists that can be used to determine a uniformly-applicable hourly standard. Given the broad range of hourly values associated with 5-minute peaks of SO_2 (EPA, 1994b, Table 3–2), it was concluded that reliance on any hourly peak-to-mean ratio would risk over-controlling some sources (if a high peak-to-mean ratio is assumed and a low hourly standard chosen) or under-controlling other sources (if a low peak-to-mean ratio is assumed and a high hourly standard chosen).

The available 5-minute SO_2 data examined in the staff paper supplement (EPA, 1994b, pp. 34–37) clearly indicate that high 5-minute peak SO_2 concentrations can occur with some frequency near some sources. Absent comprehensive data on 5-minute peak SO_2 levels, the staff used hourly data to estimate the likely nationwide prevalence of high short-term SO_2 peaks. The staff examined all hourly averages reported in the AIRS database for the year 1992 and applied different peak-to-mean ratios to produce upper and lower bound estimates of 5-minute peaks ≥0.25 ppm. The method used for calculating the incidence of short-term peaks is given in the Staff Paper Supplement (EPA, 1994b). The lower bound estimate of the number of 5-minute peaks ≥0.75 ppm SO_2 indicated that 50 monitors, in 38 counties which contained 18 urban areas, would register at least one 5-minute peak of SO_2 ≥0.75 ppm. The upper bound estimate was that 132 monitors, in 91 counties with 65 urban areas might experience a short-term peak of SO_2 ≥0.75 ppm. The same analysis indicated that 132 monitors, in 91 counties containing 65 urban areas, would be the lower bound estimate of the occurrence of at least one 5-minute peak of SO_2 ≥0.50 ppm. The upper bound estimate was that 247 monitors in 148 counties with 124 urban areas might record at least one 5-minute peak of SO_2 ≥0.50 ppm. This analysis also suggests that the number of monitoring sites likely to record multiple high 5-minute peaks in a single year, or over several years, can vary considerably (EPA, 1994b, pgs. 41–42).

The use of existing hourly data to assess the potential prevalence of 5-minute peak SO_2 levels has other limitations beyond those introduced by the use of peak-to-mean ratios. The existing monitoring network is designed to accurately characterize ambient air quality associated with 3-hour, 24-hour, and annual SO_2 concentrations rather than to detect short-term peaks SO_2 levels. As a result, the EPA's monitoring guidance on siting criteria, the spanning of SO_2 instruments, and instrument response time could lead to underestimates of high 5-minute peaks and thus the 1-hour averages for hours containing those peaks. Of these factors, monitoring siting may be the largest potential source of underestimation of SO_2 peaks and therefore changes in monitoring siting and density near SO_2 sources most likely to produce high 5-minute peaks should increase the number of high 5-minute peaks and associated 1-hour averages recorded.

In addition to estimating the occurrence of peak SO_2 levels in the ambient air, an important consideration in assessing the public health significance of SO_2-induced effects is determining the likely frequency that an asthmatic individual will be exposed (EPA, 1994a, p. 51). To address this issue, exposure analyses have been conducted that predict both the frequency of high SO_2 peaks (through air quality modeling) and the probability that an asthmatic individual will be outdoors at sufficient ventilation (>35 L/min) to experience an SO_2-induced effect. The methodologies employed in these analyses, together with the associated uncertainties, are discussed in some detail in the Staff Paper Supplement (EPA, 1994b, pp. 46–47, appendix B).

These analyses indicate that 68,000 to 166,000 asthmatic individuals (or 0.7 to 1.8 percent of the total asthmatic population) potentially could be exposed one or more times, while outdoors at exercise, to 5 minute peaks of SO_2 ≥0.5 ppm. Fewer asthmatic individuals are likely to be exposed to ≥0.6 ppm SO_2 under the same conditions. The estimated number of asthmatic individuals exposed one or more times results in an estimate of 180,000 to 395,000 total exposure events of which the utility sector accounts for about 68,000. After full implementation of the title IV program of the Act, in the year 2015, the number of exposure events at ≥0.5 ppm SO_2 attributable to the utility sector is estimated to drop to 40,000, contingent on trading decisions.

Based on the available air quality and exposure data assessed in the Staff Paper Supplement (EPA, 1994b) and summarized above, the Administrator concurs with the staff and CASAC's views that the likelihood that asthmatic individuals will be exposed to 5- to 10-minute peak SO_2 concentration of concern, while outdoors and at exercise, is relatively low when viewed from a national perspective. The Administrator takes note, however, as did the staff, that the data also indicate high peak SO_2 concentrations can occur around certain sources or source types (EPA, 1994b, p. 37) with some frequency, suggesting that asthmatic individuals who reside in the vicinity of such sources or source types may be at greater health risk than indicated for the asthmatic population as a whole.

C. Regulatory Considerations

Taking into account the staff's assessments and the advice and recommendations of the CASAC, the Administrator has considered whether additional regulatory measures are

needed to protect asthmatic individuals against short-term (5- to 10-minute) peak SO_2 exposures. In her judgment, the current 3-hour, 24-hour, and annual standards appear to provide substantial protection against the health effects associated with short-term SO_2 exposures. As indicated by the air quality analyses described above, the current standards, together with implementation of title IV of the Act, markedly limit the frequency and extent of short-term concentrations of concern. The exposure analyses that take into account normal day-to-day activity patterns further suggest that the risk is relatively low that individuals with mild or moderate asthma will experience exposure conditions approximating those that produced effects of concern in controlled human studies. In view of those analyses, the nature of the reported effects, the effectiveness of bronchodilator medication to prevent or ameliorate SO_2 effects if available and properly used, and the fact that similar events can be provoked more frequently by other stimuli, the Administrator concurs with the staff's and the CASAC's assessment that the public health risk posed by short-term peak SO_2 levels is limited when viewed from a national perspective and does not constitute a broad national public health problem.

The Administrator is mindful, however, that the available data indicate that those asthmatic individuals who reside in proximity to certain individual sources or source types will be at higher risk of being exposed to short-term peak SO_2 levels than the asthmatic population as a whole. While some asthma specialists question the health significance of the reported health effects, the Administrator notes that others believe the effects are significant and that additional protection is warranted. This information, combined with uncertainties regarding the use of bronchodilator medication prior to exercise, particularly among asthmatic children and asthmatic individuals who may not perceive a need to medicate regularly prior to engaging in outdoor activities, suggests to the Administrator that additional regulatory measures may be needed.

In their assessment of the available scientific and technical information, the EPA staff recommended a range of concern for the Administrator's consideration when examining the potential need for new regulatory measures to provide additional public health protection beyond that provided by the existing set of standards (EPA, 1994b). This range, based on the most recent assessments presented in the criteria document and staff paper supplements and summarized above, is 0.6 to 1.0 ppm SO_2. The staff's assessment concluded that a substantial percentage (20 percent or more) of mild to moderate asthmatic individuals exposed to 0.6 to 1.0 ppm SO_2 for 5 to 10 minutes during moderate exercise would be expected to have respiratory function changes and severity of respiratory symptoms that clearly exceed those experienced from typical daily variation in lung function or in response to other stimuli (e.g., moderate exercise or cold/dry air). For many of the responders the effects are likely to be both perceptible and thought to be of some immediate health concern, i.e., to cause disruption of ongoing activities, use of bronchodilator medication, and/or possibly seeking of medical attention. At SO_2 concentrations at or below 0.5 ppm, the staff concluded that at most only 10 to 20 percent of mild and moderate asthmatic individuals exposed to 0.2 to 0.5 ppm SO_2 during moderate exercise are likely to experience lung function changes distinctly larger than those typically experienced and that, compared to the response at 0.6 to 1.0 ppm SO_2, the response at or below 0.5 ppm SO_2 is less likely to be perceptible and of immediate health concern.

In considering the staff's most recent assessment of the available health information, the Administrator found it to be generally consistent with the staff's 1986 review. During both reviews there has been divergent opinion as to the appropriate level for the lower bound for the range of concern. Both assessments, however, concluded that 1.0 ppm SO_2 is the appropriate upper bound. At that level there is clear concern that if an asthmatic individual is exposed while at exercise to 1.0 ppm SO_2 for 5 minutes the risk of significant functional and symptomatic responses will be high. This finding in 1986 led several CASAC members to recommend a 1-hour standard level that would restrict the concentration of 5-minute SO_2 peaks to 0.6 to 0.8 ppm in order to preclude 5-minute peaks of 1.0 ppm SO_2 (Lippmann, 1987). The Administrator finds the staff's present recommendations consistent with that point of view.

The Administrator also took note that the current CASAC review panel, while acknowledging the existence of a wide spectrum of views among asthma specialists regarding the clinical and public health significance of the reported effects, did not comment on the range of concern or present the individual panel members' views as to the significance of the reported effects in its "closure" letter. At the April 12, 1994 "closure" meeting, however, the panel found that the range recommended by the staff was consistent with the available scientific information. Three members of the panel who addressed the public health significance of the reported effects in their written comments concluded that segments of the asthmatic population exposed to peak SO_2 concentrations while at elevated ventilation were at risk of incurring clinically significant effects if not properly medicated. While the basis for their judgments differed, their views as to the 5-minute concentrations of concern overlapped (0.4 to 0.8 ppm SO_2; above 0.6 ppm SO_2; and 0.6 to 1.0 ppm SO_2) and are in general agreement with both the 1986 and 1994 staff assessments. On the other hand, another panel member who addressed the general issue, while recognizing that SO_2 can cause bronchoconstriction, questioned the public health significance of short-term peak SO_2 exposures, based in part on his judgment that the likelihood of an asthmatic individual being exposed while at exercise is exceedingly low given the protection afforded by the existing standards. In its closure letter, the CASAC expressed the view that such exposures are rare events and that the likelihood of such exposures should be considered in selecting an appropriate regulatory response.

Based on its assessment of the available data, the staff recommended consideration of three regulatory alternatives: (1) Revising the existing NAAQS by adding a new 5-minute standard implemented through a risk-based targeted strategy, (2) establishing a new regulatory program under section 303 of the Act, or (3) augmenting the implementation of current NAAQS by focusing on those sources likely to cause high 5-minute peaks. In considering these alternatives, the Administrator has taken into account the divergent views expressed by the public, asthma specialists, and the CASAC with respect to the public health significance of short-term SO_2 exposures and the appropriate degree of protection needed. In doing so she is mindful that in the absence of conclusive scientific and technical information, the Act requires that the Administrator make a judgmental determination as to whether the reported effects endanger public health and pose an unacceptable risk of harm. At the April 12, 1994 CASAC meeting and in written comment, individual members of the 1994 CASAC panel recognized that choosing among the regulatory alternatives presented in the staff paper supplement must be

guided by legal and policy considerations, given the nature of the available scientific and technical information and the divergent views as to the health significance of the reported effect and the pollution level of concern.

The Administrator therefore is proposing for public comment three alternative regulatory approaches for supplementing the protection provided by the current standards if additional protection is judged to be necessary. In so doing, the Administrator has carefully considered the 1994 CASAC review panel's strong recommendation that any additional regulatory measures be implemented through a risk-based, targeted strategy. Consistent with this recommendation, all three regulatory alternatives under consideration, as described below, are based upon such a strategy. The Administrator believes it is important to air the key issues and uncertainties fully and specifically requests broad public comment and deliberation on these alternatives.

1. 5-Minute NAAQS Alternative

After considering the staff's recommendations and the views of the 1986 and 1994 CASAC review panels, the Administrator believes that it is both appropriate and necessary to solicit public comment on a 5-minute NAAQS of 0.60 ppm SO_2. Based on the staff's assessments of the available scientific and technical information, the Administrator is concerned that 5-minute peak SO_2 levels beginning at 0.60 ppm and above may present an unacceptable risk of harm to asthmatic individuals who have not premedicated with beta-agonist bronchodilators and are exposed at elevated ventilation. In proposing a 5-minute NAAQS, the Administrator is particularly concerned that asthmatic individuals in the proximity of sources with a high potential to cause or contribute to a 5-minute peak SO_2 concentration greater than 0.60 ppm may be at substantially greater risk of experiencing an exposure event, which triggers bronchoconstriction, than the asthmatic population as a whole. Adoption and implementation of a 5-minute NAAQS of 0.60 ppm SO_2 would prevent such exposures and further reduce the likelihood that an asthmatic individual would be exposed at elevated ventilation to lesser concentrations. Therefore, it is the Administrator's provisional judgment that a 5-minute NAAQS of 0.60 ppm SO_2 would adequately protect the public health.

In assessing the possible need for additional protection against peak SO_2 exposures, the Administrator has considered the specific issue of medication usage. While it is clear from the available data that the use of beta-agonist bronchodilators to prevent the effects of other stimuli (e.g., exercise, cold/dry air) will also prevent or ameliorate the effects of SO_2, there is considerable debate as to compliance rates and therefore the degree of protection provided. As one CASAC panel member noted, "many moderate asthmatics, particularly those from urban areas and lower economic status, may have less than ideal medical follow-up and are prone to irregular medication use and frequent deterioration" (Schachter, 1994). In public comment on the 1988 proposal, a number of individuals made the point that asthmatic children, who are dependent on adults for their medication and care, are more likely to be unprotected and therefore at particular risk from SO_2 exposures of concern. Other commenters on the criteria document and staff paper supplements noted that asthmatic individuals who do not perceive the need to medicate prior to engaging in strenuous outdoor activities would also be at increased risk from SO_2 exposures. While the Administrator believes these are important considerations, the overriding issue is whether the availability of, and reliance on, prophylactic medications should be viewed as an alternative to further regulatory action to reduce the risk posed by high peak SO_2 concentrations in the ambient air. In this regard, the Administrator is concerned whether reliance on medications, even if taken to prevent the effects caused by other stimuli, as an alternative to environmental controls would be an appropriate public policy choice, particularly given the potential environmental equity issues involved.

In seeking comment on a possible 5-minute NAAQS of 0.60 ppm SO_2, to further reduce the risk posed by high peak SO_2 concentrations, the Administrator concurs with the staff's recommendation that such a standard be implemented through a risk-based targeted approach. By focusing on those sources or source types that are most likely to cause or contribute to high 5-minute SO_2 concentrations and thus pose the greatest risk to asthmatic individuals, such a program would be effective in reducing peak SO_2 concentrations of concern. In response to questions raised by the 1994 CASAC review panel, the Agency continues to believe that such a program would be enforceable, based on its longstanding enforcement experience.

The Administrator recognizes, however, as did the 1994 CASAC review panel,[3] that the adoption of a 5-minute NAAQS might not be appropriate given the nature of the problem or the most efficient means of achieving the desired reductions. Under sections 108 through 110 of the Act, NAAQS and State plans to implement them are designed to address air pollution problems that emanate from numerous and diverse sources whose collective emissions contribute to unacceptable pollution levels, rather than from a limited number of discrete point sources that cause only very localized pollution problems. Moreover, the implementation process for a 5-minute NAAQS (described in detail in the 40 CFR part 51 document to be published shortly in the **Federal Register**) could impose significant planning and other requirements on the States and the regulated community that are neither very efficient nor necessary for addressing the limited number of point sources that the EPA believes may produce high 5-minute peak SO_2 levels. While the targeting strategy presented in the part 51 notice is designed to reduce such burdens to the extent practicable under the Act, the implementation process includes a number of time-consuming steps (e.g., area designations) that are not particularly germane, given the nature of the problem, and could significantly delay effective remediation. With these factors in mind and in view of her desire to provide such additional protection (beyond the existing NAAQS) as may be appropriate in the most efficient manner, the Administrator is also advancing for public comment the alternative of establishing a new control program

[3] In its "closure letter", the 1994 CASAC panel stated, "It was the consensus of CASAC that any regulatory strategy to ameliorate such exposure be risk-based—targeted on the most likely sources of short-term sulfur dioxide spikes rather than imposing short-term standards on all sources. All of the nine CASAC Panel members recommended that Option 1, the establishment of a new 5-minutes standard, not be adopted. Reasons cited for this recommendation included: the clinical experiences of many ozone experts which suggest that the effects are short-term, readily reversible, and typical of response seen with other stimuli. Further, the committee viewed such exposures as rare events which will even become rarer as sulfur dioxide emissions are further reduced as the 1990 amendments are implemented. In addition, the committee pointed out that enforcement of a short-term NAAQS would require substantial technical resources. Furthermore, the committee did not think that such a standard would be enforceable . . ." To the extent CASAC comments about enforcement of a short-term NAAQS took into account such factors as cost and technological feasibility, the courts have held that such factors are not appropriate considerations in the establishment or revision of NAAQS. The extent to which these factors influenced the CASAC recommendation regarding a 5-minute NAAQS is unclear.

based on sections 303, 110(a)(2)(G), and 301(a) of the Act.

2. Section 303 Program

As an alternative to a new 5-minute NAAQS, the staff recommended in the staff paper supplement that consideration be given to establishing a new regulatory program under section 303 to supplement the protection provided by the existing NAAQS. The staff recommended that the new program establish a target level for control in the range of 0.60 to 1.0 ppm SO_2, expressed as the maximum 5-minute block average in 1 hour, and that the program be implemented through a risk-based, targeted strategy. This approach would supplement the existing NAAQS by, in effect, placing a cap on ambient short-term peak SO_2 levels. Exceedance of this cap would lead to source-specific control efforts designed to prevent recurrence of such peak levels, thus providing additional protection to asthmatic individuals in proximity to the source(s) involved.

Section 303 authorizes the Administrator to bring suits for injunctive relief or to issue appropriate administrative orders if air pollution levels in an area pose "an imminent and substantial endangerment to public health or welfare, or the environment." Although section 303 is probably best known in connection with EPA regulations for the prevention of "emergency episodes" involving high concentrations of criteria pollutants (40 CFR part 51, subpart H), the Agency interprets it as providing authority to act in a variety of circumstances, including situations involving pollution concentrations lower than "emergency" levels and incidents involving industrial accidents or malfunctions (EPA, 1983b, pp. 1–2, 5).[4] Section 110(a)(2)(G) of the Act requires State implementation plans (SIP's) to contain authority comparable to section 303 and adequate contingency plans to implement that authority. As indicated above, the program proposed in this notice would be based on both of these provisions, as well as section 301(a) of the Act, which grants general authority to prescribe regulations necessary to carry out the functions of the Administrator.

Although the proposed program would differ in some respects from the approach adopted in the Agency's "emergency episodes" program, it would be based on some of the same fundamental concepts. The emergency episodes program was designed to supplement the NAAQS by providing additional protection in situations not effectively addressed by them, i.e., in periods of air stagnation when air pollution levels can build up to levels well in excess of the NAAQS. Under the program, SIP's are required to include contingency plans that specify two or more stages of episode criteria—such as the alert, warning, and emergency levels specified in example regulations issued by the EPA—and progressively more stringent abatement actions, including shutting down entire industries to the extent necessary, as pollution levels advance from one stage to another (see 40 CFR part 51, subpart H and appendix L). The episode criteria and associated abatement actions are preventive measures designed to ensure that certain pollution concentrations—referred to as significant harm levels (SHL's)—are never achieved.[5]

Although the Agency established SHL's for these purposes at concentrations associated with relatively severe health effects, the use of section 303 to protect public health is not limited to situations involving such extreme conditions. By design, the SHL's are levels that should never be reached, and relatively drastic measures to prevent their occurrence, including court actions for injunctive relief, are authorized at a lower level, usually the "emergency" level (EPA, 1993b, pp. 4–5). Indeed, abatement measures may be required at even lower levels (*id.*), both to prevent air quality levels from deteriorating further (36 FR 20513, Oct. 23, 1971), and to avoid less serious health effects that can occur at those levels (39 FR 9672, 9673, Mar. 13, 1974).

Even where there is uncertainty about a threatened harm, the EPA interprets section 303 as authorizing action where there is a "reasonable medical concern" about public health (EPA, 1983b, p. 4). More generally, the courts have construed similar provisions in other EPA statutes liberally, indicating that action under them is not limited to extreme, extraordinary, or "crisis" situations but may be based on circumstances posing a "reasonable cause for concern that someone or something may be exposed to a risk of harm" if remedial action is not taken (see, e.g., *U.S.* versus *Conservation Chemical Co.*, 619 F. Supp. 162, 194 (W.D.Mo. 1985); EPA, 1993b, pp. 10–13 (CWA section 504); EPA, 1991, pp. 5–7 (SDWA section 1431); EPA, 1983b, pp. 2–5 (CAA section 303); EPA, 1983a, pp. 8–9 (CERCLA section 106(a))). For these and other reasons, the Agency believes that its authority to address threats to public health or welfare or the environment under section 303 is not limited to situations involving pollutant concentrations associated with severe effects.[6]

Like the emergency episodes program, the new section 303 program would attempt to avoid the need for ad hoc court actions by establishing a framework for remedial efforts in advance through the Agency's rulemaking authority. However, because 5-minute peak SO_2 concentrations of concern can occur rapidly, with little or no prior build-up of SO_2 levels, and because such peak concentrations are relatively quickly dispersed, the Agency believes that a section 303 program modeled closely on the emergency episodes program would not provide an effective response. Instead, the Administrator concurs with the staff recommendation that a health-based, ambient-air target or trigger level be established if this alternative is selected, and that sources that cause or contribute to exceedances of the trigger level be identified and regulated on a case-by-case, source-specific basis to prevent 5-minute peaks of concern from recurring. Given the nature of the problem being addressed, the trigger level would need to be preventive in nature; that is, it would need to be set at a level designed to ensure that pollution levels that might pose a significant risk to the public health would not occur in the ambient air.

If this alternative is selected, it is the Administrator's provisional judgment, based on her assessment of available health information and for the reasons discussed above, that the appropriate trigger level for the section 303 program would be 0.60 ppm SO_2 as measured in the ambient air, so as to provide the same level and degree of protection as would be afforded by a possible new 5-minute NAAQS. As discussed earlier,

[4] Similar provisions in other EPA statutes have been similarly construed (see, e.g., EPA 1993b (section 504 of the Clean Water Act); EPA 1991 (section 1431 of the Safe Drinking Water Act); EPA 1983a (section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act)).

[5] This preventive approach—combining elements of rulemaking and advance planning—helps to avoid some of the practical problems associated with attempting to address emergency episodes by seeking injunctive relief on an ad hoc basis.

[6] This conclusion is consistent with the legislative history of section 303, as well as that of similar provisions in other EPA statutes (see, e.g., S. Rep. No. 91–1196, 91st Cong., 2d Sess. 35–36 (1970) (section 303 authority applies not only in situations involving incapacitating body damage, irreversible body damage, and increases in mortality but also "whenever air pollution agents reach levels of concentration that are associated with . . . the production of significant health effects . . . in any significant portion of the general population"). It is also consistent with the steady pattern of broadening and strengthening of section 303 evident in all amendments to the Act since 1967 see, e.g., S. Rep. No. 101–228, 101st Cong., 1st Sess. 370–71 (1989)).

the Administrator is concerned that 5-minute peak SO_2 concentrations of 0.60 ppm and above may present an unacceptable risk of harm to asthmatic individuals who have not premedicated with beta- agonist bronchodilators and are exposed at elevated ventilation.

The details of the proposed section 303 program will be described in the **Federal Register** in the document concerning implementation issues. Like the emergency episodes program, the proposed program would require States to adopt SIP provisions containing necessary legal authority and contingency plans. Once a violation of the trigger level proposed in today's notice was detected, the State and the pertinent emission source(s) would need to take steps to determine the cause of the violation, and the source(s) would need to implement appropriate remedial actions to prevent recurrences of such emissions. The EPA would also be able to take action, either by enforcing the SIP provisions or directly under its section 303 authority.

The proposed section 303 program would offer several distinct advantages. It would provide an enforceable, health-based target to guide the actions of the regulated community, and it could be focused specifically on those sources most likely to cause or contribute to high 5-minute peak SO_2 exposures. Once information became available that a source had caused or contributed to an exceedance of the trigger level, appropriate actions could be initiated quickly. While some SIP revisions would be necessary for States to implement this program, more time-consuming aspects of the SIP process such as designations could be avoided. The EPA would also be able to take action directly if necessary. The likelihood that this program could bring about prompt and effective remediation of problems causing high 5-minute peak SO_2 levels is a factor of considerable importance to the Administrator.

3. Retain Current Standards

The Administrator has also considered the staff's third alternative of retaining the current set of standards but augmenting their implementation by focusing on those sources that are most likely to produce high 5-minute peak SO_2 levels. The targeting strategy and implementation plan will be discussed more specifically in the **Federal Register** document on implementation issues. This approach would be aimed at assuring that the existing standards were met through more targeted monitoring, including the routine collection and reporting of 5-minute data, and more vigorous enforcement of existing regulatory provisions governing good operating practices, upsets, and malfunctions. The Administrator believes that additional risk reductions can be achieved by these means, and the EPA is presently taking steps to initiate such activities. In summary, the EPA is requesting public comment on three alternative approaches for supplementing the protection provided by the current standards against the health risk posed by short-term peak SO_2 levels if additional protection is judged to be necessary. Given the available scientific and analytical data, the final selection of the most appropriate course of action will be based in large part on policy and legal considerations. To better inform the Administrator's final determination, the EPA specifically requests public comment in several key areas. First, the EPA requests the submittal of additional factual information on the frequency of occurrence of 5-minute peak SO_2 levels in the ambient air, as well as information on the source or source types and the nature of the events that are most likely to give rise to such peak SO_2 levels. Such information would assist in determining the most effective regulatory response. Second, throughout the review there has been considerable debate as to the adequacy of the available exposure analyses. In light of the uncertainties in these analyses, the EPA requests the submission of data that would allow for better characterization of the asthmatic population at risk and of the frequency that an asthmatic individual would likely be exposed to peak SO_2 concentrations, particularly at levels of 0.60 ppm and above, while at elevated ventilation. Third, of particular interest to the Administrator is the issue of the medical significance of the reported SO_2 induced effects. Given the broad diversity of opinion of the asthma specialists that have participated in the review to date, the EPA specifically requests other members of the medical community who are experts in this area to submit their views on this important issue. Finally, the EPA requests comment on the appropriateness of the 0.60 ppm level for 5-minute NAAQS and the section 303 program, and whether a numerical value below or above 0.60 ppm would be more appropriate to protect asthmatic individuals.

D. Averaging Convention for the Standards

The averaging convention specifies the interpretation of standards for a particular averaging time (in this case, 3-hour, 24-hour, annual) with respect to when (time and day) the averaging period(s) begins and ends. The two major alternative averaging conventions are known as "block" and "running." Under the block convention, periods such as 24 hours and 3 hours are measured sequentially and do not overlap; when one averaging period ends, the next begins. For example, one 24-hour measurement would be taken from midnight on day one to midnight on day two; the next would begin at midnight on day two. Under the running convention, measurements are allowed to overlap. Thus, if one 24-hour period were measured from midnight to midnight, the next might be measured from 1 a.m. to 1 a.m. or from 12:01 a.m. to 12:01 a.m. Given a fixed standard level, running averages would produce a somewhat more restrictive standard (Faoro, 1983; Possiel, 1985).

Although the wording of the original 24-hour, 3-hour, and annual SO_2 standards was ambiguous on the matter, the earliest actions of the EPA signify that the block averaging convention was intended for these standards (OAQPS, 1986), and block averages have generally been used in implementing the standards.[7] The use of running averages would therefore represent a tightening of the standards. Because the Administrator has determined, for the reasons explained in this notice and in the April 21, 1993 notice on the secondary NAAQS (58 FR 21351), that protection of the public health and welfare does not require tightening the existing standards, the Administrator proposes to retain the block averaging convention for the 24-hour, 3-hour, and annual standards. To eliminate any future questions on this aspect of the standards, clarifying language is being proposed in the regulation (40 CFR 50.4 and 50.5).

E. Form of the Current Standards

In revising the standards for ozone and particulate matter, the EPA concluded that it would be appropriate to make technical improvements to the form in which the standards were expressed (44 FR 8202, Feb. 8, 1979; 52 FR 24653, July 1, 1987). These improvements were embodied in a revised statistical form for the

[7] Although EPA generally does not specify use of a running average in evaluating SO_2 SIP's for attainment and maintenance of the NAAQS, running averages have been used in a limited number of instances. In the enforcement context, in cases where supplementary control systems (SCS) were used as an interim measure to protect the NAAQS at primary copper smelters, consent decrees for such facilities specified running average requirements see, e.g., U.S. v. Phelps Dodge Corp. Civil No. 81-088-TUC-MAR (D. Ariz. filed October 20, 1986)).

standards, which was intended to maintain desired health protection while improving ease of implementation. The decisions on the statistical form were made in conjunction with decisions on the level of the standard. The EPA has also considered the alternative of expressing the SO_2 standards in a similar statistical form, with one expected exceedance per year for the 24-hour and 3-hour standards and expressing the annual standard as an expected annual mean. The EPA examined the relative protection afforded by the current standards if they were expressed in statistical form (EPA, 1984a; Frank, 1987). These analyses found that the standards expressed in a statistical form would afford reduced protection against the 24-hour, annual, and 3-hour health and welfare effects associated with these averaging periods and, in addition, would significantly reduce the degree of protection the existing set of standards provides against 5-minute peak SO_2 exposures. Thus, adopting a statistical form would necessitate revisions to the levels of the existing 24-hour, 3-hour, and annual standards to maintain the requisite level of protection needed. In the judgment of the Administrator, the limited technical advantages of adopting a statistical form for these standards are not sufficient to warrant the administrative burden associated with such a change.

In advancing the new alternatives of a 5-minute NAAQS and a section 303 program for public comment, however, the Administrator believes it is appropriate to propose that they take a statistical form as recommended by the staff. In reaching a judgment that a new 5-minute NAAQS of 0.60 ppm SO_2 or a new section 303 trigger level of 0.60 ppm SO_2 may be needed to provide additional public health protection, the Administrator was cognizant of and took into account that these measures would be expressed in the statistical form when determining the level to be proposed for each alternative. The EPA is, however, requesting comment on whether more than one expected exceedance should be allowed as suggested by the staff (EPA 1994b, pp. 60–62). In seeking comment on this question, the EPA is concerned that a single upset or malfunction during a day could cause multiple exceedances of the proposed 5-minute standard level or the alternative section 303 trigger level despite a source operator's good faith and willingness to take prompt and effective abatement action.

F. Other Technical Changes

The EPA is proposing to make some minor technical changes in the part 50 regulations concerning the SO_2 standards (Frank, 1988). First, the levels for the primary and secondary NAAQS would be restated in ppm rather than $\mu g/m^3$ (40 CFR 50.4 and 50.5). This would be done to make the SO_2 NAAQS consistent with other pollutants and to improve understanding by the public. The levels would be restated as follows: (a) The level of the annual standard is 0.030 parts per million (ppm) (approximately 80 $\mu g/m^3$), (b) the level of the 24-hour standard is 0.14 ppm (approximately 365 $\mu g/m^3$), and (c) the level of the 3-hour standard is 0.5 ppm (approximately 1300 $\mu g/m^3$). Secondly, explicit rounding conventions would be added (40 CFR 50.4 and 50.5). This would aid State and local air pollution control agencies in interpreting the standard. Finally, data completeness and handling conventions would be specified (40 CFR 50.4 and 50.5). These conventions would be consistent with the definitions used with ozone and would ensure that omission or deletion of some hourly or 5-minute data will not negate obvious exceedances (see 40 CFR part 50, appendix H for the equivalent ozone language).

VI. Federal Reference Methods and Equivalent Methods

The Federal Reference Method for measuring ambient concentrations of SO_2 set forth in appendix A of part 50 is not capable of providing 5-minute average concentration measurements. Even if it could, such a manual method would not be practical for 5-minute measurements because of the large number of individual samples that would have to be obtained and analyzed. Clearly, an automated, continuous monitoring method (equivalent method) is required for 5-minute monitoring. This requirement is innocuous, however, since the reference method is now rarely used for routine field monitoring, even for 3-hour or 24-hour measurements, having already been replaced with use of continuous, instrumental equivalent methods. Thus, no revisions are proposed to the reference method.

Although most of these instrumental equivalent methods provide nominally continuous SO_2 concentration measurements, these measurements are almost universally reduced to standardized hourly averages (block averages, by convention, as opposed to running or overlapping averages) for purposes of recording, validation, storage, interpretation, and use. (Longer-term averages are computed from the hourly averages.) Accordingly, the performance of the instruments is usually optimized by the manufacturer toward production of hourly averages. Specifically, the response of the analyzers may be intentionally slowed to provide concentration measurements that change more slowly than the actual input concentration. This "smoothing" filters random fluctuations (noise), provides more stable readings for instrument operators, aids calibration accuracy, and facilitates more accurate integration of the readings into hourly averages.

When such instruments are used to obtain 5-minute average concentration measurements, however, the slowed response often causes the measurements to underestimate the actual peak concentration of short-duration concentration peaks (Eaton et al., 1991; Eaton et al., 1993). The degree of error is estimated to be from a few percent to as much as 20 or 25 percent, depending on the response time of the instrument and the sharpness (height to duration ratio) of the concentration peak. (The smoothed measurements correspondingly overestimate the duration of the peak such that the peak is correctly integrated for longer averaging periods such as 1 hour.)

Fortunately, more accurate 5-minute average concentration measurements can be obtained from most of the equivalent method analyzers available currently by relatively minor modifications to increase their response times. These modifications may include minor electronic adjustments, substitution of modified circuit cards or software programs, or increased flow rates, and the modifications could also likely be made available for existing analyzers through either user or manufacturer retrofitting. Prior to promulgation of one of the regulatory alternatives, SO_2 analyzer manufacturers would be informed of the new requirements for faster response time for both new and existing analyzers as may be appropriate.

Based on this assessment, the EPA is proposing to establish special, supplemental performance specifications that would be applicable to equivalent method analyzers used for 5-minute SO_2 monitoring. These new performance specifications would be added to 40 CFR part 53, which sets forth the provisions under which the EPA designates reference and equivalent methods for air monitoring to determine attainment of the NAAQS. Part 53 gives the quantitative performance specifications and other requirements that a candidate method must meet to be

designated as a reference or equivalent method, as well as the detailed test procedures by which the various performance parameters are to be measured.

Capability for accurate 5-minute monitoring requires more stringent specifications for certain performance parameters than are required for 1-hour average measurements. The primary performance specifications that must be changed are those having to do with the response time of the analyzer. These are the "rise time" and "fall time" specifications of part 53, which describe the time required for the output measurement or signal of the analyzer to respond to increases or decreases, respectively, in the input concentration. More specifically, these times are defined as the time required for the instrument measurement to reach 95 percent of the final, stable reading after a step increase or decrease (respectively) in the input concentration. For 1-hour average SO_2 measurements, analyzer response can be relatively slow; the specifications in part 53 for rise and fall time are both 15 minutes. Typical rise and fall times of several widely used designated SO_2 equivalent method analyzers are between 2 and 5 minutes.

However, as noted previously, such an analyzer may underestimate the actual 5-minute average concentration of a short-term concentration peak by as much as 20 or 25 percent, depending on the response time of the instrument and the nature (shape) of the concentration peak. To provide more accurate 5-minute measurements, the maximum rise and fall time specifications must be reduced to 2 minutes or less. Accordingly, part 53 is proposed to be amended by adding supplemental maximum rise and fall time specifications of 2 minutes to be applicable to designated equivalent methods for SO_2 that would be used for 5-minute monitoring.

Another performance parameter that is associated with rise and fall time (and sometimes included in the generic term "response time") is "lag time," which describes the time between the presentation of a step change in the input concentration and the first indication of the change in the measurement readings. Although the lag time represents a delay in the presentation of concentration measurement readings by the analyzer, technically it does not affect the ultimate accuracy or precision of 5-minute measurements relative to the accuracy or precision of 1-hour measurements. Therefore, no supplemental lag time specification is needed for 5-minute monitoring.

The only other performance specification that is of special concern for 5-minute monitoring is the measurement range of the analyzer. Measurements of 5-minute SO_2 concentrations in source-targeted areas where high short-term concentrations may occur would likely require a higher measurement range than for monitoring in other areas. It is expected that a 1.0 ppm measurement range would be adequate for most 5-minute monitoring sites. However, accurate measurements require that the measured concentration not exceed the measurement range during any portion of the 5-minute averaging period. Therefore, measurement ranges higher than 1.0 ppm may be needed at some monitoring sites.

Part 53 specifies a base measurement range of 0.5 ppm and permits alternative ranges up to 1.0 ppm. All designated equivalent methods for SO_2 in wide use today have 1.0 ppm measurement ranges that are approved for use under their equivalent method designations. Further, if a higher range is needed at a particular monitoring site, provisions in 40 CFR part 58, appendix C, section 2.6 allow individual approval of ranges higher than 1.0 ppm at sites where such a higher range is justified. Accordingly, only a minor change is proposed to part 53—to require a 1.0 ppm range for equivalent methods for SO_2 that would be used for 5-minute monitoring.

The currently existing rise and fall time and range specifications in 40 CFR part 53 (for 1-hour average measurements) are not proposed to be changed. Hence, there would be no change in the base requirements in 40 CFR part 53 for designation of equivalent methods for SO_2. The new, supplemental rise and fall time and range specifications being proposed would be applicable only to designated equivalent methods used for 5-minute monitoring and would create a subset of SO_2 equivalent methods that would be additionally approved for 5-minute monitoring. Methods that meet all of the existing performance specifications but not the supplemental specifications for rise and fall time and range would be acceptable for all NAAQS monitoring other than 5-minute monitoring. This situation would be similar to that for other performance parameters where, for example, some designated equivalent methods are approved for use on multiple measurement ranges or over a wider operating temperature range than the minimum range specified. In all such cases, the additional performance qualifications, over the minimum requirements of 40 CFR part 53, are clearly identified and indicated in the equivalent method description. This description appears in both the notice of designation published in the **Federal Register** and in the List of Reference and Equivalent Methods maintained in accordance with § 53.8(c) and distributed to the EPA Regional Offices and to others upon request.

Manufacturers of new SO_2 analyzers may redesign their analyzers to provide for additional ranges, faster response, or capability for user-selection of these parameters. The test procedures to show that an analyzer meets the new supplemental range and rise and fall time specifications for 5-minute monitoring are the same range and rise and fall time test procedures currently described in 40 CFR part 53. Test results from these tests would be submitted along with the results from the other tests in an application for an equivalent method determination under 40 CFR part 53. A manufacturer of an existing analyzer that is currently designated as an equivalent method for SO_2 but does not meet the new supplemental specifications for range and rise and fall time would be encouraged to develop modifications to the analyzer that would allow it to meet the new specifications. The manufacturer should then carry out appropriate tests to demonstrate that the modified analyzer meets the new specifications and apply for approval of the modifications under § 53.14 (modification of a reference or equivalent method). Manufacturers should note, however, that tests other than the range and rise and fall time tests may have to be carried out, since increasing the range or response time could have a possible adverse effect on other performance parameters, such as noise and lower detectable limit. Ideally, such analyzer modifications should be made available to users in the form of a retrofit kit for user installation, if possible. Alternatively, the analyzer may have to be returned to the factory for the modifications to meet the new 5-minute monitoring specifications.

No other changes to 40 CFR part 53 are deemed necessary to support the 5-minute monitoring requirement.

VII. Regulatory Impacts

A. Regulatory Impacts Administrative Requirements

Under Executive Order 12866 (58 FR 51713, Oct. 4, 1993), the EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this notice is a significant regulatory action because of its potential to have an annual effect on the economy of $100 million or more. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Summary of Regulatory Impacts

The EPA has prepared and entered into the docket a draft regulatory impact analysis (RIA) entitled "Regulatory Impact Analysis for the Proposed Regulatory Options to Address Short-Term Peak Sulfur Dioxide Exposures (June 1994)." This draft RIA includes estimates of costs, economic impacts, and net benefits associated with implementation of the regulatory alternatives discussed above. The proposed regulatory action is intended to be implemented through a risk-based, targeted monitoring strategy given the localized nature of the short-term SO_2 problem. Absent specific information on which sources would be impacted under this implementation strategy, modeling is used to identify SO_2 sources likely to cause exceedances of either the 0.60 ppm SO_2, 1 or 5 expected exceedance forms of the standard. Although there are large uncertainties associated with the modeling analysis, such analyses are currently the only available tools for predicting sources of short-term SO_2 peaks and estimating associated control costs for reducing peak, ambient concentrations. Given the modeling uncertainties, as well as that the modeling analyses are not reflective of the specific sources to be targeted by States under a risk-based, targeted implementation strategy, the following estimated impacts should be viewed with caution.

Short-term SO_2 NAAQS Regulatory Alternative

The cost estimates for the short-term SO_2 NAAQS regulatory alternative represent a snapshot of the estimated total industry costs that could be incurred at some unspecified time in the future following full implementation of a short-term SO_2 NAAQS. The costs are based on the use of add-on control devices and fuel switching to lower-sulfur fuels. Given that EPA believes that many sources will be able to reduce their peaks through other, nontechnological means, this assumption may result in overstating costs. With this caveat in mind, nonutility annualized costs are estimated to be approximately $250 million for an ambient SO_2 concentration level of 0.60 ppm, 1 expected exceedance. Annualized costs for a 0.60 ppm, 5 annual exceedance concentration level are estimated to be approximately $160 million. It is estimated that SO_2 will be reduced by approximately 910 thousand tons, and 560 thousand tons for the 1 and 5 exceedance cases, respectively. Incremental to the title IV requirements and attainment of the existing SO_2 NAAQS, total utility annualized costs in 2005 are estimated to be an additional $1.5 billion for the 0.60 ppm, 1 expected exceedance case, and $400 million for the 5 expected exceedance case. Estimated total utility SO_2 emissions in 2005 are not expected to change given the title IV emissions trading program.

Administrative costs are estimated to be approximately $18 million for the short-term NAAQS regulatory alternative. Monitoring costs are estimated to be minimal.

Section 303 Regulatory Alternative

The section 303 regulatory alternative may provide for lower control costs at the national level relative to the cost estimates for the short-term SO_2 NAAQS. First, under the section 303 program, sources would be allowed to use intermittent controls and other practices normally barred by section 123 of the Act (e.g., supplemental control systems, stack height in excess of GEP) to prevent exceedances of a 5-minute trigger level. These types of controls are generally less costly to employ relative to add-on controls. Secondly, given the timetables in the Act regarding SIP development and attainment of the NAAQS, it is probable that emission reductions from a section 303 program could be achieved in a more timely fashion. While some SIP revisions would be necessary for States to implement the section 303 program, more time-consuming aspects of the SIP process such as designations could be avoided. There is a greater likelihood that the section 303 program could bring about more prompt and effective remediation of high 5-minute SO_2 concentration relative to the short-term NAAQS alternative. In respect to total annual emission reductions, it is likely that the section 303 program would achieve less emission reductions than a short-term NAAQS program. Administrative costs are expected to be minimal as some resource-intensive components of the SIP process could be bypassed under a section 303 program. Likewise, monitoring costs are estimated to be minimal.

Analysis of Potential Benefits

A quantitative analysis of the benefits of reducing short-term SO_2 peaks through implementation of the regulatory options under consideration in this RIA is not possible at this time. Results of a staff paper exposure analysis conducted on a subset of SO_2 sources potentially affected by this rulemaking indicate that as many as 180,000–395,000 exposure events above 0.5 ppm SO_2 may occur among 68,000–166,000 exercising asthmatics nationally every year. Moreover, this analysis shows that there is a clustering of risk of exposure around a subset of those SO_2 sources analyzed. It is expected that reductions in short-term SO_2 peaks resulting from this rulemaking could reduce potential risks of adverse respiratory effects (e.g., bronchoconstriction, wheezing, chest tightness, shortness of breath) among exercising asthmatic individuals that are potentially exposed to these high 5-minute SO_2 ambient concentrations. Additionally, reductions in adverse welfare effects due to SO_2 such as improvements in visual air quality and reductions in ecosystem impacts, odors, and materials damage, and reductions in adverse health and welfare effects due to particulate matter may be achieved as a result of implementing the regulatory alternatives considered in this document today.

A final RIA will be issued at the time of promulgation of final standards. This draft RIA has not been considered in issuing this proposal. In accordance with Executive Order 12866, this proposed rule was submitted to OMB for review. Written comments from OMB and the EPA written responses to these comments are available for public inspection at the EPA's Central Docket Section (Docket No. A–84–25), South Conference Center, Room 4, Waterside Mall, 401 M Street, SW., Washington, DC.

B. Impact on Small Entities

Pursuant to the EPA guidelines issued in response to the Regulatory Flexibility Act, 5 U.S.C., 600 et seq., a regulatory flexibility analysis has been prepared and is discussed in the draft RIA cited above. The analysis examined industry-wide cost and economic impacts for nonutility and utility sources of SO_2 emissions likely to be impacted by the regulatory alternatives discussed in this notice. The EPA also analyzed various industries for the existence of small entities. Given data limitations and because the regulatory alternatives would be implemented through a risk-based targeted strategy described in the Federal Register document on implementation issues, it was not feasible to quantitatively ascertain whether small entities within a given industry category would be differentially impacted when compared to the industry category as a whole.

C. Reduction of Governmental Burden

Executive Order 12875 ("Enhancing the Intergovernmental Partnership") is designed to reduce the burden to State, local, and tribal governments of the cumulative effect of unfunded Federal mandates, and recognizes the need for these entities to be free from unnecessary Federal regulation to enhance their ability to address problems they face and provides for Federal agencies to grant waivers to these entities from discretionary Federal requirements. In accordance with the purposes of Executive Order 12875, the EPA will consult with representatives of State, local, and tribal governments to inform them of the requirements for implementing the alternative regulatory measures being proposed to address short-term peak SO_2 exposures. The EPA will summarize the concerns of the governmental entities and respond to their comments prior to taking final action.

D. Environmental Justice

Executive Order 12898 requires that each Federal Agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The requirements of Executive Order 12898 have been addressed in the draft RIA cited above.

On average, approximately 25 percent of the total population and 14 percent of total households residing in geographic areas that are potentially impacted by short-term SO_2 peaks of 0.60 ppm or greater are nonwhite and below the poverty level, respectively. These estimates exceed the national averages of 19.7 percent and 12.7 percent, respectively. It also follows that, on average, 25 percent of the asthmatics potentially exposed to short-term SO_2 peaks of 0.60 ppm or greater are nonwhite. Upon closer examination, 44 percent of these potentially SO_2-impacted areas have a nonwhite population greater than the national average with 24 percent between 1 and 2 times greater, 10 percent between 2 and 3 times greater, 7 percent between 3 and 4 times greater, and 3 percent between 4 and 5 times greater.

E. Impact on Reporting Requirements

Air quality monitoring activities that would occur as a result of this proposed rule would increase the costs and man-hour burdens to State and local agencies for conducting ambient SO_2 surveillance required by 40 CFR part 58 and currently approved under OMB Control Number 2060–0084. Increased costs would result from the relocation of some monitors currently operated as part of the State and Local Air Monitoring Stations (SLAMS) networks and from the purchase and operation of additional monitors in a small number of agencies (see the related document to be published shortly in the Federal Register revising 40 CFR parts 51 and 58 for information on compliance with Paperwork Reduction Act requirements).

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Appendix I to the Preamble

February 19, 1987.

The Honorable Lee M. Thomas,
Administrator, U.S. Environmental Protection Agency, Washington, DC 20460.

Dear Mr. Thomas: The Clean Air Scientific Advisory Committee (CASAC) has completed its review of the 1986 Addendum to the 1982 Staff Paper on Sulfur Oxides (*Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information*) prepared by the Agency's Office of Air Quality Planning and Standards (OAQPS).

The Committee unanimously concludes that this document is consistent in all significant respects with the scientific evidence presented and interpreted in the combined Air Quality Criteria Document for Particulate Matter/Sulfur Oxides (1982) and its 1986 Addendum, on which CASAC issued its closure letter on December 15, 1986. The Committee believes that the 1986 Addendum to the 1982 Staff Paper on Sulfur Oxides provides you with the kind and amount of technical guidance that will be needed to make appropriate decisions with respect to the standards. The Committee's major findings and conclusions concerning the various scientific issues and studies discussed in the Staff Paper Addendum are contained in the attached report.

Thank you for the opportunity to present the Committee's views on this important public health and welfare issue.

Sincerely,

Morton Lippmann, Ph.D.,
Chairman, Clean Air Scientific Advisory Committee.

cc: A. James Barnes
Gerald Emison
Lester Grant
Vaun Newill
John O'Connor
Craig Potter
Terry Yosie

Summary of Major Scientific Issues and CASAC Conclusions on the 1986 Draft Addendum to the 1982 Sulfur Oxides Staff Paper

The Committee found the technical discussions contained in the Staff Paper Addendum to be scientifically thorough

and acceptable, subject to minor editorial revisions. This document is consistent in all significant respects with the scientific evidence presented in the 1982 combined Air Quality Criteria Document for Particulate Matter/Sulfur Oxides and its 1986 Addendum, on which the Committee issued its closure letter on December 15, 1986.

Scientific Basis for Primary Standards

The Committee addressed the scientific basis for a 1-hour, 24-hour, and annual primary standards at some length in its August 26, 1983 closure letter on the 1982 Sulfur Oxides Staff Paper. That letter was based on the scientific literature which had been published up to 1982. The present review has examined the more recently published studies.

It is clear that no single study of SO_2 can fully address the range of public health issues that arise during the standard setting process. The Agency has completed a thorough analysis of the strengths and weaknesses of various studies and has derived its recommended ranges of interest by evaluating the weight of the evidence. The Committee endorses this approach.

The Committee wishes to comment on several major issues concerning the scientific data that are available. These issues include:

- Recent studies more clearly implicate particulate matter than SO_2 as a longer-term public health concern at low exposure levels.
- A majority of Committee members believe that the effects reported in the clinical studies of asthmatics represent effects of significant public health concern.
- The exposure uncertainties associated with a 1-hour standard are quite large. The relationship between the frequency of short-term peak exposures and various scenarios of asthmatic responses is not well understood. Both EPA and the electric power industry are conducting further analyses of a series of exposure assessment issues. Such analyses have the potential to increase the collective understanding of the relationship between SO_2 exposures and responses observed in subgroups of the general population.
- The number of asthmatics vulnerable to peak exposures near electric power plants, given the protection afforded by the current standards, represents a small number of people. Although the Clean Air Act requires that sensitive population groups receive protection, the size of such groups has not been defined. CASAC believes that this issue represents a legal/policy matter and has no specific scientific advice to provide on it.

CASAC's advice on primary standards for three averaging times is presented below:

1-Hour Standard—It is our conclusion that a large, consistent data base exists to document the bronchoconstrictive response in mild to moderate asthmatics subjected in clinical chambers to short-term, low levels of sulfur dioxide while exercising. There is, however, no scientific basis at present to support or dispute the hypothesis that individuals participating in the SO_2 clinical studies are surrogates for more sensitive asthmatics. Estimates of the size of the asthmatic population that experience exposures to short-term peaks of SO_2 (0.2–0.5 parts per million (ppm) SO_2 for 5–10 minutes) during light to moderate exercise, and that can be expected to exhibit a bronchoconstrictive response, varies from 5,000 to 50,000.

The majority of the Committee believes that the scientific evidence supporting the establishment of a new 1-hour standard is stronger than it was in 1983. As a result, and in view of the significance of the effects reported in these clinical studies, there is strong, but not unanimous support for the recommendation that the Administrator consider establishing a new 1-hour standard for SO_2 exposures. The Committee agrees that the range suggested by EPA staff (0.2–0.5 ppm) is appropriate, with several members of the Committee suggesting a standard from the middle of this range. The Committee concludes that there is not a scientifically demonstrated need for a wide margin of safety for a 1-hour standard.

24–Hour Standard—The more recent studies presented and analyzed in the 1986 Staff Paper Addendum, in particular, the episodic lung function studies in children (Dockery et al., and Dassen et al.) serve to strengthen our previous conclusion that the rationale for reaffirming the 24-hour standard is appropriate.

Annual Standard—The Committee reaffirms its conclusion, voiced in its 1983 closure letter, that there is no quantitative basis for retaining the current annual standard. However, a decision to abolish the annual standard must be considered in the light of the total protection that is to be offered by the suite of standards that will be established.

The above recommendations reflect the consensus position of CASAC. Not all CASAC reviewers agree with each position adopted because of the uncertainties associated with the existing scientific data. However, a strong majority supports each of the specific recommendations presented above, and the entire Committee agrees that this letter represents the consensus position.

Secondary Standards

The 3-hour secondary standard was not addressed at this review.

APPENDIX II to the Preamble

June 1, 1994.

Honorable Carol M. Browner,
Administrator, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460.

Subject: Clean Air Scientific Advisory Committee Closure on the Supplements to Criteria Document and Staff Position Papers for SO_2

Dear Ms. Browner: The Clean Air Scientific Advisory Committee (CASAC) at a meeting on April 12, 1994, completed its review of the documents: Supplement to the Second Addendum (1986) to Air Quality Criteria for Particulate Matter and Sulfur Oxides: Assessment of New Findings on Sulfur Dioxide and Acute Exposure Health Effects in Asthmatics; and Review of the National Ambient Air Quality Standards for Sulfur Oxides: Updated Assessment of Scientific and Technical Information, Supplement to the 1986 OAQPS Staff Paper Addendum. The Committee notes, with satisfaction, the improvements made in the scientific quality and completeness of the documents.

With the changes recommended at our March 12 session, written comments submitted to the Agency subsequent to the meeting, and the major points provided below, the documents are consistent with the scientific evidence available for sulfur dioxide. They have been organized in a logical fashion and should provide an adequate basis for a regulatory decision. Nevertheless, there are four major points which should be called to your attention while reviewing these materials:

1. A wide spectrum of views exists among the asthma specialists regarding the clinical and public health significance of the effects of 5 to 10 minute concentrations of sulfur dioxide on asthmatics engaged in exercise. On one end of the spectrum is the view that spirometric test responses can be observed following such short-term exposures and they are a surrogate for significant health effects. Also, there is some concern that the effects are underestimated because moderate asthmatics, not severe asthmatics, were used in the clinical tests.

At the other end of the spectrum, the significance of the spirometric test results are questioned because the response is similar to that evoked by other commonly encountered, non-specific stimuli such as exercise alone, cold, dry air inhalation, vigorous coughing, psychological stress, or even fatigue. Typically, the bronchoconstriction reverses itself within one or two hours, is not accompanied by a late-phase response (often more severe and potentially dangerous than the immediate response), and shows no

evidence of cumulative or long-term effects. Instead, it is characterized by a short-term period of bronchoconstriction, and can be prevented or ameliorated by beta-agonist aerosol inhalation.

2. It was the consensus of CASAC that the exposure scenario of concern is a rare event. The sensitive population in this case is an unmedicated asthmatic engaged in moderate exercise who happens to be near one of the several hundred sulfur dioxide sources that have the potential to produce high ground-level sulfur dioxide concentrations over a small geographical area under rare adverse meteorological conditions. In addition, CASAC pointed out that sulfur dioxide emissions have been significantly reduced since EPA conducted its exposure analysis and emissions will be further reduced as the 1990 Clean Air Act Amendments are implemented. Consequently, such exposures will become even rarer in the future.

3. It was the consensus of CASAC that any regulatory strategy to ameliorate such exposures be risk-based—targeted on the most likely sources of short-term sulfur dioxide spikes rather than imposing short-term standards on all sources. All of the nine CASAC Panel members recommended that Option 1, the establishment of a new 5-minutes standard, not be adopted. Reasons cited for this recommendation included: the clinical experiences of many ozone experts which suggest that the effects are short-term, readily reversible, and typical of response seen with other stimuli. Further, the committee viewed such exposures as rare events which will even become rarer as sulfur dioxide emissions are further reduced as the 1990 amendments are implemented. In addition, the committee pointed out that enforcement of a short-term NAAQS would require substantial technical resources. Furthermore, the committee did not think that such a standard would be enforceable (see below).

4. CASAC questioned the enforceability of a 5-minute NAAQS or "target level." Although the Agency has not proposed an air monitoring strategy, to ensure that such a standard or "target level" would not be exceeded, we infer that potential sources would have to be surrounded by concentric circles of monitors. The operation and maintenance of such monitoring networks would be extremely resource intensive. Furthermore, current instrumentation used to routinely monitor sulfur dioxide does not respond quickly enough to accurately characterize 5-minute spikes.

The Committee appreciates the opportunity to participate in this review and looks forward to receiving notice of your decision on the standard. Please do not hesitate to contact me if CASAC can be of further assistance on this matter.

Sincerely,

George T. Wolff, Ph.D.,

Chair, Clean Air Scientific Advisory Committee.

List of Subjects

40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 53

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 1, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

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

Authority: Secs. 109 and 301(a), Clean Air Act, as amended (42 U.S.C. 7409, 7601(a)).

2. Section 50.4 is revised to read as follows:

§ 50.4 National primary ambient air quality standards for sulfur oxides (sulfur dioxide).

(a) The level of the annual standard is 0.030 parts per million (ppm), not to be exceeded in a calendar year. The annual arithmetic mean shall be rounded to three decimal places (fractional parts equal to or greater than 0.0005 ppm must be rounded up).

(b) The level of the 24-hour standard is 0.14 parts per million (ppm), not to be exceeded more than once per calendar year. The 24-hour averages shall be determined from successive nonoverlapping 24-hour blocks starting at midnight each calendar day and shall be rounded to two decimal places (fractional parts equal to or greater than 0.005 ppm must be rounded up).

(c) The level of the 5-minute standard is 0.60 parts per million (ppm), not to be exceeded more than once per calendar year, as determined in accordance with appendix I of this part.

(d) Sulfur oxides shall be measured in the ambient air as sulfur dioxide by the reference method described in appendix A of this part or by an equivalent method designated in accordance with part 53 of this chapter.

(e) To demonstrate attainment, the annual arithmetic mean and the second-highest 24-hour averages must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 24-hour block average shall be considered valid if at least 75 percent of the hourly averages for the 24-hour period are available. In the event that only 18, 19, 20, 21, 22, or 23 hourly averages are available, the 24-hour block average shall be computed as the sum of the available hourly averages using 18, 19, etc. as the divisor. If less than 18 hourly averages are available, but the 24-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of paragraph (b) of this section, then this shall be considered a valid 24-hour average. In this case, the 24-hour block average shall be computed as the sum of the available hourly averages divided by 24.

3. Section 50.5 is revised to read as follows:

§ 50.5 National secondary ambient air quality standard for sulfur oxides (sulfur dioxide).

(a) The level of the 3-hour standard is 0.5 parts per million (ppm), not to be exceeded more than once per calendar year. The 3-hour averages shall be determined from successive nonoverlapping 3-hour blocks starting at midnight each calendar day and shall be rounded to 1 decimal place (fractional parts equal to or greater than 0.05 ppm must be rounded up).

(b) Sulfur oxides shall be measured in the ambient air as sulfur dioxide by the reference method described in appendix A of this part or by an equivalent method designated in accordance with Part 53 of this chapter.

(c) To demonstrate attainment, the second-highest 3-hour average must be based upon hourly data that are at least 75 percent complete in each calendar quarter. A 3-hour block average shall be considered valid only if all three hourly averages for the 3-hour period are available. If only one or two hourly averages are available, but the 3-hour average would exceed the level of the standard when zeros are substituted for the missing values, subject to the rounding rule of paragraph (a) of this section, then this shall be considered a valid 3-hour average. In all cases, the 3-hour block average shall be computed as the sum of the hourly averages divided by 3.

4. Appendix I is added to part 50 to read as follows:

Appendix I to Part 50—Interpretation of the 5-Minute National Ambient Air Quality Standard for Sulfur Dioxide

1.0 *General.*

1.1 This appendix explains the computations necessary for analyzing sulfur dioxide data to determine attainment of the 5-minute standard specified in 40 CFR 50.4. Sulfur dioxide is measured in the ambient air by the reference method specified in Appendix A of this part or an equivalent

method designated in accordance with part 53 of this chapter.

1.2 Several terms used in this appendix must be defined. A "5-minute hourly maximum" for SO_2 refers to the highest of the 12 possible nonoverlapping 5-minute SO_2 averages calculated or measured during a clock hour. The term "exceedance" of the 5-minute standard means a 5-minute hourly maximum that is greater than the level of the 5-minute standard after rounding to the nearest hundredth ppm (i.e. values ending in or greater than 0.005 ppm are rounded up; e.g., a value of 0.605 would be rounded to 0.61, which is the smallest value for an exceedance). The term "year" refers to a calendar year. The term "quarter" refers to a calendar quarter. The 5-minute SO_2 standard is expressed in terms of the number of exceedances per year after adjusting for missing data (if required) and after averaging over a two year period.

2.0 Attainment Determination.

2.1 Under 40 CFR 50.4(c) the 5-minute standard is attained when the number of exceedances per year is less than or equal to one. In general, this determination is to be made by recording the number of 5-minute hourly maximum exceedances at a monitoring site for each year, using the calculations in section 3.2 to compensate for missing data (if required), averaging the number of exceedances over a two year period, and comparing the number of exceedances (rounded to the nearest integer) to the number of allowable exceedances.

2.2 There are less stringent requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the sulfur dioxide standards. Although it is necessary to meet the minimum data completeness requirements to use the computational formula described in section 3.2, this criterion does not apply when there are obvious nonattainment situations. For example, when a site fails to meet the completeness criteria, nonattainment of the 5-minute standard can still be established on the basis of the observed number of exceedances in a year (e.g. three observed exceedances in a single year).

3.0 Calculations for the 5-Minute Standard

3.1 Calculating a 5–Minute hourly maximum. A 5-minute hourly maximum value for SO_2 is the highest of the 5-minute averages from the twelve possible nonoverlapping periods during a clock hour. These 5-minute values shall be rounded to the nearest hundredth ppm (fractional values equal to or greater than 0.005 ppm are rounded up). A 5-minute maximum shall be considered valid if (1) 5-minute averages were available for at least 9 of the twelve five-minute periods during the clock hour or (2) the value of the 5-minute average exceeds the level of the 5-minute standard.

3.2 Calculating estimated exceedances for a year.

3.2 Because of practical considerations, a 5-minute maximum SO_2 value may not be available for each hour of the year. To account for the possible effect of incomplete data, an adjustment must be made to the data collected at a particular monitoring location to estimate the number of exceedances in a year. The adjustment is made on a quarterly basis to ensure that the entire year is adequately represented. In this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level.

3.2.2 The computation for incomplete data is to be made for all NAMS and SLAMS sites with 50 percent to 90 percent complete data in each quarter. If a site has more than 90 percent complete data in a quarter, no adjustment for missing data is required. If a site has less than 50 percent complete data in a quarter, no adjustment for missing data is required and the observed exceedances are used. To demonstrate attainment, a site must have at least 75 percent complete data in each quarter.

3.2.3 The estimate of the expected number of exceedances for the quarter is equal to the observed number of exceedances plus an increment associated with the missing data. The following formula must be used for these computations:

$$e_q = v_q + [(v_q/n_q) \times (N_q - n_q] = v_q \times N_q/n_q \quad [1]$$

where

e_q=the estimated number of exceedances for quarter q,

v_q=the observed number of exceedances for quarter q,

N_q=the number of hours in quarter q, and

nq=the number of hours in the quarter with valid 5-minute hourly SO_2 maximums

q=the index for each quarter, q=1, 2, 3 or 4.

The estimated number of exceedances for the quarter must be rounded to the nearest hundredth (fractional values equal to or greater than 0.005 are rounded up).

3.2.4 The estimated number of exceedances for the year, e, is the sum of the estimates for each quarter.

$$e = \sum_{q=1}^{4} e_q \quad [2]$$

The estimated number of exceedances for a single year must be rounded to one decimal place (fractional values equal to or greater than 0.05 are rounded up).

3.2.5 The number of exceedances is then estimated by averaging the individual annual estimates over a two year period, rounding to the nearest integer, and comparing with the allowable exceedance rate of one per year (fractional values equal to or greater than 0.5 are rounded up; e.g., an estimated number of exceedances of 1.5 would be rounded to 2, which is the lowest value for nonattainment).

3.2.6 *Example.*

i. During the most recent quarter, 1210 out of a possible 2208 5-minute hourly maximums were recorded, with one observed exceedance of the 5-minute standard. Using formula [1], the estimated number of exceedances for the quarter is

e=1×2208/1210=1.825 or 1.83

ii. If the estimated exceedances for the other four quarters were 0.0, then using formula [2], the estimated number of exceedances for the year is

1.83+0.0+0.0+0.0=1.83 or 1.8

iii. If the estimated number of exceedances for the previous year was 0.0, then the expected number of exceedances is estimated by

(1.8+0.0)/2=0.9 or 1

iv. Since 1 does not exceed the allowable number of exceedances, this monitoring site would not fail the attainment test.

PART 53—AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

1. The authority citation for part 53 continues to read as follows:

Authority: Sec. 301(a) of the Clean Air Act (42 U.S.C. sec. 1857g(a)), as amended by sec. 15(c)(2) of Pub. L. 91–604, 84 Stat. 1713, unless otherwise noted.

2. Section 53.20 is amended by adding two sentences to the end of paragraph (b) and by revising the table to paragraph (c) to read as follows:

§ 53.20 General provisions.

* * * * *

(b) * * * Candidate methods for sulfur dioxide may be additionally approved for use in obtaining 5-minute average concentration measurements by meeting all of the specified requirements for both the 0 to 0.5 ppm and 0 to 1.0 ppm ranges and meeting the supplemental specifications for rise and fall time given in Table B–1. Such additional approval for 5-minute monitoring shall be included in any equivalent method designation determination for the method and shall be identified in the **Federal Register** notice of designation required under § 53.8(a), the notice to the applicant required under § 53.8(b), and the list of designated methods required under § 53.8(c).

(c) * * *

TABLE B–1.—PERFORMANCE SPECIFICATIONS FOR AUTOMATED METHODS

Performance parameter	Units	Sulfur dioxide	Photochemical oxidants	Carbon monoxide	Nitrogen dioxide	Definitions and test procedures
1. Range Supplemental, 5-minute[2]	ppm[1]	0–0.5	0–0.5	0–50	0–0.5	Sec. 53.23(a).
	ppm	0–1.0				
2. Noise	ppm	0.005	0.005	0.50	0.005	Sec. 53.23(b).
3. Lower detectable limit	ppm	0.01	0.01	1.0	0.01	Sec. 53.23(c).
4. Interference equivalent:						
Each interferant	ppm	±0.02	±0.02	±1.0	±0.02	Sec. 53.23(d).
Total interferant	ppm	±0.06	±0.06	±1.5	±0.04	
5. Zero drift, 12 and 24 hour	ppm	±0.02	±0.02	±1.0	±0.02	Sec. 53.23(e).
6. Span drift, 24 hour:						
20 percent of upper range limit	Percent	±20.0	±20.0	±10.0	±20.0	Sec. 53.23(e).
80 percent of upper range limit	Percent	±5.0	±5.0	±2.5	±5.0	
7. Lag time	Minutes	20	20	10	20	Sec. 53.23(e).
8. Rise time Supplemental, 5-minute[2]	Minutes	15	15	5	15	Sec. 53.23(e).
	Minutes	2				
9. Fall time Supplemental, 5-minute[2]	Minutes	15	15	5	15	Sec. 53.23(e).
	Minutes	2				
10. Precision:						
20 percent of upper range limit	ppm	0.010	0.010	0.5	0.020	Sec.53.23(e)
80 percent of upper range limit	ppm	0.015	0.010	0.5	0.030	

[1] Parts per million by volume. To convert from parts per million to μg/m^3 at 25 °C and 760 mm Hg, multiply by M/0.02447, where M is the molecular weight of the gas.

[2] Supplemental specifications applicable to sulfur dioxide equivalent methods to be additionally approved for use for 5-minute monitoring.

* * * * *

[FR Doc. 94–27646 Filed 11–14–94; 8:45 am]

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federal register

Tuesday
November 15, 1994

Part IV

Department of the Interior

Fish and Wildlife

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Animal Candidate Review for Listing as Endangered or Threatened Species; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Animal Candidate Review for Listing as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this notice the U.S. Fish and Wildlife Service (Service) presents an updated compilation of vertebrate and invertebrate animal taxa native to the United States that are being reviewed for possible addition to the List of Endangered and Threatened Wildlife under the Endangered Species Act of 1973, as amended (Act). Such taxa are generally referred to as listing candidates (candidates). The changes in this document from previous animal notices of review primarily involve: (1) the addition of new candidate taxa; (2) changes in category for some candidates; (3) additions and deletions in State historic distributions; and (4) changes in status trend for some candidate taxa. Procedures initiated in the previous animal notice of review (November 21, 1991, 56 FR 58804) that are being continued include: (1) a category (PE or PT) for species that are currently proposed for listing under the Act; (2) alphabetical organization by scientific name of taxa under each major group heading (class or order) identified in previous notices; (3) the omission of taxa that have been identified as non-candidates in previous notices; and (4) identification of a Fish and Wildlife Service Region with lead responsibility for each taxon. While it is prudent to take candidate taxa into account during environmental planning, neither the substantive nor procedural provisions of the Act apply to a taxon that is designated as a candidate. (Species that have been proposed for listing are covered by the conference procedure of Section 7(a)(4) of the Act).

Through the publication of this notice, the Service also requests any additional status information that may be available. This information will be considered in preparing listing documents and future revisions and/or supplements to the notice of review. It will also assist the Service in monitoring changes in the status of listing candidates.

DATE: Comments are requested until the publication of an update of this notice, anticipated in 1996.

ADDRESSES: Interested persons or organizations should submit comments regarding particular taxa to the Regional Director of the Region specified with each taxon as having the lead responsibility for that taxon. Comments of a more general nature may be submitted to: Chief—Division of Endangered Species, U.S. Fish and Wildlife Service, Mail Stop 452 ARLSQ, Washington, D.C. 20240. Written comments and materials received in response to this notice will be available for public inspection by appointment in the Regional Offices listed below.

Region 1.—California, Hawaii, Idaho, Nevada, Oregon, Washington, Commonwealth of the Northern Mariana Islands, and Pacific Territories of the United States.

Regional Director (TE), U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (503–231–6241).

Region 2.—Arizona, New Mexico, Oklahoma, and Texas.

Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505–766–3972).

Region 3.—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.

Regional Director (TE), U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612–725–3276).

Region 4.—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.

Regional Director (TE), U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30303 (404–679–7103).

Region 5.—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Regional Director (TE), U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589 (413–253–8615).

Region 6.—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Regional Director (TE), U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303–236–7398).

Region 7.—Alaska.

Regional Director (TE), U.S. Fish and Wildlife Service, 1011 East Tudor Street, Anchorage, Alaska 99501 (907–786–3605).

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species (703–358–2171) or Endangered Species Coordinator(s) in the appropriate Regional Office(s) listed above.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) requires the Secretary of the Interior (or Commerce according to vested program responsibilities) to determine whether wildlife and plant species are endangered or threatened, based on the best available scientific and commercial data, after conducting a review of their status. In regulations found at 50 CFR 424.15 the Service advises that it may publish comprehensive notices of such review. These notices contain the names of the species considered to be candidates for listing under the Act and indicate whether sufficient scientific or commercial information is available to warrant proposing to list them. They also solicit additional information regarding any of the species mentioned.

The Service has for many years been gathering data on taxa of animals native to the United States that appeared, at least at times, to merit consideration for addition to the List of Endangered and Threatened Wildlife. The accompanying table identifies many of these taxa (including, by definition, biological subspecies and certain distinct population segments of vertebrate animals) and assigns each taxon to one of the categories described below. In revising this compilation the Service relies on information from status surveys conducted for candidate assessment and on other information from State Heritage Programs, from other State and Federal Agencies (such as the Forest Service and the Bureau of Land Management), from knowledgeable scientists, and from comments received in response to previous notices of review.

Unless it is the subject of a current published proposed rule to determine endangered or threatened status, none of these taxa receives substantive or procedural protection pursuant to the Act (species that are the subject of a final listing rule are removed from this table at each periodic updating). The Act requires, however, monitoring the status of certain candidate taxa to prevent their extinction while awaiting listing decisions. The Service intends to monitor the status of all listing candidates to the fullest extent possible,

emphasizing monitoring of species for which available scientific and commercial information indicates imminent threat (see the listing priority guidelines published September 21, 1983, 48 FR 43098).

Many of the taxa in the accompanying table were covered in the Service's previous animal notices of review. The preceding animal notice of review was published in the FEDERAL REGISTER of November 21, 1991 (56 FR 58804–58836). Previous to that a comprehensive animal notice was published January 6, 1989 (54 FR 554–579), with minor corrections on August 10, 1989 (54 FR 32833). Earlier comprehensive reviews for vertebrate animals were published on September 18, 1985 (50 FR 37958–37967), and on December 30, 1982 (47 FR 58454–58460). An initial comprehensive review for invertebrate animals was published May 22, 1984 (49 FR 21664–21675). This revised notice supersedes all previous animal notices of review.

The Service has assigned lead responsibility to one of its Regional Offices for each candidate species that occurs in more than one Service Region. The comments received in response to the previous animal notices of review have been provided for review to the Region having lead responsibility for each candidate species mentioned in the comment. The Service will likewise consider all information provided in response to this notice of review in deciding whether or not to propose species for listing and when to undertake necessary listing actions. All comments received become part of the administrative record for the species mentioned.

Some taxa covered by the previous notices have had final determinations of endangered or threatened status and, therefore, are not included in this notice of review (for the current U.S. Lists of Endangered and Threatened Wildlife and Plants contact any of the offices in the above "ADDRESSES" section). Also, former animal candidates that have been assigned in previous notices to categories 3A, 3B or 3C (see definitions below) are not repeated here, except in cases where subsequent category changes were necessary.

Current Notice

This notice reflects the Service's current judgment of the possible vulnerability and status trends of native U.S. animal taxa. Taxa in the notice are assigned to several status categories, noted in the "Category" column at the left side of the table.

Codes for the major status categories of taxa in the first column of the table are explained below:

PE—Taxa already proposed to be listed as endangered.

PT—Taxa already proposed to be listed as threatened.

1—Taxa for which the Service has on file sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. Proposed rules have not yet been issued because this action is precluded at present by other listing activity. In accordance with the policy announced in a statement published May 12, 1993 (58 FR 28034–28035), all species that have been the subject of a petition determination of "warranted but precluded" for listing are automatically assigned to Category 1 of the next comprehensive notice of review unless they are proposed or determined to be "not warranted" in the interim. Development and publication of proposed rules on Category 1 taxa are anticipated, however, and the Service encourages other Federal agencies to give consideration to such taxa in environmental planning.

2—Taxa for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which persuasive data on biological vulnerability and threat are not currently available to support proposed rules. The Service emphasizes that these taxa are not being proposed for listing by this notice, and there are no current plans for such proposals until additional supporting information becomes available. Further biological research and field study usually will be necessary to ascertain the status of taxa in this category. It is likely that many will be found not to warrant listing, either because they are not threatened or endangered or because they do not qualify as species under the definition in the Act, while others will be found to be in greater danger of extinction than some taxa already found in Category 1. An asterisk (*) beside the category number indicates that the species may possibly be extinct. The Service hopes that this notice will encourage necessary research on vulnerability, taxonomy, and/or threats for these taxa.

Taxa that once were considered for listing as threatened or endangered but are no longer under such consideration are included in Category 3. Taxa in category 3 are not current candidates for listing. Such taxa are further divided into three subcategories to indicate the reason(s) for their removal from consideration:

3A—Taxa for which the Service has persuasive evidence of extinction. If rediscovered, such taxa might acquire high priority for listing. At this time, however, the best available information indicates that the taxa in this subcategory, or the habitats from which they were known, have been lost.

3B—Names that, on the basis of current taxonomic understanding (usually as represented in published revisions and monographs), do not represent distinct taxa meeting the Act's definition of "species"; it also includes vertebrate populations that do not meet this definition. Such supposed entities could be reevaluated in the future on the basis of new information.

3C—Taxa that have proven to be more abundant or widespread than previously believed and/or those that are not subject to any identifiable threat. If further research or changes in habitat conditions indicate a significant decline in any of these taxa, they may be reevaluated for possible inclusion in categories 1 or 2. Taxa assigned to Category 3C in previous notices whose status is unchanged have been omitted from the current compilation. Any taxon omitted from a previous notice will still be treated by the Service as belonging to Category 3.

The taxa in categories 1 and 2 of this notice are considered by the Service as candidates for possible addition to the List of Endangered and Threatened Wildlife. The Service encourages their consideration in long-range environmental planning, such as in environmental impact analysis under the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508). Information regarding the range, status, and habitat needs of such species is available from the Service's Regional Offices (see "ADDRESSES" above).

The Service is aware of some misinterpretations that have been made of Category 3 subcategories in the past. In particular, Category 3A has been interpreted as either a comprehensive compilation of extinct species or as a list of species that became extinct while undergoing status review. Neither interpretation is correct. In fact, status review of the overwhelming majority of species identified in Category 3A revealed extinction that had occurred well before passage of the Endangered Species Act of 1973. A common misinterpretation of Category 3C is that a status review indicates those species have special sensitivity or vulnerability to extinction. Although this might be true of some of them, it is not necessarily true of all or even a majority of them.

A second status column in the table indicates status trend, where known. Please note, however, that status trend is only a small part of the whole picture of a taxon's status and may undergo frequent and/or rapid reversals owing to natural and man-made causes. Each species' status is identified as I, S, D, U, or N, which stand, respectively, for Improving, Stable, Declining, Unknown, or Not applicable. "Improving" indicates those species known to be increasing in numbers and/or whose threats to their continued existence are lessening in the wild. "Stable" indicates those species known to have stable numbers over the recent past and/or whose threats have remained relatively constant. "Declining" indicates decreasing numbers and/or increasing threats. "Unknown" is for those species where additional survey work is required to determine their current trends. "Not applicable" applies to species in Category 3.

Summary of Status Categories

For ease of reference, numerical totals for candidates in the various status categories are provided below:

Proposed for Listing—52 (including PE—44 and PT—8)

Category 1—86

Category 2—1,919 (Representing about 2,001 taxa)

Category 3—90 (including 3A—32, 3B—14, and 3C—44)

This and previous animal notices have identified a total of 424 category 3 taxa (including 3A—156, 3B—61, and 3C—207).

Request for Information

The Service hereby requests that any further information on the vulnerable taxa named in this notice be submitted as soon as possible and on a continuing basis, including:

(1) Data indicating that a taxon should be assigned to a category other than the one in which it appears;

(2) Nominations of taxa not included;

(3) Recommendations of area as critical habitat for a candidate taxon, or indications that a proposal of critical habitat would not be prudent for a taxon;

(4) Documentation of threats to any of the included taxa;

(5) Information concerning the degrees of threats;

(6) identification of taxonomic or nomenclatural changes for any of the taxa, including the acceptability of the indicated vertebrate populations;

(7) Appropriate common name suggestions; or

(8) Identification of mistakes, such as errors in the indicated historical distributions.

The Service will consider all information received in response to this notice. Substantive changes will be published in the **Federal Register** on a two-year cycle.

Organization of the Table

The following table is arranged alphabetically by names of genera, species, and relevant subspecies under the major group headings (class or order as it provides a practical grouping). Useful synonyms and subgeneric scientific names appear in parentheses (the synonyms preceded by an equal sign) and are displaced to the right in some instances to avoid affecting the alphabetical order. Some taxa that have not yet been formally described in the scientific literature have been included. Such taxa are identified by a generic or specific name (in italics) followed by "sp." or "ssp." (not italicized, or alphabetized).

The scientific community is making some progress in standardizing common names at the species level (but very little at the level of subspecies). Standardized common names are incorporated in these notices as they become available. Any common names replaced in the process of standardization will be repeated at least once (given in parentheses with an equal sign). The flux in common names, the inclusion of vernacular and composite subspecific names, and the fact that a majority of invertebrates still lack a standardized name combine to make common names relatively useless for organizing the table. This notice also presents a group name (in parentheses) for many species, notably mollusks and insects, whose standardized common name given alone would have little recognition value to most users of the table.

For each taxon in the table, the assigned status category appears in the first column on the left. The second column contains the current status trend information. Column three indicates the Service Region with lead responsibility (see "**ADDRESSES**" section above). Following the scientific name of each species or subspecies (fourth column) is the family designation (column five) and any common or vernacular name (column six). Column seven contains the known historical ranges for all included taxa, indicated by postal code abbreviations for States and U.S. possessions (many taxa may no longer occur in all of the areas shown). In the section on birds, the abbreviation "N" indicates the nesting range of the species, and the abbreviation "V" indicates additional areas in which the species is a regular visitor. In only the sections on insects, an asterisk (*) beside the name of a State signifies a lack of sightings, to the Service's knowledge, since 1963 for that State.

Author

This notice was compiled from evaluations by the Service's Ecological Services staff biologists in the Service's Regional Offices and Field Stations. It was compiled and edited by Dr. George Drewry of the Division of Endangered Species in the Service's Washington Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Authority

This notice is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
			VERTEBRATES			
			MAMMALS.			
2	U	R1	*Ammospermophilus nelsoni*	Sciuridae	Nelson's antelope ground squirrel	CA.
2	U	R1	*Aplodontia rufa californica*	Aplodontidae	Mountain beaver (Mono Basin population).	CA.
2	U	R1	*Aplodontia rufa phaea*	Aplodontidae	Point Reyes mountain beaver	CA.
2	U	R1	*Arborimus albipes*	Muridae	White-footed vole	CA, OR.
2	U	R1	*Arborimus pomo*	Muridae	California red tree vole	CA, OR

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
3C	N	R5	*Blarina brevicauda aloga*	Soricidae	Martha's Vineyard short-tailed shrew	MA.
2	S	R5	*Blarina brevicauda compacta*	Soricidae	Nantucket short-tailed shrew	MA.
2	U	R4	*Blarina brevicauda shermani*	Soricidae	Sherman's short-tailed shrew	FL.
2	U	R2	*Blarina hylophaga (=brevicauda) plumbea.*	Soricidae	Aransas short-tailed shrew	TX.
2	U	R1	*Brachylagus idahoensis*	Leporidae	Pygmy rabbit	CA, ID, MT, NV, OR, UT, WA, WY.
2	U	R2	*Choeronycteris mexicana*	Phyllostomidae	Mexican long-tongued bat	AZ, CA, NM, TX, Mexico, Central & South America.
2	U	R4	*Clethrionomys gapperi maurus*	Muridae	Kentucky red-backed vole	KY.
1	D	R2	*Conepatus leuconotus texensis*	Mustelidae	Gulf Coast hog-nosed skunk	TX, Mexico.
2	U	R6	*Conepatus mesoleucus figginsi*	Mustelidae	Colorado hog-nosed skunk	CO.
2	U	R2	*Conepatus mesoleucus telmalestes*	Mustelidae	Big Thicket hog-nosed skunk	TX.
2	U	R2	*Cynomys ludovicianus arizonensis*	Sciuridae	Arizona black-tailed prairie dog	AZ, NM, TX, Mexico.
2	U	R1	*Dipodomys californicus (=heermanni) eximius.*	Heteromyidae	Marysville California kangaroo rat (=M. Heerman's k.r.).	CA.
2	U	R2	*Dipodomys elator*	Heteromyidae	Texas kangaroo rat	OK, TX.
3B	N	R1	*Dipodomys elephantinus*	Heteromyidae	Big-eared kangaroo rat	CA.
2	U	R1	*Dipodomys heermanni berkleyensis*	Heteromyidae	Berkeley kangaroo rat	CA
2	H	R1	*Dipodomys heermanni dixoni*	Heteromyidae	Merced kangaroo rat	CA
2	U	R1	*Dipodomys merriami collinus*	Heteromyidae	Earthquake Merriam's kangaroo rat	CA
2	U	R6	*Dipodomys merriami frenatus*	Heteromyidae	Virgin Merriam's kangaroo rat	UT.
1	D	R1	*Dipodomys merriami parvus*	Heteromyidae	San Bernadino Merriam's kangaroo rat.	CA.
2	U	R6	*Dipodomys microps alfredi*	Heteromyidae	Gunnison Island kangaroo rat	UT.
2	U	R2	*Dipodomys microps leucotis*	Heteromyidae	Marble Canyon kangaroo rat	AZ.
2	U	R6	*Dipodomys microps russeolus*	Heteromyidae	Dolphin Island chisel-toothed kangaroo rat.	UT.
2	U	R1	*Dipodomys nitratoides brevinasus*	Heteromyidae	Short-nosed kangaroo rat	CA.
2	U	R6	*Dipodomys ordii cineraceus*	Heteromyidae	Dolphin Island ord's kangaroo rat	UT.
PE	U	R1	*Dugong dugon*	Dugongidae	Dugong	PW
1	D	R1	*Emballonura semicaudata*	Emballonuridae	Sheath-tailed bat (Agiguan, American Samoa populations).	AS, CM (Agiguan)
2*	E	R1	*Emballonura semicaudata*	Emballonuridae	Sheath-tailed bat (Guam, Rota populations).	GU, CM (Rota)
2	U	R1	*Emballonura semicaudata*	Emballonuridae	Sheath-tailed bat (Caroline Islands populations).	TT (Caroline Islands).
2	U	R2	*Euderma maculatum*	Vespertilionidae	Spotted bat	AZ, CA, CO, ID, MT, NM, NV, OR, UT, WY, TX, Canada, Mexico.
1	D	R4	*Eumops glaucinus floridanus*	Molossidae	Florida mastiff-bat	FL.
2	U	R2	*Eumops perotis californicus*	Molossidae	Greater western mastiff-bat	AZ, CA, NM, TX, Mexico.
2	U	R2	*Eumops underwoodi*	Molossidae	Underwood's mastiff-bat	AZ, Mexico, Central America.
2	U	R1	*Eutamias palmeri*	Sciuridae	Palmer's chipmunk	NV.
2	U	R2	*Eutamias quadrivittatus australis*	Sciuridae	Organ Mountains Colorado chipmunk.	NM.
2	U	R1	*Eutamias umbrinus nevadensis*	Sciuridae	Hidden Forest Uinta chipmunk	NV.
2	U	R2	*Felis concolor browni*	Felidae	Yuma puma	AZ, CA, Mexico.
2	U	R3	*Felis concolor schorgeri*	Felidae	Wisconsin puma	IA, IL, KS, MN, MO, WI, Canada.
2	U	R6	*Felis lynx canadensis*	Felidae	North American lynx	AK, CO, ID, ME, MI, MN, MT, ND, NH, NV, NY, OR, UT, VT, WA, WI, WY, Canada.
2	U	R2	*Geomys bursarius arenarius*	Geomyidae	Desert pocket gopher	NM, TX
3C	N	R4	*Geomys bursarius breviceps*	Geomyidae	Mer Rouge pocket gopher	LA.
2	U	R4	*Geomys cumberlandius*	Geomyidae	Cumberland pocket gopher	GA.
2	U	R2	*Geomys personatus maritimus*	Geomyidae	Maritime Texas pocket gopher	TX.
2	U	R2	*Geomys personatus streckeri*	Geomyidae	Carrizo Springs Texas pocket gopher.	TX.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	U	R2	*Geomys texensis bakeri*	Geomyidae	Baker's Llano pocket gopher	TX
2	D	R1	*Glaucomys sabrinus californicus*	Sciuridae	San Bernardino northern flying squirrel.	CA.
2	U	R6	*Gulo gulo luscus*	Mustelidae	North American wolverine	CO, ID, MN, MT, ND, NV, UT, WY.
2	U	R1	*Gulo gulo luteus*	Mustelidae	California wolverine	CA, NV, OR, WA.
2	U	R6	*Idionycteris (=Plecotus) phyllotis*	Vespertilionidae	Allen's (Mexican) big-eared bat	AZ, CA, CO, NM, NV, UT, Mexico
2	U	R1	*Lepus americanus tahoensis*	Leporidae	Sierra Nevada snowshoe hare	CA, NV.
2	D	R1	*Lepus californicus bennettii*	Leporidae	San Diego black-tailed jackrabbit	CA, Mexico.
2	U	R2	*Lepus callotis gaillardi*	Leporidae	White-sided jack rabbit	NM, Mexico.
2	U	R2	*Lutra canadensis sonora*	Mustelidae	Southwestern otter	AZ, CA, CO, NM, UT.
2	U	R2	*Macrotus californicus*	Phyllostomidae	California leaf-nosed bat	AZ, CA, Mexico.
2	U	R1	*Martes pennanti pacifica*	Mustelidae	Pacific fisher	CA, OR, WA.
2	U	R1	*Microdipodops megacephalus albiventer.*	Heteromyidae	Desert Valley kangaroo mouse	NV.
2	U	R1	*Microdipodops megacephalus nasutus.*	Heteromyidae	Fletcher dark kangaroo mouse	NV.
2	U	R5	*Microtus breweri*	Muridae	Beach vole	MA.
2	U	R1	*Microtus californicus mohavensis*	Muridae	Mojave river vole	CA.
3C	N	R1	*Microtus californicus sanpabloensis*	Muridae	San Pablo California vole	CA.
2	D	R1	*Microtus californicus stephensi*	Muridae	Stephens' California vole (=meadow mouse).	CA.
2	U	R1	*Microtus californicus vallicola*	Muridae	Owens Valley California vole	CA.
2	S	R5	*Microtus chrotorrhinus carolinensis*	Muridae	Southern rock vole	NC, TN, VA, WV.
2	U	R2	*Microtus mexicanus navaho*	Muridae	Navaho Mountain Mexican vole	AZ, UT.
2	U	R1	*Microtus montanus fucosus*	Muridae	Pahranagat Valley montane vole	NV.
2	U	R1	*Microtus montanus nevadensis*	Muridae	Ash Meadows montane vole	NV.
2	U	R6	*Microtus montanus rivularis*	Muridae	Virgin River montane vole	UT.
2	U	R7	*Microtus oeconomus amakensis*	Muridae	Amak tundra vole	AK.
2	U	R7	*Microtus oeconomus elymocetes*	Muridae	Montague tundra vole	AK.
2	U	R1	*Microtus pennsylvanicus kincaidi*	Muridae	Potholes meadow vole	WA.
2	S	R5	*Microtus pennsylvanicus provectus*	Muridae	Block Island meadow vole	RI.
2	U	R5	*Microtus pennsylvanicus shattucki*	Muridae	Penobscot meadow vole	ME.
3C	N	R1	*Microtus townsendii pugeti*	Muridae	Shaw Island Townsend's vole	WA.
2	U	R4	*Mustela frenata peninsulae*	Mustelidae	Florida long-tailed weasel	FL.
2	U	R4	*Myotis austroriparius*	Vespertilionidae	Southeastern myotis (bat)	AL, AR, FL, GA, IL, IN, KY, LA, MO, MS, NC, OK, SC, TN, TX.
2	U	R6	*Myotis ciliolabrum*	Vespertilionidae	Small-footed myotis (bat)	AZ, CA, CO, ID, MT, ND, NE, NM, NV, SD, TX, UT, WA, Mexico
2	U	R6	*Myotis evotis*	Vespertilionidae	Long-eared myotis (bat)	AZ, CA, CO, ID, MT, ND, NE, NM, NV, OR, SD, TX, UT, WA, Canada, Mexico
2	D	R5	*Myotis leibii (=M. subulatus l.)*	Vespertilionidae	Eastern small-footed bat	AR, CT, DE, GA, IL, IN, KY, MA, MD, ME, MO, NC, NH, NJ, NY, OH, OK, PA, RI, SC, TN, VA, VT, WV, Canada.
2	U	R2	*Myotis lucifugus occultus*	Vespertilionidae	Occult little brown bat	AZ, CA, NM, TX, Mexico.
2	U	R6	*Myotis thysanodes*	Vespertilionidae	Fringed myotis (bat)	AZ, CA, CO, ID, MT, NE, NM, NV, SD, TX, UT, WA, Canada, Mexico
2	U	R2	*Myotis velifer*	Vespertilionidae	Cave myotis (bat)	AZ, CA, NE, NM, NV, TX, Mexico

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Category	Trend					
2	U	R6	*Myotis volans*	Vespertilionidae	Long-legged myotis (bat)	AZ, CA, CO, ID, MT, ND, NE, NM, NV, SD, TX, UT, WA, Canada, Mexico
2	U	R1	*Myotis yumanensis*	Vespertilionidae	Yuma myotis (bat)	AZ, CA, CO, ID, MT, NM, NV, TX, UT, WA, Canada, Mexico
2	U	R4	*Neofiber alleni*	Muridae	Round-tailed muskrat	FL, GA.
2	U	R4	*Neotoma floridana haematoreia*	Muridae	Southern Appalachian eastern woodrat.	GA, NC, SC.
2	U	R1	*Neotoma fuscipes annectens*	Muridae	San Francisco dusky-footed woodrat	CA.
2	U	R1	*Neotoma fuscipes luciana*	Muridae	Monterey dusky-footed woodrat	CA.
1	D	R1	*Neotoma fuscipes riparia*	Muridae	San Joaquin Valley woodrat	CA.
2	U	R1	*Neotoma lepida intermedia*	Muridae	San Diego desert woodrat	CA.
2	D	R5	*Neotoma magister (=N. floridana m.)*	Muridae	Alleghany (=Eastern) woodrat	AL, CT*, GA, IN, KY, MD, NC, NJ, NY*, OH, PA, TN, VA, WV.
2	U	R2	*Neotoma mexicana bullata*	Muridae	Santa Catalina Mountains woodrat	AZ.
2	U	R2	*Neotoma micropus leucophaea*	Muridae	White Sands woodrat	NM.
2	U	R2	*Nyctinomops macrotis (=Tadarida m., T. molossa).*	Molossidae	Big free-tailed bat	AZ, CO, NM, UT, Mexico, South America
2	U	R6	*Ochotona princeps barnesi*	Ochotonidae	Barnes' pika	UT.
2	U	R6	*Ochotona princeps cinnamomea*	Ochotonidae	Cinnamon pika	UT.
2	U	R6	*Ochotona princeps lasalensis*	Ochotonidae	La Sal pika	UT.
2	D	R6	*Ochotona princeps moorei*	Ochotonidae	Heliotrope pika	UT.
2	U	R2	*Ochotona princeps nigrescens*	Ochotonidae	Goat Peak pika	NM.
2	U	R6	*Ochotona princeps wasatchensis*	Ochotonidae	Wasatch pika	UT.
2	U	R4	*Odocoileus virginianus hiltonensis*	Cervidae	Hilton Head white-tailed deer	SC.
2	U	R4	*Odocoileus virginianus nigribarbis*	Cervidae	Blackbeard Island white-tailed deer	GA.
2	U	R4	*Odocoileus virginianus taurinsulae*	Cervidae	Bulls Island white-tailed deer	SC.
2	U	R4	*Odocoileus virginianus venatoria*	Cervidae	Hunting Island white-tailed deer	SC.
2	U	R2	*Ondatra zibethicus ripensis*	Cricetidae	Pecos River muskrat	NM, TX
2	D	R1	*Onychomys torridus ramona*	Muridae	Southern grasshopper mouse	CA, Mexico.
2	U	R1	*Onychomys torridus tularensis*	Muridae	Tulare grasshopper mouse	CA
2	U	R2	*Oryzomys couesi aquaticus*	Cricetidae	Coues' rice rat	TX, Mexico.
2	S	R1	*Ovis canadensis californiana*	Bovidae	California bighorn sheep	CA, ID, OR, WA, Canada.
PE	D	R1	*Ovis canadensis cremnobates*	Bovidae	Peninsular bighorn sheep	CA, Mexico.
PE	E	R2	*Panthera onca*	Felidae	Jaguar, U.S. population	AZ, CA, CO, LA, NM, TX
2	U	R1	*Perognathus alticola alticola*	Heteromyidae	White-eared pocket mouse	CA.
2	U	R1	*Perognathus alticola inexpectatus*	Heteromyidae	Tehachapi white-eared pocket mouse.	CA.
2	U	R2	*Perognathus amplus ammodytes*	Heteromyidae	Coconino Arizona pocket mouse	AZ.
2	U	R2	*Perognathus amplus amplus*	Heteromyidae	Yavapai Arizona pocket mouse	AZ.
2	U	R2	*Perognathus amplus cineris*	Heteromyidae	Wupatki Arizona pocket mouse	AZ.
2	U	R1	*Perognathus californicus femoralis (subgen. Chaetodipus).*	Heteromyidae	Dulzura California pocket mouse	CA, Mexico.
2	D	R1	*Perognathus fallax fallax (subgen. Chaetodipus).*	Heteromyidae	Northwestern San Diego pocket mouse.	CA, Mexico.
2	U	R1	*Perognathus fallax pallidus (subgen. Chaetodipus).*	Heteromyidae	Pallid San Diego pocket mouse	CA.
2	U	R2	*Perognathus flavus goodpasteri*	Heteromyidae	Silky pocket mouse	AZ.
2	U	R1	*Perognathus inoratus*	Heteromyidae	San Joaquin pocket mouse (includes all ssp.).	CA
2	U	R2	*Perognathus intermedius nigrimontis*	Heteromyidae	Black Mountain pocket mouse	AZ.
2	D	R1	*Perognathus longimembris bangsi*	Heteromyidae	Palm Springs little pocket mouse	CA.
2	D	R1	*Perognathus longimembris brevinasus.*	Heteromyidae	Los Angeles little pocket mouse	CA.
2	U	R1	*Perognathus longimembris internationalis.*	Heteromyidae	Jacumba little pocket mouse	CA, Mexico.
2	U	R2	*Peromyscus eremicus papagensis*	Muridae	Pinacate cactus mouse	AZ, Mexico.
2	U	R2	*Peromyscus eremicus pullus*	Muridae	Black Mountain cactus mouse	AZ.
2	D	R4	*Peromyscus floridanus*	Muridae	Florida mouse	FL.
2	U	R5	*Peromyscus leucopus ammodytes*	Muridae	Monomoy white-footed mouse	MA.
3C	N	R5	*Peromyscus leucopus easti*	Muridae	Pungo white-footed mouse	VA.

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Category	Trend					
3C	N	R5	*Peromyscus leucopus fusus*	Muridae	Martha's Vineyard white-footed mouse.	MA.
2	U	R1	*Peromyscus maniculatus anacapae*	Muridae	Anacapa deer mouse	CA.
2	U	R1	*Peromyscus maniculatus clementis*	Muridae	San Clemente deer mouse	CA.
2	U	R4	*Peromyscus polionotus leucocephalus.*	Muridae	Santa Rosa beach mouse	FL.
1	D	R4	*Peromyscus polionotus peninsularis*	Muridae	St. Andrews beach mouse	FL.
2	S	R2	*Peromyscus truei comanche*	Muridae	Palo Duro mouse	TX.
2	U	R4	*Plecotus rafinesquii*	Vespertilionidae	Rafinesque's (=southeastern) big-eared bat.	AL, AR, FL, GA, IL, IN, KY, LA, MO, MS, NC, OH, OK, SC, TN, TX, VA, WV.
2	U	R2	*Plecotus townsendii pallescens*	Vespertilionidae	Pale Townsend's (=western) big-eared bat.	AZ, CA, CO, ID, KS, MT, ND, NE, NM, OK, SD, Mexico.
2	D	R1	*Plecotus townsendii townsendii*	Vespertilionidae	Pacific Townsend's (=western) big-eared bat.	CA, ID, NV, OR, WA, Canada.
2	U	R4	*Procyon lotor auspicatus*	Procyonidae	Key Vaca raccoon	FL.
2	U	R4	*Procyon lotor incautus*	Procyonidae	Key West raccoon	FL.
1	S	R1	*Pteropus mariannus mariannus*	Pteropodidae	Mariana flying fox (Agiguan, Tinian, Saipan populations).	MP.
2	S	R1	*Pteropus mariannus mariannus*	Pteropodidae	Mariana flying fox (Rota, northern island populations).	MP.
2	S	R1	*Pteropus mariannus paganensis*	Pteropodidae	Pagan Mariana flying fox (=Pagan fruit bat).	MP.
2	D	R1	*Pteropus samoensis samoensis*	Pteropodidae	Samoan flying fox (=Samoan fruit bat).	AS, Western Samoa.
2	U	R6	*Rangifer tarandus caribou*	Cervidae	Woodland caribou (Montana population).	MT.
2	U	R2	*Reithrodontomys megalotis arizonensis.*	Muridae	Chiricahua western harvest mouse	AZ.
2	U	R6	*Reithrodontomys megalotis ravus*	Muridae	Stansbury Island harvest mouse	UT.
2	U	R4	*Scalopus aquaticus bassi*	Talpidae	Englewood mole	FL.
2	U	R2	*Scalopus aquaticus texanus*	Talpidae	Presidio mole	TX.
2	U	R1	*Scapanus latimanus parvus*	Talpidae	Alameda Island mole	CA
2	U	R2	*Sciurus arizonensis catalinae*	Sciuridae	Santa Catalina Mountains squirrel	AZ.
2	U	R2	*Sciurus nayaritensis chiricahuae*	Sciuridae	Chiricahua Nayarit squirrel	AZ.
2	D	R4	*Sciurus niger avicennia*	Sciuridae	Mangrove fox squirrel	FL.
2	D	R4	*Sciurus niger shermani*	Sciuridae	Sherman's fox squirrel	FL.
2	U	R2	*Sigmodon arizonae jacksoni*	Muridae	Yavapai Arizona cotton rat	AZ.
2	D	R1	*Sigmodon arizonae plenus*	Muridae	Colorado River cotton rat	CA.
2	U	R2	*Sigmodon fulviventer goldmani*	Muridae	Hot Springs cotton rat	NM.
2	U	R2	*Sigmodon hispidus eremicus*	Muridae	Yuma hispid cotton rat	CA, AZ, Mexico.
2	U	R4	*Sigmodon hispidus insulicola*	Muridae	Insular hispid cotton rat	FL.
2	U	R2	*Sigmodon ochrognathus*	Muridae	Yellow-nosed cotton rat	AZ, NM, TX, Mexico.
2	U	R7	*Sorex alaskanus*	Soricidae	Glacier Bay water shrew	AK.
2	U	R2	*Sorex arizonae*	Soricidae	Arizona shrew	AZ, NM.
2	U	R5	*Sorex cinereus nigriculus*	Soricidae	Tuckahoe masked shrew	NJ.
2	U	R7	*Sorex hydrodromus*	Soricidae	Pribilof Islands shrew	AK.
3C	N	R1	*Sorex lyelli*	Soricidae	Mt. Lyell shrew	CA.
1	D	R1	*Sorex ornatus relictus*	Soricidae	Buena Vista Lake ornate shrew	CA.
2	U	R1	*Sorex ornatus salarius*	Soricidae	Monterey ornate shrew	CA.
2	D	R1	*Sorex ornatus salicornicus*	Soricidae	Salt marsh ornate shrew	CA.
2	U	R1	*Sorex ornatus sinuosus*	Soricidae	Suisun ornate shrew	CA.
2	U	R1	*Sorex ornatus willetti*	Soricidae	Santa Catalina ornate shrew	CA.
2	U	R5	*Sorex palustris punctulatus*	Soricidae	Southern water shrew	MD, NC, PA, TN, VA, WV.
2	D	R6	*Sorex preblei*	Soricidae	Preble's shrew	ID, MT, NV, OR, UT, WA, WY.
2	U	R1	*Sorex trowbridgii destructioni*	Soricidae	Destruction Island shrew	WA.
2	U	R1	*Sorex vagrans halicoetes*	Soricidae	Salt marsh vagrant shrew	CA.
2	S	R1	*Spermophilus brunneus* ssp.	Sciuridae	Northern Idaho ground squirrel	ID.
2	S	R1	*Spermophilus brunneus* ssp.	Sciuridae	Southern Idaho ground squirrel	ID.
2	D	R1	*Spermophilus mohavensis*	Sciuridae	Mohave ground squirrel	CA.
2	D	R1	*Spermophilus tereticaudus chlorus*	Sciuridae	Coachella Valley round-tailed ground squirrel.	CA.
2	D	R6	*Spermophilus tridecemlineatus alleni*	Sciuridae	Allen's 13-lined ground squirrel	WY.
2	U	R1	*Spermophilus washingtoni*	Sciuridae	Washington ground squirrel	WA, OR

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Category	Trend					
2	U	R1	*Spilogale putorius amphiala*	Mustelidae	Channel Islands spotted skunk	CA.
2	U	R6	*Spilogale putorius interrupta*	Mustelidae	Plains spotted skunk	AR, CO, IA, IL, LA, KS, MN, MO, NE, OK, SD, TX, WI, WY.
2	U	R4	*Stenoderma rufum*	Phyllostomidae	Desmarest's fig-eating bat	PR.
1	D	R1	*Sylvilagus bachmani riparius*	Leporidae	Riparian brush rabbit	CA.
2	U	R5	*Sylvilagus floridanus hitchensi*	Leporidae	Smiths Island cottontail rabbit	VA.
2	U	R2	*Sylvilagus floridanus robustus*	Leporidae	Davis Mountains cottontail rabbit	TX.
2	U	R4	*Sylvilagus obscurus*	Leporidae	Appalachian cottontail	AL, GA, MD, NC, NY, PA, SC, TN, VA, WV
2	D	R5	*Sylvilagus transitionalis*	Leporidae	New England cottontail rabbit	CT, MA, ME, NH, NY, PA, RI, VT.
2	U	R5	*Synaptomys borealis sphagnicola*	Muridae	Northern bog lemming	ME, NH, Canada.
3A	N	R6	*Synaptomys cooperi paludis*	Muridae	Kansas bog lemming	KS.
3A	N	R6	*Synaptomys cooperi relictus*	Muridae	Nebraska bog lemming	NE.
2	U	R2	*Tamias canipes*	Sciuridae	Gray-footed chipmunk	NM, TX
2	D	R1	*Tamias speciosus speciosus*	Sciuridae	Lodgepole chipmunk	CA
2	U	R6	*Tamias umbrinus sedulus*	Sciuridae	Mount Ellen Uinta chipmunk	UT.
2	D	R1	*Thomomys mazama glacialis*	Geomyidae	Roy Prairie pocket gopher	WA.
2	U	R1	*Thomomys mazama helleri*	Geomyidae	Goldbeach western pocket gopher	OR.
2	U	R1	*Thomomys mazama louiei*	Geomyidae	Louie's western pocket gopher	WA.
2*	E	R1	*Thomomys mazama tacomensis*	Geomyidae	Tacoma western pocket gopher	WA.
2	U	R1	*Thomomys umbrinus abstrusus*	Geomyidae	Fish Spring pocket gopher	NV.
3B	N	R1	*Thomomys umbrinus amargosae*	Geomyidae	Amargosa southern pocket gopher	CA.
2	U	R6	*Thomomys umbrinus bonnevillei*	Geomyidae	Bonneville southern pocket gopher	UT.
2	U	R6	*Thomomys umbrinus convexus*	Geomyidae	Clear Lake pocket gopher	UT.
2	U	R1	*Thomomys umbrinus curtatus*	Geomyidae	San Antonio pocket gopher	NV.
2	U	R1	*Thomomys umbrinus detumidus*	Geomyidae	Pistol River pocket gopher	OR.
2	U	R6	*Thomomys umbrinus dissimilis*	Geomyidae	Mount Ellen pocket gopher	UT.
2	U	R2	*Thomomys umbrinus guadalupensis*	Geomyidae	Guadalupe southern pocket gopher	NM, TX.
2	U	R2	*Thomomys umbrinus hualpaiensis*	Geomyidae	Hualapai southern pocket gopher	AZ.
2	U	R2	*Thomomys umbrinus limpiae*	Geomyidae	Limpia southern pocket gopher	TX.
2	U	R2	*Thomomys umbrinus mearnsi*	Geomyidae	Mearns' southern pocket gopher	NM.
2	U	R6	*Thomomys umbrinus minimus*	Geomyidae	Stansbury Island pocket gopher	UT.
2	U	R2	*Thomomys umbrinus muralis*	Geomyidae	Prospect Valley pocket gopher	AZ.
2	U	R6	*Thomomys umbrinus nesophilus*	Geomyidae	Antelope Island pocket gopher	UT.
2	U	R2	*Thomomys umbrinus paguatae*	Geomyidae	Cebolleta southern pocket gopher	NM.
2	U	R6	*Thomomys umbrinus powelli*	Geomyidae	Salt Gulch pocket gopher	UT.
2	U	R2	*Thomomys umbrinus quercinus*	Geomyidae	Pajarito southern pocket gopher	AZ.
2	U	R6	*Thomomys umbrinus robustus*	Geomyidae	Skull Valley pocket gopher	UT.
2	U	R6	*Thomomys umbrinus sevieri*	Geomyidae	Swasey Spring pocket gopher	UT.
2	U	R2	*Thomomys umbrinus suboles*	Geomyidae	Searchlight southern pocket gopher	AZ.
2	U	R2	*Thomomys umbrinus subsimilis*	Geomyidae	Harquahala southern pocket gopher	AZ.
2	U	R2	*Thomomys umbrinus texensis*	Geomyidae	Limpia Creek pocket gopher	TX.
2	U	R1	*Urocyon littoralis catalinae*	Canidae	Santa Catalina Island fox	CA.
2	S	R1	*Urocyon littoralis clementae*	Canidae	San Clemente Island fox	CA.
2	S	R1	*Urocyon littoralis dickeyi*	Canidae	San Nicolas Island fox	CA.
2	S	R1	*Urocyon littoralis littoralis*	Canidae	San Miguel Island fox	CA.
2	S	R1	*Urocyon littoralis santacruzae*	Canidae	Santa Cruz Island fox	CA.
2	S	R1	*Urocyon littoralis santarosae*	Canidae	Santa Rosa Island fox	CA.
1	D	R4	*Ursus americanus floridanus*	Ursidae	Florida black bear	FL, GA.
2	D	R6	*Vulpes velox*	Canidae	Swift fox (U.S. population)	CO, KS, MT, ND, NE, NM, OK, SD, TX, WY.
2	U	R1	*Vulpes vulpes necator*	Canidae	Sierra Nevada red fox	CA, NV.
2	S	R2	*Zapus hudsonius luteus*	Zapodidae	New Mexican meadow jumping mouse.	AZ, NM.
2	D	R6	*Zapus hudsonius preblei*	Zapodidae	Preble's meadow jumping mouse	CO, WY.
2	U	R1	*Zapus trinotatus orarius*	Zapodidae	Point Reyes jumping mouse	CA.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
			BIRDS.			
2	D	R2	*Accipiter gentilis*	Accipitridae	Northern goshawk (North American pop.).	N=AK, AZ, CA, ID, MA, MD, ME, MI, MN, MT, ND, NE, NH, NM, NV, NY, OR, PA, SD, TX, UT, VT, WA, WI, WV, WY, Canada, V=AL, AR, FL, GA, IA, IL, IN, KS, KY, LA, MO, MS, NC, OH, OK, SC, TN, TX, VA, Mex
PE	D	R4	*Accipiter striatus venator*	Accipitridae	Puerto Rican sharp-shinned hawk	PR
2	D	R1	*Agelaius tricolor*	Emberizidae	Tricolored blackbird	CA, NV, OR, Mexico.
2	U	R4	*Aimophila aestivalis*	Emberizidae	Bachman's sparrow	AL, AR, FL, GA, IL, IN, KY, LA, MD, MO, MS, NC, OH, OK, PA, SC, TN, TX, VA, WV.
2	S	R2	*Aimophila botterii texana*	Emberizidae	Texas Botteri's sparrow	TX, Mexico.
2	D	R1	*Aimophila ruficeps canescens*	Emberizidae	Southern California rufous-crowned sparrow.	CA, Mexico.
2	D	R6	*Ammodramus bairdii*	Emberizidae	Baird's sparrow	N=MN, MT, ND, SD, WY, Canada; V=CO, ID, KS, MO, NE, OK, NM, TX, Mexico.
2	D	R1	*Amphispiza belli belli*	Emberizidae	Bell's sage sparrow	CA, Mexico.
2	S	R4	*Anas bahamensis bahamensis*	Anatidae	Lesser white-cheeked pintail	PR, VI, West Indies, South America.
2	U	R1	*Aphelocoma coerulescens cana*	Corvidae	Eagle Mountain scrub jay	CA.
2	S	R2	*Arremonops rufivirgatus rufivirgatus*	Emberizidae	Texas (=Sennett's) olive sparrow	TX, Mexico.
1	S	R1	*Artamus leucorhynchus pelewensis*	Artamidae	Palau white-breasted wood-swallow	TT (Caroline Islands).
1	S	R1	*Asio flammeus ponapensis*	Strigidae	Ponape short-eared owl	TT (Caroline Islands).
2	U	R1	*Asio flammeus sandwichensis*	Strigidae	Hawaiian short-eared owl	HI
2	D	R1	*Athene cunicularia hypugea*	Strigidae	Western burrowing owl	AZ, CA, CO, ID, IA, KS, LA, MN, MT, ND, NE, NM, NV, OK, OR, TX, SD, WA, WY, Canada, Mexico
2	D	R7	*Brachyramphus brevirostris*	Alcidae	Kittlitz's murrelet	AK, Russia
2	D	R7	*Brachyramphus marmoratus marmoratus.*	Alcidae	Marbled murrelet northern pop.	AK, Canada.
2	S	R2	*Buteo nitidus maximus*	Accipitridae	Northern gray hawk	N=AZ, NM, TX, Mexico.
PE	U	R4	*Buteo platypterus brunnescens*	Accipitridae	Puerto Rican broad-winged hawk	PR.
2	D	R6	*Buteo regalis*	Accipitridae	Ferruginous hawk	N=CO, ID, KS, MT, ND, NE, NM, NV, OK, OR, SD, TX, UT, WA, WY, Canada: V=AZ, CA, Mexico.
3B	N	R1	*Campylorhynchus brunneicapillus couesi.*	Troglodytidae	San Diego (coastal population) cactus wren.	CA, Mexico.
2	D	R5	*Catharus minimus bicknelli*	Muscicapidae	Bicknell's thrush	N=MA, ME, NH, NY, VT, Canada.
2	D	R1	*Centrocercus urophasianus phaios*	Phasianidae	Western sage grouse	OR, WA, Canada.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
3C	N	R6	*Charadrius alexandrinus nivosus*	Charadriidae	Western snowy plover (interior population).	N=CA, CO, KS, NM, NV, OK, OR, TX, UT, WA, WY: V=AZ, Mexico.
2	U	R4	*Charadrius alexandrinus tenuirostris*	Charadriidae	Southeastern snowy plover	AL, FL, LA, MS, PR, Greater Antilles.
2	D	R6	*Charadrius montanus*	Charadriidae	Mountain plover	N=CO, KS, MT, ND, NE, NM, OK, SD, TX, UT, WY: V=AZ, CA, NV, Mexico.
1	D	R1	*Chasiempis sandwichensis gayi*	Pachycephalidae	Oahu elepaio	HI
2	D	R6	*Chlidonias niger*	Laridae	Black tern	CA, CO, ID, IA, IL, IN, KS, ME, MI, MN, MO, MT, NE, ND, NY, NV, OH, OR, SD, UT, WA, WI, WY, Canada.
2	U	R4	*Columba leucocephala*	Columbidae	White-crowned pigeon	FL, West Indies, Central America.
2	D	R7	*Contopus borealis*	Tyrannidae	Olive-sided flycatcher	N=AK, Canada V=
2	I	R6	*Cygnus buccinator*	Anatidae	Trumpeter swan (Rocky Mountain population).	ID, MT, WY.
2	U	R4	*Dendrocygna arborea*	Anatidae	West Indian whistling duck	PR, VI, West Indies.
2	D	R1	*Dendrocygna bicolor*	Anatidae	Fulvous whistling duck (SW U.S. population).	N=AZ, CA: V=Mexico.
2	U	R4	*Dendroica angelae*	Emberizidae	Elfin woods warbler	PR.
2	D	R3	*Dendroica cerulea*	Emberizidae	Cerulean warbler	AL, AR, CN, DE, IA, IL, IN, KS, KY, LA, MA, MD, MI, MN, MO, MS, NC, NE, NH, NJ, NY, OH, OK, PA, RI, TN, TX, VA, VT, WI, WV, Canada.
2	U	R4	*Dendroica dominica stoddardi*	Emberizidae	Stoddard's yellow-throated warbler	AL, FL.
2	D	R1	*Ducula oceanica ratakensis*	Columbidae	Radak Micronesian pigeon	TT (Marshall Islands).
2	U	R1	*Ducula oceanica teraokai*	Columbidae	Truk Micronesian pigeon	TT (Caroline Islands).
2	U	R4	*Egretta rufescens*	Ardeidae	Reddish egret	N=FL, TX, Mexico, West Indies: V=AL, CA, LA, MS.
2	U	R2	*Empidonax fulvifrons pygmaeus*	Tyrannidae	Buff-breasted flycatcher (northern)	AZ, NM, Mexico
2	D	R1	*Empidonax traillii brewsteri*	Tyrannidae	Little willow flycatcher	CA, OR, WA, British Columbia
PE	D	R2	*Empidonax traillii extimus*	Tyrannidae	Southwestern willow flycatcher	AZ, CA, CO, NM, TX, UT, Mexico.
3C	N	R1	*Eremophila alpestris actia*	Alaudidae	California horned lark	CA, Mexico.
2	U	R4	*Falco sparverius paulus*	Falconidae	Southeastern American kestrel	AL, FL, GA, LA, MS.
2	U	R4	*Fulica caribaea*	Rallidae	Caribbean coot	PR, VI, West Indies.
1	D	R1	*Gallicolumba stairi*	Columbidae	Friendly ground dove	AS
2	U	R2	*Geothlypis trichas insperata*	Emberizidae	Brownsville common yellowthroat	TX, Mexico.
2	S	R1	*Geothlypis trichas sinuosa*	Emberizidae	Saltmarsh common yellowthroat	CA.
1	D	R2	*Glaucidium brasilianum cactorum*	Strigidae	Cactus ferruginous pygmy-owl	AZ, TX, Mexico.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	U	R6	*Histrionicus histrionicus*	Anatidae	Harlequin duck	AK, AR, AZ, CA, CO, CT, DE, IA, ID, KS, MA, MD, ME, MO, MN, NE, NH, NJ, NM, NV, MT, OK, OR, RI, SD, TX, UT, WA, WY, Canada.
2	U	R2	*Icterus cucullatus cucullatus*	Emberizidae	Mexican hooded oriole	TX, Mexico.
2	U	R2	*Icterus cucullatus sennetti*	Emberizidae	Sennett's hooded oriole	TX, Mexico.
2	U	R2	*Icterus graduacauda audubonii*	Emberizidae	Audubon's oriole	TX, Mexico.
2	D	R1	*Ixobrychus exilis hesperis*	Ardeidae	Least bittern	AZ, CA, NV, OR, UT, Mexico.
2	U	R7	*Lagopus mutus evermanni*	Phasianidae	Evermann's rock ptarmigan	AK
2	U	R7	*Lagopus mutus yunaskensis*	Phasianidae	Yunaska rock ptarmigan	AK.
2	S	R3	*Lanius ludovicianus migrans*	Laniidae	Migrant loggerhead shrike	N=AR, CT, DC, DE, IA, IL, IN, KS, KY, MA, MD, ME, MI, MN, MO, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, TN, TX, VA, VT, WI, WV, Canada: V=AL, FL, GA, LA, MS, SC.
2	U	R3	*Laterallus jamaicensis*	Rallidae	Black rail	AL, AR, AZ, CA, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, MI, MO, MS, NC, NJ, NY, OH, OK, PA, RI, SC, TN, TX, VA, WI, WV, WY.
2	U	R1	*Loxops caeruleirostris*	Fringillidae	Kauai akepa	HI
2	S	R1	*Melospiza melodia maxillaris*	Emberizidae	Suisun song sparrow	CA.
2	U	R1	*Melospiza melodia pusillula*	Emberizidae	Alameda (South Bay) song sparrow	CA.
2	U	R1	*Melospiza melodia samuelis*	Emberizidae	San Pablo song sparrow	CA.
2	U	R1	*Moho bishopi*	Melephagidae	Bishop's o'o	HI.
2	S	R7	*Numenius tahitiensis*	Scolopacidae	Bristle-thighed curlew	N=AK: V=HI, Central Pacific Islands.
2	D	R1	*Oceanodroma castro cryptoleucura*	Hydrobatidae	Band-rumped storm petrel	HI.
2	U	R1	*Oceanodroma homochroa*	Hydrobatidae	Ashy storm-petrel	CA
1	D	R1	*Oreomystis bairdi*	Fringillidae	Kauai creeper	HI
3C	N	R1	*Oreortyx pictus*	Phasianidae	Mountain quail	CA, ID, NV, OR, WA.
2	U	R4	*Otus nudipes newtoni*	Strigidae	Virgin Islands screech owl	PR, VI.
2	S	R4	*Oxyura jamaicensis jamaicensis*	Anatidae	West Indian ruddy duck	PR, VI, West Indies.
2	U	R2	*Parula pitiayumi nigrilora*	Emberizidae	Tropical parula (=Olive-backed warbler).	TX, Mexico.
2	S	R1	*Passerculus sandwichensis beldingi*	Emberizidae	Belding's savannah sparrow	CA, Mexico.
2	U	R1	*Passerculus sandwichensis rostratus*	Emberizidae	Large-billed savannah sparrow	N=Mexico: V=AZ, CA.
2	U	R4	*Passerina ciris ciris*	Emberizidae	Eastern painted bunting	NC, SC, GA, FL, West Indies
2	D	R1	*Pipilo erythrophthalmus clementae*	Emberizidae	San Clemente rufous-sided towhee	CA.
2	I	R1	*Plegadis chihi*	Threskiornithidae	White-faced ibis	N=AZ, CA, CO, KS, NE, NM, NV, OK, OR, SD, TX, UT: V=ID, WY, Mexico.
PT		R7	*Polysticta stelleri*	Anatidae	Steller's eider (AK breeding pop.)	AK, Russia
1	D	R1	*Porzana tubuensis*	Rallidae	Spotless crake	AS

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	U	R4	*Pterodroma hasitata*	Procellaridae	Black-capped petrel	N=West Indies–Haiti; V=NC, SC, GA, West Indies
1	D	R1	*Ptilinopus perousii perousii*	Columbidae	Many-colored fruit dove	AS
2	U	R4	*Rallus longirostris insularum*	Rallidae	Mangrove clapper rail	FL.
2	D	R7	*Rissa brevirostris*	Laridae	Red-legged kittiwake	AK, Russia
1	S	R1	*Rukia ruki*	Zosteropidae	Truk greater white-eye	TT (Caroline Islands).
2	U	R1	*Sterna elegans*	Laridae	Elegant tern	CA, Mexico.
2	D	R3	*Sterna hirundo*	Laridae	Common tern (Great Lakes population).	IL, IN, MI, MN, NY, OH, PA, WI, Canada.
2	D	R1	*Sterna nilotica vanrossemi*	Laridae	Van Rossem's gull-billed tern	CA, Mexico
2	D	R1	*Strix occidentalis occidentalis*	Strigidae	California spotted owl	CA, NV.
2	D	R1	*Synthliboramphus (=Endomychura) hypoleuca scrippsi.*	Alcidae	Xantus' murrelet	CA, Mexico.
2	D	R5	*Thryomanes bewickii altus*	Troglodytidae	Appalachian Bewick's wren	AL, GA, KY, MD, NC, OH, PA, SC, TN, VA, WV, Canada.
2	U	R1	*Toxostoma lecontei macmillanorum*	Mimidae	San Joaquin LeConte's thrasher	CA
2	D	R1	*Tympanuchus phasianellus columbianus.*	Phasianidae	Columbian sharp-tailed grouse	CA, CO, ID, OR, MT, NV, UT, WA, WY, Canada.
1	D	R1	*Zosterops conspicillatus rotensis*	Zosteropidae	Rota bridled white-eye	MP.
			REPTILES.			
2	U	R4	*Ameiva wetmorei*	Teiidae	Blue-tailed ground lizard	PR.
2	U	R1	*Anniella pulchra nigra*	Anniellidae	Black California legless lizard	CA.
2	D	R1	*Anniella pulchra pulchra*	Anniellidae	Silvery legless lizard	CA, Mexico
2	U	R4	*Anolis cooki*	Iguanidae	Cook's anole	PR.
2	U	R4	*Anolis occultus*	Iguanidae	Puerto Rican pygmy anole	PR.
2	U	R4	*Arrhyton exiguum exiguum*	Colubridae	Culebra garden snake	PR.
2	U	R1	*Charina bottae umbratica*	Boidae	Southern rubber boa	CA.
2	U	R1	*Clemmys marmorata marmorata*	Emydidae	Northwestern pond turtle	CA, NV, OR, WA, Canada.
2	U	R1	*Clemmys marmorata pallida*	Emydidae	Southwestern pond turtle	CA.
2	U	R5	*Clemmys muhlenbergii*	Emydidae	Bog turtle (southern pop.)	CT, DE, GA, MA, MD, NC, NY, NJ, PA, RI, SC, VA.
1	U	R5	*Clemmys muhlenbergii*	Emydidae	Bog turtle (northern pop.)	CT, DE, GA, MA, MD, NC, NY, NJ, PA, RI, SC, VA.
2	S	R3	*Clonophis kirtlandii*	Colubridae	Kirtland's snake	IL, IN, KY, MI, OH, PA.
2	U	R2	*Cnemidophorus burti*	Teiidae	Canyon (giant) spotted whiptail	AZ, NM.
2	S	R2	*Cnemidophorus dixoni*	Teiidae	Gray-checkered whiptail	NM, TX.
2	D	R1	*Cnemidophorus hyperythrus*	Teiidae	Orange-throated whiptail	CA, Mexico.
2	D	R1	*Cnemidophorus tigris multiscutatus*	Teiidae	Coastal western whiptail	CA, Mexico.
2	U	R1	*Coleonyx switaki (=Anarbylus s.)*	Eublepharidae	Barefoot gecko	CA, Mexico.
2	U	R1	*Coleonyx variegatus abbotti*	Gekkonidae	San Diego banded gecko	CA, Mexico.
2	U	R1	*Crotalus ruber ruber*	Viperidae	Northern red diamond rattlesnake	CA, Mexico.
2	U	R2	*Crotaphytus reticulatus*	Iguanidae	Reticulate collared lizard	TX, Mexico.
2	U	R4	*Diadophis punctatus acricus*	Colubridae	Key ringneck snake	FL.
2	U	R1	*Diadophis punctatus modestus*	Colubridae	San Bernardino ringneck snake	CA.
2	U	R1	*Diadophis punctatus similis*	Colubridae	San Diego ringneck snake	CA, Mexico.
2	U	R1	*Elgaria (=Gerrhonotus) panamintina*	Anguidae	Panamint alligator lizard	CA.
2	D	R6	*Emydoidea blandingii*	Emydidae	Blanding's turtle	IA, IL, IN, MI, MN, NE, NY, OH, PA, SD, WI, WY.
2	U	R4	*Eumeces egregius egregius*	Scincidae	Florida Keys mole skink	FL.
2	U	R4	*Eumeces egregius insularis*	Scincidae	Cedar Key mole skink	FL.
2	S	R2	*Eumeces gilberti arizonensis*	Scincidae	Arizona Gilbert's skink	AZ.
2	D	R1	*Eumeces skiltonianus interparietalis*	Scincidae	Coronado skink	CA, Mexico.
2	U	R2	*Gopherus agassizii (=Xerobates a.)*	Testudinidae	Desert tortoise (Sonoran Desert population).	AZ, Mexico.
2	D	R4	*Gopherus polyphemus*	Testudinidae	Gopher tortoise (eastern population)	AL, FL, GA, SC.
3C	N	R4	*Graptemys barbouri*	Emydidae	Barbour's map turtle	AL, FL, GA.
1	D	R2	*Graptemys caglei*	Emydidae	Cagle's map turtle	TX.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	U	R6	*Graptemys pseudogeographica*	Emydidae	False map turtle	IN, MO, MN, ND, WI.
2	U	R1	*Heloderma suspectum cinctum*	Helodermatidae	Banded Gila monster (Pops. W & N of Colorado R.).	AZ, CA, NV, UT
2	D	R4	*Heterodon simus*	Colubridae	Southern hognose snake	AL, FL, GA, MS, NC, SC.
2	U	R3	*Kinosternon flavescens flavescens*	Kinosternidae	Yellow mud turtle (northern populations).	IA, IL, MO, NE.
2	U	R2	*Kinosternon hirtipes murrayi*	Kinosternidae	Big Bend mud turtle	TX, Mexico.
2	D	R1	*Lampropeltis zonata parvirubra*	Colubridae	San Bernardino mountain king snake	CA
2	U	R1	*Lampropeltis zonata pulchra*	Colubridae	San Diego Mountain king snake	CA.
2	U	R2	*Lichanura trivirgata*	Boidae	Rosy boa	AZ, CA, Mexico
2	D	R4	*Macroclemys temmincki*	Chelydridae	Alligator snapping turtle	AR, AL, FL, GA, IL, IN, KY, KS, LA, MO, MS, OK, TN, TX.
2	U	R2	*Malaclemys terrapin littoralis*	Emydidae	Texas diamondback terrapin	LA, TX.
2	U	R4	*Malaclemys terrapin pileata*	Emydidae	Mississippi diamondback terrapin	AL, FL, GA, LA, MS
2	S	R5	*Malaclemys terrapin terrapin*	Emydidae	Northern diamondback terrapin	CT, DE, MD, NC, NJ, NY, MA, RI, VA.
2	D	R1	*Masticophis flagellum ruddocki*	Colubridae	San Joaquin whipsnake	CA
PE	D	R1	*Masticophis lateralis euryxanthus*	Colubridae	Alameda striped racer	CA.
2	U	R4	*Nerodia clarkii*	Colubridae	Gulf salt marsh snake	AL, FL, LA, MS, TX.
PT	U	R3	*Nerodia erythrogaster neglecta*	Colubridae	Northern copperbelly water snake	IL, IN, KY, MI, OH.
2	U	R2	*Nerodia harteri harteri*	Colubridae	Brazos water snake	TX.
PT	D	R3	*Nerodia sipedon insularum*	Colubridae	Lake Erie water snake	OH, Canada.
2	U	R4	*Ophisaurus compressus*	Anguidae	Island glass lizard	FL, GA, SC.
2	D	R4	*Ophisaurus mimicus*	Anguidae	Mimic glass lizard	AL, FL, GA, LA, MS, NC, SC
2	D	R2	*Phrynosoma cornutum*	Iguanidae	Texas horned lizard	AZ, AR, CO, KS, LA, MO, NM, OK, TX, Mexico.
2	D	R1	*Phrynosoma coronatum blainvillii*	Iguanidae	San Diego horned lizard	CA, Mexico.
2	D	R1	*Phrynosoma coronatum frontale*	Iguanidae	California horned lizard	CA
2	U	R6	*Phrynosoma douglassii brevirostra*	Iguanidae	Eastern short-horned lizard	CO, MT, ND, NE, SE, UT, WY, Canada.
PT	D	R1	*Phrynosoma mcallii*	Iguanidae	Flat-tailed horned lizard	AZ, CA, Mexico.
2	U	R4	*Pituophis melanoleucus lodingi*	Colubridae	Black pine snake	AL, LA, MS.
2	U	R4	*Pituophis melanoleucus melanoleucus.*	Colubridae	Northern pine snake	AL, GA, NC, NJ, SC, TN, VA, WV.
2	D	R4	*Pituophis melanoleucus mugitus*	Colubridae	Florida pine snake	AL, FL, GA, SC.
2	U	R1	*Pituophis melanoleucus pumilis*	Colubridae	Santa Cruz Island gopher snake	CA.
2	U	R4	*Pituophis melanoleucus ruthveni*	Colubridae	Louisiana pine snake	LA, TX.
2	U	R4	*Pseudemys* sp.	Emydidae	Mississippe redbelly turtle	MS
2	U	R4	*Pseudemys (decussata) stejnegeri*	Emydidae	Jicotea	PR.
2	D	R4	*Regina septemvittata* ssp.	Colubridae	Queen snake	AR, MO
2	U	R1	*Salvadora hexalepis virgultea*	Colubridae	Coast patch-nosed snake	CA.
2	D	R1	*Sauromalus obesus*	Iguanidae	Chuckwalla	AZ, CA, NV, UT, Mexico.
2	D	R2	*Sceloporus arenicolus (=S. graciosus a.).*	Iguanidae	Dunes sagebrush lizard	TX, NM.
2	U	R6	*Sceloporus graciosus graciosus*	Iguanidae	Northern sagebrush lizard	AZ, CA, ID, MT, ND, NE, NM, OR, WA.
3C	N	R1	*Sceloporus graciosus vandenburgianus.*	Iguanidae	Southern sagebrush lizard	CA, Mexico.
2	D	R4	*Sceloporus woodi*	Iguanidae	Florida scrub lizard	FL.
2	U	R3	*Sistrurus catenatus catenatus*	Viperidae	Eastern massasauga	IA, IL, IN, MI, MO, MN, NY, OH, PA, WI, Canada.
2	D	R4	*Stilosoma extenuatum*	Colubridae	Short-tailed snake	FL.
2	U	R6	*Storeria occipitomaculata pahasapae*	Colubridae	Black Hills redbelly snake	SD, WY
2	D	R4	*Tantilla oolitica*	Colubridae	Rimrock crowned snake	FL.
2	S	R5	*Thamnophis brachystoma*	Colubridae	Short-headed garter snake	NY, PA.
2	D	R2	*Thamnophis eques*	Colubridae	Mexican garter snake	AZ, NM, Mexico.
2	U	R1	*Thamnophis hammondii*	Colubridae	Two-striped garter snake	CA.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	U	R2	*Thamnophis rufipunctatus*	Colubridae	Narrowhead garter snake	AZ, NM, Mexico.
2	D	R1	*Thamnophis sirtalis* ssp.	Colubridae	South coast garter snake	CA
2	U	R2	*Thamnophis sirtalis annectens*	Colubridae	Texas garter snake	KS, OK, TX.
2	U	R4	*Tropidophis melanurus bucculentus*	Colubridae	Navassa dusky dwarf boa	Navassa Island.
2	D	R1	*Uma notata notata*	Iguanidae	Colorado Desert fringed-toed lizard	CA, Mexico.
2	U	R2	*Uma notata rufopunctata*	Iguanidae	Cowles fringe-toed lizard	AZ, Mexico.
2	S	R1	*Xantusia henshawi gracilis*	Xantusiidae	sandstone night lizard	CA
2	D	R1	*Xantusia vigilis sierrae*	Xantusiidae	Sierra night lizard	CA
			AMPHIBIANS.			
1	D	R1	*Ambystoma californiense (=A. tigrinum c.).*	Ambystomatidae	California tiger salamander	CA.
2	D	R4	*Ambystoma cingulatum*	Ambystomatidae	Flatwoods salamander	AL, FL, GA, MS, SC.
1	D	R2	*Ambystoma tigrinum stebbinsi*	Ambystomatidae	Sonoran tiger salamander	AZ, Mexico.
2	D	R4	*Aneides aeneus*	Plethodontidae	Green salamander (Southern Blue Ridge population).	GA, NC, SC.
2	S	R2	*Aneides hardii*	Plethodontidae	Sacramento mountain salamander	NM.
2	D	R1	*Ascaphus truei*	Ascaphidae	Tailed frog	CA, OR, WA, ID, MT
2*	D	R1	*Batrachoseps* sp.	Plethodontidae	Breckenridge Mountain slender salamander.	CA
2	U	R1	*Batrachoseps campi*	Plethodontidae	Inyo Mountains slender salamander	CA.
2	U	R1	*Batrachoseps pacificus pacificus*	Plethodontidae	Channel Islands slender salamander	CA.
2	D	R1	*Batrachoseps relictus (=pacificus)*	Plethodontidae	Relictual slender salamander	CA
2	U	R1	*Batrachoseps simatus*	Plethodontidae	Kern Canyon slender salamander	CA.
2	U	R1	*Batrachoseps stebbinsi*	Plethodontidae	Techachapi slender salamander	CA.
2	D	R6	*Bufo boreas boreas*	Bufonidae	Boreal western toad (Rocky Mountains population).	CO, NM, WY.
2	D	R1	*Bufo canorus*	Bufonidae	Yosemite toad	CA.
2	U	R1	*Bufo exsul*	Bufonidae	Black toad	CA.
PE	D	R1	*Bufo microscaphus californicus*	Bufonidae	Arroyo southwestern toad	CA, Mexico.
2	U	R2	*Bufo microscaphus microscaphus*	Bufonidae	Arizona toad	AZ, CA, NM, NV, UT, Mexico.
1	D	R1	*Bufo nelsoni*	Bufonidae	Amargosa toad	NV.
2	D	R4	*Cryptobranchus alleganiensis*	Cryptobranchidae	Hellbender	AL, AR, GA, IA, IL, IN, KY, KS, MD, MN, MO, MS, NC, NY, OH, PA, SC, TN, VA, WV.
2	U	R4	*Desmognathus aeneus*	Plethodontidae	Seepage salamander	AL, GA, NC, TN
2	U	R4	*Desmognathus brimleyorum*	Plethodontidae	Ouachita dusky salamander	OK, AR.
1	D	R4	*Eleutherodactylus cooki*	Leptodactylidae	Guajon, rock frog	PR.
1	D	R4	*Eleutherodactylus eneidae*	Leptodactylidae	Mottled coqui (Eneida's coqui)	PR.
1	D	R4	*Eleutherodactylus karlschmidti*	Leptodactylidae	Web-footed coqui	PR.
2	U	R1	*Ensatina eschscholtzii croceator*	Plethodontidae	Yellow-blotched ensatina	CA.
2	U	R1	*Ensatina eschscholtzii klauberi*	Plethodontidae	Large-blotched ensatina	CA.
2	U	R2	*Eurycea* sp.	Plethodontidae	Buttercup Creek salamander	TX
2	U	R2	*Eurycea* sp.	Plethodontidae	Georgetown salamander	TX
2	U	R2	*Eurycea* sp.	Plethodontidae	Jollyville Plateau salamander	TX
2	U	R2	*Eurycea* sp.	Plethodontidae	Salado salamander	TX
2	U	R4	*Eurycea aquatica*	Plethodontidae	Dark-sided salamander	AL, TN.
2	U	R4	*Eurycea junaluska*	Plethodontidae	Junaluska salamander	NC.
2	U	R2	*Eurycea neotenes*	Plethodontidae	Texas salamander	TX.
PE	U	R2	*Eurycea sosorum*	Plethodontidae	Barton Springs salamander	TX.
2	U	R2	*Eurycea tridentifera*	Plethodontidae	Comal blind salamander	TX.
2	U	R4	*Gyrinophilus palleucus*	Plethodontidae	Tennessee cave salamander (including Berry Cave salamander).	AL, GA, TN.
2	S	R5	*Gyrinophilus subterraneus*	Plethodontidae	West Virginia spring salamander	WV.
2	U	R4	*Haideotriton wallacei*	Plethodontidae	Georgia blind salamander	GA, FL.
2	D	R1	*Hydromantes* sp.	Plethodontidae	Owens Valley web-toes salamander	CA
2	U	R1	*Hydromantes brunus*	Plethodontidae	Limestone salamander	CA.
2	U	R1	*Hydromantes platycephalus*	Plethodontidae	Mount Lyell salamander	CA.
2	S	R1	*Hydromantes shastae*	Plethodontidae	Shasta salamander	CA.
2	U	R4	*Necturus* sp.	Proteidae	Black Warrior waterdog	AL.
2	U	R2	*Notophthalmus meridionalis*	Salamandridae	Black-spotted newt	TX, Mexico.
2	D	R4	*Notophthalmus perstriatus*	Salamandridae	Striped newt	FL, GA
3C	N	R4	*Plethodon caddoensis*	Plethodontidae	Caddo Mountain salamander	AR.
2	U	R1	*Plethodon elongatus*	Plethodontidae	Del Norte salamander	CA, OR.
3C	N	R4	*Plethodon fourchensis*	Plethodontidae	Fourche Mountain salamander	AR.
2	S	R5	*Plethodon hubrichti*	Plethodontidae	Peaks of Otter salamander	VA.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	U	R1	*Plethodon larselli*	Plethodontidae	Larch Mountain salamander	OR, WA.
2	I	R2	*Plethodon neomexicanus*	Plethodontidae	Jemez Mountains salamander	NM.
2	S	R5	*Plethodon punctatus*	Plethodontidae	Cow Knob (=White-spotted) salamander.	VA, WV.
2	U	R1	*Plethodon stormi (=P. elongatus s.)*	Plethodontidae	Siskiyou Mountains salamander	CA, OR.
2	U	R3	*Pseudacris streckeri illinoensis*	Hylidae	Illinois Strecker's chorus frog	AR, IL, MO.
2	U	R4	*Pseudobranchus striatus lustricolus*	Sirenidae	Gulf Hammock dwarf siren	FL.
2	D	R4	*Rana areolata aesopus*	Ranidae	Florida crawfish (=gopher) frog	FL, GA.
2	D	R4	*Rana areolata capito*	Ranidae	Carolina crawfish (=gopher) frog	GA, NC, SC.
1	D	R4	*Rana areolata sevosa*	Ranidae	Dusky crawfish (=gopher) frog	AL, FL, LA, MS.
2	U	R1	*Rana aurora aurora*	Ranidae	Northern red-legged frog	CA, OR, WA, Canada.
PE	D	R1	*Rana aurora draytoni*	Ranidae	California red-legged frog	CA, Mexico.
2	D	R1	*Rana boylii*	Ranidae	Foothill yellow-legged frog	CA, OR.
2	U	R1	*Rana cascadae*	Ranidae	Cascades frog	CA, OR, WA.
2	D	R2	*Rana chiricahuensis*	Ranidae	Chiricahua leopard frog	AZ, NM, Mexico.
2	D	R1	*Rana muscosa*	Ranidae	Mountain yellow-legged frog	CA, NV.
2	S	R4	*Rana okaloosae*	Ranidae	Florida bog frog	FL.
2	U	R6	*Rana pretiosa*	Ranidae	Spotted frog (main population)	AK, ID, MT, WY, Canada.
1	D	R6	*Rana pretiosa*	Ranidae	Spotted frog, West Coast, Great Basin, Wasatch Front pops..	CA, ID, NV, OR, UT, WA, Canada.
1	D	R6	*Rana pretiosa*	Ranidae	Spotted frog, West Desert (Utah) pop..	UT.
1	D	R2	*Rana subaquavocalis*	Ranidae	Ramsey Canyon leopard frog	AZ
2	U	R2	*Rana tarahumarae*	Ranidae	Tarahumara frog	AZ, Mexico.
2	D	R2	*Rana yavapaiensis*	Ranidae	Lowland (=Yavapai & San Felipe) leopard frog.	AZ, CA, NM, UT, Mexico.
2	D	R1	*Rhyacotriton variegatus (=olympicus)*	Ambystomatidae	southern torrent (seep) salamander	CA, OR
2	D	R1	*Scaphiopus hammondii*	Pelobatidae	western spadefoot (toad)	CA
2	U	R2	*Siren intermedia texana*	Sirenidae	Rio Grande lesser siren	TX, Mexico.
2	U	R2	*Typhlomolge robusta*	Plethodontidae	Robust (=Blanco) blind salamander	TX.
			FISHES.			
2	U	R3	*Acipenser fulvescens*	Acipenseridae	Lake sturgeon	AL, AR, GA, IA, IL, IN, KS, KY, LA, MI, MN, MO, MS, NE, NY, OH, PA, SD, TN, VT, WI, WV, Canada.
2	D	R1	*Acipenser medirostris*	Acipenseridae	Green sturgeon	CA, OR, WA, AK, Canada,
PE	D	R1	*Acipenser transmontanus*	Acipenseridae	White sturgeon, Kootenai River population.	ID.
2	D	R2	*Agosia chrysogaster*	Cyprinidae	Longfin dace	AZ, NM, Mexico
2	U	R3	*Amblyopsis spelaea*	Amblyopsidae	Northern cavefish	IN, KY.
2	D	R1	*Archoplites interruptus*	Centrarchidae	Sacramento perch (native population).	CA.
2	D	R2	*Campostoma ornatum*	Cyprinidae	Mexican stoneroller	AZ, TX, Mexico.
2	S	R1	*Catostomus* sp.	Catostomidae	Wall Canyon sucker	NV.
2	S	R1	*Catostomus clarki* ssp.	Catostomidae	Meadow Valley Wash desert sucker	NV.
2	D	R2	*Catostomus clarki*	Catostomidae	Desert sucker	AZ, NM, NV, UT, Mexico
2	D	R1	*Catostomus clarki intermedius*	Catostomidae	White River desert sucker	NV.
2	U	R2	*Catostomus discobolus yarrowi*	Catostomidae	Zuni bluehead (=Mountain) sucker	AZ, NM.
2	D	R2	*Catostomus insignis*	Catostomidae	Sonora sucker	AZ, NM, Mexico
2	D	R2	*Catostomus latipinnis*	Catostomidae	Flannelmouth sucker (lower Colorado R. basin pop.).	AZ, CA, NV, UT.
2	D	R1	*Catostomus occidentalis lacusanserinus.*	Catostomidae	Goose Lake sucker	CA, OR.
2	U	R1	*Catostomus rimiculus* ssp.	Catostomidae	Jenny Creek sucker	CA, OR.
2	D	R1	*Catostomus santaanae*	Catostomidae	Santa Ana sucker	CA.
2	D	R1	*Catostomus snyderi*	Catostomidae	Klamath largescale sucker	CA, OR.
2	U	R3	*Coregonus kiyi*	Salmonidae	Kiyi	IL, IN, MI, MN, NY, WI, Canada.
2	U	R3	*Coregonus reighardi*	Salmonidae	Shortnose cisco	IL, IN, MI, NY, WI, Canada.
2	U	R3	*Coregonus zenithicus*	Salmonidae	Shortjaw cisco	IL, IN, MI, MN, WI, Canada.
2	U	R5	*Cottus* sp.	Cottidae	Bluestone sculpin	VA, WV.

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Category	Trend					
2	U	R1	*Cottus asperrimus*	Cottidae	Rough sculpin	CA.
2	U	R1	*Cottus bairdi* ssp.	Cottidae	Malheur mottled sculpin	OR.
2	D	R1	*Cottus greenei*	Cottidae	Shoshone sculpin	ID
2	S	R1	*Cottus leiopomus*	Cottidae	Wood River sculpin	ID.
2	U	R1	*Cottus marginatus*	Cottidae	Margined sculpin	WA, OR
2	U	R1	*Cottus tenuis*	Cottidae	Slender sculpin	OR.
2	S	R1	*Crenichthys baileyi albivallis*	Cyprinodontidae	Preston White River springfish	NV.
2	S	R1	*Crenichthys baileyi moapae*	Cyprinodontidae	Moapa White River springfish	NV.
2	D	R1	*Crenichthys baileyi thermophilus*	Cyprinodontidae	Moorman White River springfish	NV.
3C	N	R4	*Crystallaria (=Ammocrypta) asprella*	Percidae	Crystal darter	AL, AR, FL, IA, IL, IN, KY, LA, MN, MO, MS, OH, OK, TN, WI, WV.
2	S	R3	*Cycleptus elongatus*	Catostomidae	Blue sucker	AL, AR, IA, IL, IN, KS, KY, LA, MN, MO, MS, MT, ND, NE, NM, OH, OK, PA, SD, TN, TX, WI, WV, Mexico.
2	U	R4	*Cyprinella callisema*	Cyprinidae	Ocmulgee shiner	GA
2	U	R4	*Cyprinella callitaenia (=Notropis c.)*	Cyprinidae	Bluestripe shiner	AL, FL, GA.
2	U	R2	*Cyprinella proserpina (=Notropis proserpinus).*	Cyprinidae	Proserpine shiner	TX, Mexico.
2	U	R2	*Cyprinodon* sp.	Cyprinodontidae	Palomas pupfish	NM, Mexico.
2	D	R2	*Cyprinodon eximius*	Cyprinodontidae	Conchos pupfish	TX, Mexico.
2	U	R1	*Cyprinodon nevadensis calidae*	Cyprinodontidae	Tecopa pupfish	CA.
2	D	R1	*Cyprinodon nevadensis shoshone*	Cyprinodontidae	Shoshone pupfish	CA.
1	D	R2	*Cyprinodon pecosensis*	Cyprinodontidae	Pecos pupfish	NM, TX.
2	S	R2	*Cyprinodon tularosa*	Cyprinodontidae	White Sands pupfish	NM.
1	D	R2	*Dionda diaboli*	Cyprinidae	Devils River minnow	TX, Mexico.
1	S	R4	*Elassoma alabamae*	Centrarchidae	Spring pygmy sunfish	AL.
2	U	R4	*Elassoma boehlkei*	Centrarchidae	Carolina (=barred) pygmy sunfish	NC, SC.
PT	S	R4	*Etheostoma (Ulocentra)* sp.	Percidae	Cherokee darter	GA.
2	U	R4	*Etheostoma aquali*	Percidae	Coppercheek darter	TN.
2	D	R4	*Etheostoma bellator*	Percidae	Warrior darter	AL
2	U	R4	*Etheostoma brevirostrum*	Percidae	Holiday darter	AL, GA, TN
2	U	R4	*Etheostoma chermocki*	Percidae	Vermilion darter	AL
2	D	R4	*Etheostoma cinereum*	Percidae	Ashy darter	AL, GA, KY, TN, VA
2	U	R4	*Etheostoma corona*	Percidae	Crown darter	AL, TN
1	D	R6	*Etheostoma cragini*	Percidae	Arkansas darter	AR, CO, KS, MO, OK.
2	D	R4	*Etheostoma ditrema*	Percidae	Coldwater darter	AL, GA, TN.
2	U	R4	*Etheostoma douglasi*	Percidae	Tuskaloosa darter	AL
PT		R4	*Etheostoma etowahae*	Percidae	Etowah darter	GA.
2	U	R4	*Etheostoma forbesi*	Percidae	Barrens darter	TN
2	D	R2	*Etheostoma grahami*	Percidae	Rio Grande darter	TX, Mexico.
2	U	R5	*Etheostoma maculatum*	Percidae	Spotted darter	IN, NY, OH, PA, WV.
3C	N	R4	*Etheostoma moorei*	Percidae	Yellowcheek darter	AR.
2	D	R4	*Etheostoma nigrum susanae*	Percidae	Cumberland Johnny darter	KY.
2	D	R5	*Etheostoma osburni*	Percidae	Finescale saddled darter	VA, WV.
2	S	R5	*Etheostoma pellucidum (=Ammocrypta p.).*	Percidae	Eastern sand darter	IL, IN, KY, MI, NY, OH, PA, VT, WV.
2	U	R4	*Etheostoma pseudovulatum*	Percidae	Egg-mimic darter	TN
3C	N	R4	*Etheostoma rupestre*	Percidae	Rock darter	AL, GA, MS.
2	U	R4	*Etheostoma striatulum*	Percidae	Striated darter	TN.
2	D	R4	*Etheostoma trisella*	Percidae	Trispot darter	AL, GA, TN.
2	S	R4	*Etheostoma tuscumbia*	Percidae	Tuscumbia darter	AL, TN.
2	D	R4	*Fundulus julisia*	Cyprinodontidae	Barrens topminnow	TN.
2	D	R6	*Fundulus sciadicus*	Cyprinodontidae	Plains topminnow	SD, MN, IA, NE, CO, WY, KS, OK, MO.
2	S	R4	*Fundulus waccamensis*	Cyprinodontidae	Waccamaw killifish	NC.
2	D	R2	*Gambusia senilis*	Poeciliidae	Blotched gambusia	TX, Mexico.
3B	N	R1	*Gasterosteus aculeatus santaannae*	Gasterosteidae	Santa Ana threespine stickleback	CA.
2	U	R1	*Gila alvordensis*	Cyprinidae	Alvord chub	NV, OR.
1	D	R1	*Gila bicolor* ssp.	Cyprindidae	High Rock Springs tui chub	CA.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	D	R1	*Gila bicolor* ssp.	Cyprinidae	Big Smoky Valley tui chub	NV.
2	U	R1	*Gila bicolor* ssp.	Cyprinidae	Catlow tui chub	OR.
2	I	R1	*Gila bicolor* ssp.	Cyprinidae	Dixie Valley tui chub	NV.
2	D	R1	*Gila bicolor* ssp.	Cyprinidae	Fish Lake Valley tui chub	NV.
2	S	R1	*Gila bicolor* ssp.	Cyprinidae	Hot Creek Valley tui chub	NV.
2	D	R1	*Gila bicolor* ssp.	Cyprinidae	Pleasant Valley tui chub	NV.
2	U	R1	*Gila bicolor* ssp.	Cyprinidae	Railroad Valley tui chub	NV.
2	U	R1	*Gila bicolor* ssp.	Cyprinidae	Summer Basin tui chub	OR.
2	U	R1	*Gila bicolor euchila*	Cyprinidae	Fish Creek Springs tui chub	NV.
2	U	R1	*Gila bicolor eurysoma*	Cyprinidae	Sheldon tui chub	NV, OR.
2	U	R1	*Gila bicolor isolata*	Cyprinidae	Independence Valley tui chub	NV.
2	U	R1	*Gila bicolor newarkensis*	Cyprinidae	Newark Valley tui chub	NV.
3C	N	R1	*Gila bicolor obesa*	Cyprinidae	Lahontan Creek tui chub	NV.
2	U	R1	*Gila bicolor oregonensis*	Cyprinidae	XL Spring (=Oregon Lakes) tui chub	OR.
1	D	R1	*Gila bicolor vaccaceps*	Cyprinidae	Cowhead Lake tui chub	CA.
2	U	R6	*Gila copei*	Cyprinidae	Leatherside chub	ID, UT, WY.
2	D	R2	*Gila intermedia*	Cyprinidae	Gila chub	AZ, NM, Mexico.
2	D	R1	*Gila orcutti*	Cyprinidae	Arroyo chub	CA
2	D	R2	*Gila robusta*	Cyprinidae	Roundtail chub	AZ, CA, CO, NM, NV, UT, WY, Mexico.
2	D	R4	*Hemitremia flammea*	Cyprinidae	Flame chub	AL, GA, TN
2	D	R6	*Hybognathus argyritis*	Cyprinidae	Western silvery minnow	IA, IL, KS, MO, MT, ND, NE, SD, WY, Canada
2	D	R6	*Hybognathus placitus*	Cyprinidae	Plains minnow	AR, CO, IA, IL, KS, KY, LA, MO, MT, ND, NE, NM, OK, SD, TX, WY.
3C	N	R4	*Hybopsis lineapunctata*	Cyprinidae	Lined chub	AL, GA, TN.
2	D	R1	*Hysterocarpus traski pomo*	Embiotocidae	Russian River tule perch	CA.
2	D	R2	*Ictalurus* sp.	Ictaluridae	Chihuahua catfish	NM, TX, Mexico
2	U	R2	*Ictalurus lupus*	Ictaluridae	Headwater catfish	NM, TX, Mexico.
1	D	R6	*Iotichthys phlegethontis*	Cyprinidae	Least chub	UT.
2	D	R1	*Lampetra ayresi*	Petromyzontidae	River Lamprey	CA, OR, WA, AK
2	D	R1	*Lampetra hubbsi*	Petromyzontidae	Kern Brook lamprey	CA.
2	D	R1	*Lampetra tridentata* ssp.	Petromyzontidae	Goose Lake lamprey	CA, OR.
2	U	R1	*Lampetra tridentata*	Petromyzontidae	Pacific lamprey	AK, CA, OR, WA, Canada
2	D	R1	*Lavinia symmetricus* ssp.	Cyprinidae	Red Hills roach	CA
2	D	R1	*Lavinia symmetricus mitrulus*	Cyprinidae	Pit roach	CA, OR.
2	U	R1	*Lavinia symmetricus parvipinnis*	Cyprinidae	Gualala roach	CA.
1	S	R1	*Lentipes concolor*	Gobiidae	O'opu alamo'o (goby)	HI.
PT	D	R6	*Lepidomeda mollispinis mollispinis*	Cyprinidae	Virgin spinedace	AZ, NV, UT.
2	U	R2	*Lythrurus (=Notropis) snelsoni*	Cyprinidae	Ouachita Mountain shiner	AR, OK.
1	D	R6	*Macrhybopsis (=Hybopsis) gelida*	Cyprinidae	Sturgeon chub	AR, IA, IL, KY, KS, LA, MO, MS, MT, NE, ND, SD, WY, TN.
1	D	R6	*Macrhybopsis (=Hybopsis) meeki*	Cyprinidae	Sicklefin chub	AR, IA, IL, KS, KY, LA, MO, MS, NE, ND, SD, TN.
2	D	R2	*Macrhybopsis aestivalis tetranemus*	Cyprinidae	Arkansas River speckled chub	AR?CO, KS, NM, OK, TX.
2	D	R2	*Micropterus treculi*	Centrarchidae	Guadalupe bass	TX.
2	U	R4	*Moxostoma robustum*	Catostomidae	Robust (=bighead) redhorse	GA, SC*, NC*.
2	U	R6	*Moxostoma valenciennesi*	Catostomidae	Greater redhorse	KY, IN, IL, MI, MN, ND, NY, OH, WI, Canada (Que.).
3C	N	R4	*Notropis asperifrons*	Cyprinidae	Burrhead shiner	AL, GA, TN.
2	D	R2	*Notropis buccula*	Cyprinidae	Smalleye shiner	TX.
2	D	R2	*Notropis chihuahua*	Cyprinidae	Chihuahua shiner	TX, Mexico.
PE	D	R2	*Notropis girardi*	Cyprinidae	Arkansas River shiner (native pop. only).	AR, KS, NM, OK, TX.
2	U	R4	*Notropis hypsilepis*	Cyprinidae	Highscale shiner	AL, GA
2	D	R2	*Notropis jemezanus*	Cyprinidae	Rio Grande shiner	NM, TX, Mexico.
2	U	R4	*Notropis melanostomus*	Cyprinidae	Blackmouth (=swamp) shiner	FL, MS.
2	U	R2	*Notropis oxyrhynchus*	Cyprinidae	Sharpnose shiner	TX.
2	U	R4	*Notropis ozarcanus*	Cyprinidae	Ozark shiner	AR, MO.

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Category	Trend					
2	D	R5	*Notropis semperasper*	Cyprinidae	Roughhead shiner	VA.
1	D	R6	*Notropis topeka (=tristis)*	Cyprinidae	Topeka shiner	IA, KS, MN, MO, NE, SD.
2	U	R4	*Notropis xaenurus*	Cyprinidae	Altamaha shiner	GA.
2	D	R4	*Noturus* sp.	Ictaluridae	Saddled madtom	TN.
2	U	R4	*Noturus* sp.	Ictaluridae	Chucky madtom	TN
2	U	R4	*Noturus* sp.	Ictaluridae	Saddled madtom	TN
2	S	R5	*Noturus gilberti*	Ictaluridae	Orangefin madtom	NC, VA.
2	D	R5	*Noturus insignis* ssp.	Ictaluridae	Spotted madtom	VA, NC.
3C	N	R4	*Noturus lachneri*	Ictaluridae	Ouachita madtom	AR.
3C	N	R4	*Noturus munitus*	Ictaluridae	Frecklebelly madtom	AL, GA, LA, MS, TN.
3C	N	R4	*Noturus taylori*	Ictaluridae	Caddo madtom	AR.
2	S	R1	*Novumbra hubbsi*	Umbridae	Olympic mudminnow	WA.
2	U	R1	*Oncorhynchus (=Salmo) clarki* ssp.	Salmonidae	Snake River fine-spotted cutthroat trout.	ID, WY.
3B	N	R1	*Oncorhynchus (=Salmo) clarki* ssp.	Salmonidae	Willow/Whitehorse cutthroat trout	OR.
2	D	R6	*Oncorhynchus (=Salmo) clarki lewisi*	Salmonidae	Westslope cutthroat trout	ID, MT, WY, WA, OR, Canada (Alb., B.C.)
2	D	R6	*Oncorhynchus (=Salmo) clarki pleuriticus.*	Salmonidae	Colorado River cutthroat trout	CO, UT, WY.
2	D	R6	*Oncorhynchus (=Salmo) clarki utah*	Salmonidae	Bonneville cutthroat trout	ID, UT, WY, NV.
2	D	R1	*Oncorhynchus (=Salmo) mykiss* ssp.	Salmonidae	Catlow Valley redband trout	OR.
2	D	R1	*Oncorhynchus (=Salmo) mykiss* ssp.	Salmonidae	Goose Lake redband trout	CA, OR.
1	D	R1	*Oncorhynchus (=Salmo) mykiss* ssp.	Salmonidae	McCloud River redband trout	CA.
2	D	R1	*Oncorhynchus (=Salmo) mykiss* ssp.	Salmonidae	Warner Valley redband trout	CA, OR, NV.
2	U	R1	*Oncorhynchus (=Salmo) mykiss aguabonita.*	Salmonidae	Volcano Creek golden trout	CA.
2	D	R1	*Oncorhynchus (=Salmo) mykiss aquilarum.*	Salmonidae	Eagle lake rainbow trout	CA
2	D	R1	*Oncorhynchus (=Salmo) mykiss gibbsi.*	Salmonidae	Interior redband trout	ID, MT, NV, OR.
2	D	R1	*Oncorhynchus (=Salmo) mykiss gilberti.*	Salmonidae	Kern River rainbow trout	CA.
2	D	R1	*Oregonichthys kalawatseti*	Cyprinidae	Umpqua oregon chub	OR.
2	U	R5	*Osmerus spectrum*	Osmeridae	Pygmy smelt	ME.
2	U	R4	*Percina* sp.	Percidae	Alabama channel darter	AL.
2	U	R4	*Percina* sp.	Percidae	Pearl channel darter	LA, MS.
2	U	R4	*Percina* sp.	Percidae	Warrior bridled darter	AL.
2	D	R4	*Percina* sp.	Percidae	Halloween darter	AL, GA
2	U	R3	*Percina cymatotaenia*	Percidae	Bluestripe darter	MO.
3C	N	R4	*Percina lenticula*	Percidae	Freckled darter	AL, GA, LA, MS.
2	S	R5	*Percina macrocephala*	Percidae	Longhead darter	KY, NC, NY, OH, PA, TN, VA, WV.
3C	N	R4	*Percina nasuta*	Percidae	Longnose darter	AR, MO, OK.
3C	N	R4	*Percina palmaris*	Percidae	Bronze darter	AL, GA, TN.
2	U	R4	*Percina squamata*	Percidae	Olive darter	GA, KY, TN.
2	U	R4	*Percina uranidea*	Percidae	Stargazing darter	AR, IL, IN, LA, MO.
2	D	R5	*Phenacobius teretulus*	Cyprinidae	Kanawha minnow	NC, VA, WV.
2	U	R3	*Platygobio (=Hybopsis) gracilis*	Cyprinidae	Flathead chub	AL, AR, CO, IA, IL, KS, KY, LA, MN, MO, MT, ND, NE, NM, OK, SD, TN, WY, Canada
PT	D	R1	*Pogonichthys macrolepidotus*	Cyprinidae	Sacramento splittail	CA.
2	S	R6	*Polyodon spathula*	Polyodontidae	Paddlefish	AL, AR, IA, IL, IN, KS, KY, LA, MN, MO, MS, MT, ND, NE, OH, OK, PA, SD, TN, TX, WI.
2	U	R4	*Pteronotropis euryzonus*	Cyprinidae	Broadstripe shiner	AL, GA
2	S	R1	*Relictus solitarius*	Cyprinidae	Relict dace	NV.
2	S	R5	*Rhinichthys bowersi*	Cyprinidae	Cheat minnow	MD, PA, WV.
2	U	R1	*Rhinichthys cataractae* ssp.	Cyprinidae	Millicoma dace	OR
2	D	R1	*Rhinichthys osculus* ssp.	Cyprinidae	Benton Valley speckled dace	CA
3A	N	R1	*Rhinichthys osculus* ssp.	Cyprinidae	Little Lake speckled dace	CA

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	D	R1	*Rhinichthys osculus* ssp.	Cyprinidae	Long Valley speckled dace	CA
2	D	R2	*Rhinichthys osculus*	Cyprinidae	Speckled dace (Gila & Bill Williams basins pop.).	AZ
2	U	R1	*Rhinichthys osculus* ssp.	Cyprinidae	Amargosa Canyon speckled dace	CA.
2	U	R1	*Rhinichthys osculus* ssp.	Cyprinidae	Diamond Valley speckled dace	NV.
2	S	R1	*Rhinichthys osculus* ssp.	Cyprinidae	Meadow Valley Wash speckled dace	NV.
2	S	R1	*Rhinichthys osculus* ssp.	Cyprinidae	Monitor Valley speckled dace	NV.
2	S	R1	*Rhinichthys osculus* ssp.	Cyprinidae	Oasis Valley speckled dace	NV.
2	D	R1	*Rhinichthys osculus* ssp.	Cyprinidae	Owens speckled dace	CA.
2	D	R1	*Rhinichthys osculus* ssp.	Cyprinidae	Santa Ana speckled dace	CA.
2	S	R1	*Rhinichthys osculus* ssp.	Cyprinidae	White River speckled dace	NV.
2	D	R1	*Rhinichthys osculus moapae*	Cyprinidae	Moapa speckled dace	NV.
2	D	R1	*Rhinichthys osculus velifer*	Cyprinidae	Pahranagat speckled dace	NV.
2	D	R5	*Salmo salar*	Salmonidae	Atlantic salmon (Dennys, Machias, East Machias, Narraguagus, Sheepscot, Ducktrap pops.).	ME
1	D	R1	*Salvelinus confluentus*	Salmonidae	Bull trout	CA, ID, MT, NV, OR, WA.
2	U	R2	*Satan eurystomus*	Ictaluridae	Widemouth blindcat	TX.
2	D	R1	*Spirinchus thaleichthys*	Osmeridae	Longfin smelt (Delta population)	CA.
1	D	R6	*Thymallus arcticus montanus*	Salmonidae	Montana Arctic grayling	MT.
2	U	R2	*Trogloglanis pattersoni*	Ictaluridae	Toothless blindcat	TX.
			INVERTEBRATES			
			SNAILS (Mollusks, Class Gastropoda).			
2	D	R6	*Acroloxus coloradensis* (J. Henderson, 1930).	Acroloxidae	Rocky Mountain capshell (snail)	MT, CO.
2	U	R1	*Algamorda newcombiana (=Littorina subrotunda)* (Carpenter, 1865).	Littorinidae	Newcomb's littorine snail	CA, WA, OR.
2	U	R1	*Ammonitella yatesi* Cooper, 1868	Ammonitellidae	Tight coin (=Yate's snail)	CA.
2	U	R4	*Amphigyra alabamensis* Pilsbry, 1906.	Planorbidae	Shoal sprite (snail)	AL.
1	D	R3	*Antrobia culveri* (Hubricht, 1971)	Hydrobiidae	Tumbling Creek cavesnail	MO.
2	U	R4	*Antrorbis breweri* Herschler & Thompson, 1990.	Hydrobiidae	(Snail, no common name)	AL.
2	U	R2	*Apachecoccus arizonae* Taylor, 1987	Hydrobiidae	Bylas springsnail	AZ
2	U	R4	*Aphaostracon asthenes* F.G. Thompson, 1968.	Hydrobiidae	Blue Spring hydrobe (snail)	FL.
2	U	R4	*Aphaostracon monas* (Pilsbry, 1899)	Hydrobiidae	Wekiwa hydrobe (snail)	FL.
2	U	R4	*Aphaostracon pycnus* F.G. Thompson, 1968.	Hydrobiidae	Dense hydrobe (snail)	FL.
2	U	R4	*Aphaostracon xynoelictus* F.G. Thompson, 1968.	Hydrobiidae	Fenney Spring hydrobe (snail)	FL.
2	U	R2	*Ashmunella hebardi* Pilsbry & Manatta, 1923.	Polygyridae	Hacheta Grande woodlandsnail	NM.
2	U	R2	*Ashmunella macromphala* Vagvolgyi, 1974.	Polygyridae	Cooke's Peak woodlandsnail	NM.
2	U	R2	*Ashmunella pasonis* (Drake, 1951)	Polygyridae	Franklin Mountain wood snail	TX.
2	U	R1	*Assiminea infima* Berry, 1947	Assimineidae	Badwater snail	CA.
1	U	R2	*Assiminea pecos* Taylor, 1987	Assimineidae	Pecos assiminea snail	NM, TX, Mexico.
PE		R4	*Athearnia anthonyi* (Redfield, 1854)	Pleuroceridae	Anthony's river snail	AL, GA, TN.
2	U	R1	*Binneya notabilis* Cooper, 1863	Arionidae	Santa Barbara shelled slug (=Slug snail).	CA.
2	U	R4	*Campeloma decampi* ("Currier" Binney, 1865).	Viviparidae	Slender campeloma (snail)	AL
2	U	R1	*Carelia* ca 12 spp.	Amastridae	Genus (Snails, no common names)	HI.
2	U	R3	*Catinella gelida* (Baker, 1927)	Succineidae	(Snail, no common name)	IA.
2	U	R4	*Cincinnatia helicogyra* F.G. Thompson, 1968.	Hydrobiidae	Crystal siltsnail (=helicoid spring snail).	FL.
2	U	R4	*Cincinnatia mica* F.G. Thompson, 1968.	Hydrobiidae	Ichetucknee siltsnail	FL.
2	U	R4	*Cincinnatia monroensis* (Dall, 1885)	Hydrobiidae	Enterprise siltsnail	FL.
2	U	R4	*Cincinnatia parva* F.G. Thompson, 1968.	Hydrobiidae	Pygmy siltsnail	FL.
2	U	R4	*Cincinnatia ponderosa* F.G. Thompson, 1968.	Hydrobiidae	Ponderous siltsnail (=Ponderous spring snail).	FL.
2	U	R4	*Cincinnatia vanhyningi* (Vanatta, 1934).	Hydrobiidae	Seminole siltsnail (=Seminole Spring snail).	FL
2	U	R4	*Cincinnatia wekiwae* F.G. Thompson, 1968.	Hydrobiidae	Wekiwa siltsnail (=Wekiwa Spring snail).	FL.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
3A	N	R4	*Clappia cahabensis* Clench, 1965	Hydrobiidae	Cahaba pebblesnail	AL.
3A	N	R4	*Clappia umbilicata* (Walker, 1904)	Hydrobiidae	Umbilicate pebblesnail	AL.
2	U	R2	*Cochliopa texana* Pilsbry, 1935	Hydrobiidae	Phantom Lake cave snail	TX.
2	U	R1	*Cryptomastix magnidentata (=Tridopsis mullani m.)* (Pilsbry, 1940).	Polygyridae	Mission Creek oregonian (snail)	ID.
2	U	R1	*Diastole matafaoi* H.B. Baker, 1938	Helicarionidae	Mt. Matafao different snail	AS.
2	D	R1	*Diastole schmeltziana*	Helicarionidae	(Snail, no common name)	AS.
2	U	R1	*Discus marmorensis* H.B. Baker, 1932.	Discidae	Marbled disc (snail)	ID.
2	U	R6	*Discus shemeki cockerelli*	Discidae	Cockerell's striate disc (snail)	AZ, CA, CO, MT, NM, OR, SD, UT, WY, Canada.
2	U	R4	*Elimia acuta* (I. Lea, 1831)	Pleuroceridae	Acute elimia (snail)	AL, TN
2	U	R4	*Elimia alabamensis* (I. Lea, 1861)	Pleuroceridae	Mud elimia (snail)	AL.
2	U	R4	*Elimia albanyensis (=Goniobasis a.)* (I. Lea, 1864).	Pleuroceridae	Black-crest elima (=Albany snail)	AL, GA.
3A	N	R4	*Elimia ampla* (Anthony, 1854)	Pleuroceridae	Ample elimia (snail)	AL.
3A	N	R4	*Elimia annettae* (Goodrich, 1941)	Pleuroceridae	Lily Shoals elimia (snail)	AL.
2	U	R4	*Elimia aterina* (I. Lea, 1863)	Pleuroceridae	Coal elimia (snail)	TN
2	U	R4	*Elimia bellula* (I. Lea, 1861)	Pleuroceridae	Walnut elimia (snail)	AL.
2	U	R4	*Elimia boykiniana* (I. Lea, 1840)	Pleuroceridae	Flaxen elimia (snail)	AL, GA.
3A	N	R4	*Elimia brevis* (Reeve, 1860)	Pleuroceridae	Short-spire elimia (snail)	AL.
3C	N	R4	*Elimia cahawbensis* (I. Lea, 1841)	Pleuroceridae	Cahaba elimia (snail)	AL.
2	U	R4	*Elimia capillaris* (I. Lea, 1861)	Pleuroceridae	Spindle elimia (snail)	AL, GA.
2	D	R4	*Elimia crenatella* (I. Lea, 1860)	Pleuroceridae	Lacy elimia (snail)	AL.
2	U	R4	*Elimia fascinans* (I. Lea, 1861)	Pleuroceridae	Banded elimia (snail)	AL.
3A	N	R4	*Elimia fusiformis* (I. Lea, 1861)	Pleuroceridae	Fusiform elimia (snail)	AL.
3C	N	R4	*Elimia gerhardti* (I. Lea, 1862)	Pleuroceridae	Coldwater elimia (snail)	AL, GA.
3A	N	R4	*Elimia hartmaniana* (I. Lea, 1861)	Pleuroceridae	High-spired elimia (snail)	AL.
2	U	R4	*Elimia haysiana* (I. Lea, 1843)	Pleuroceridae	Silt elimia (snail)	AL.
2	U	R4	*Elimia hydei* (Conrad, 1834)	Pleuroceridae	Gladiator elimia (snail)	AL.
3A	N	R4	*Elimia impressa* (I. Lea, 1841)	Pleuroceridae	Constricted elimia (snail)	AL.
2	D	R4	*Elimia interrupta (=Goniobasis i.)* (Haldeman, 1840).	Pleuroceridae	Knotty elimia (snail)	NC, TN.
2	U	R4	*Elimia interveniens* (I. Lea, 1862)	Pleuroceridae	Slowwater elimia (snail)	AL.
3A	N	R4	*Elimia jonesi* (Goodrich, 1936)	Pleuroceridae	Hearty elimia (snail)	AL.
3A	N	R4	*Elimia laeta* (Jay, 1839)	Pleuroceridae	Ribbed elimia (snail)	AL.
2	U	R4	*Elimia nassula* (Conrad, 1834)	Pleuroceridae	Round-rib elimia (snail)	AL.
2	U	R4	*Elimia olivula* (Conrad, 1834)	Pleuroceridae	Caper elimia (snail)	AL.
3A	N	R4	*Elimia pilsbryi* (Goodrich, 1927)	Pleuroceridae	Rough-lined elimia (snail)	AL.
2	U	R4	*Elimia porreta* (I. Lea, 1863)	Pleuroceridae	Nymph elimia (snail)	AL
2	U	R4	*Elimia prestriata* (I. Lea, 1852)	Pleuroceridae	Engraved elimia (snail)	AL
3A	N	R4	*Elimia pupaeformis* (I. Lea, 1864)	Pleuroceridae	Pupa elimia (snail)	AL.
2	U	R4	*Elimia pybasi* (I. Lea, 1862)	Pleuroceridae	Spring elimia (snail)	AL
3A	N	R4	*Elimia pygmaea* (H. H. Smith, 1936)	Pleuroceridae	Pygmy elimia (snail)	AL.
3C	N	R4	*Elimia showalteri* (I. Lea, 1860)	Pleuroceridae	Compact elimia (snail)	AL.
2	U	R4	*Elimia strigosa* (I. Lea, 1841)	Pleuroceridae	Brook elimia (snail)	TN
2	U	R4	*Elimia teres* (I. Lea, 1841)	Pleuroceridae	Elegant elimia (snail)	TN
2	U	R4	*Elimia troostiana* (I. Lea, 1838)	Pleuroceridae	Mossy elimia (snail)	TN
3A	N	R4	*Elimia vanuxemiana* (I. Lea, 1843)	Pleuroceridae	Cobble elimia (snail)	AL.
2	U	R4	*Elimia varians* (I. Lea, 1861)	Pleuroceridae	Puzzle elimia (snail)	AL.
3C	N	R4	*Elimia variata* (I. Lea, 1861)	Pleuroceridae	Squat elimia (snail)	AL.
2	U	R1	*Eremarionta immaculata (=Micrarionta i.)* (Willet, 1937).	Helminthoglyptidae	White desertsnail	CA.
2	U	R1	*Eremarionta millepalmarum (=Micranrionta m.)* (Berry, 1930).	Helminthoglyptidae	Thousand Palms desertsnail	CA.
2	U	R1	*Eremarionta morogoana (=Micrarionta m.)* (Berry, 1929).	Helminthoglyptidae	Morongo (=Colorado) desertsnail	CA.
1	D	R1	*Eua zebrina*	Partulidae	Tutuila tree snail	AS.
2	U	R2	*Euchemotrema cheatumi (=Stenotrema leai cheatumi)* (Fullington, 1974).	Polygyridae	Palmetto pillsnail	TX.
2	U	R3	*Euchemotrema hubrichti (=Stenotrema h.)* (Pilsbry, 1940).	Polygyridae	Carinate pillsnail	IL.
2	U	R4	*Ferrissia mcneili* Walker, 1925	Ancylidae	Hood ancylid (snail)	AL, FL.
2	U	R1	*Fluminicola avernalis* (Pilsbry, 1935)	Hydrobiidae	Moapa pebblesnail (=Muddy Valley turban snail).	NV.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	U	R1	*Fluminicola columbianus (=Lithoglyphus c.)* (Hemphill in Pilsbry, 1899).	Hydrobiidae	Columbia pebblesnail (=Great Columbia River spire snail).	ID, OR, WA.
2	U	R1	*Fluminicola merriami* (Pilsbry & Belcher, 1892).	Hydrobiidae	Pahranagat pebblesnail (=Pahranagat Valley turban snail).	NV
1	S	R2	*"Fontelicella" chupaderae* Taylor, 1987.	Hydrobiidae	Chupadera springsnail	NM.
2	U	R2	*"Fontelicella" davisi* Taylor, 1987	Hydrobiidae	Davis County springsnail	TX
1	S	R2	*"Fontelicella" gilae* Taylor, 1987	Hydrobiidae	Gila springsnail	NM
2	U	R2	*"Fontelicella" metcalfi* Taylor, 1987	Hydrobiidae	Presidio County springsnail	TX
1	S	R2	*"Fontelicella" pecosensis* Taylor, 1987.	Hydrobiidae	Pecos springsnail	NM.
1	S	R2	*"Fontelicella" roswellensis* Taylor, 1987.	Hydrobiidae	Roswell springsnail	NM.
1	S	R2	*"Fontelicella" thermalis* Taylor, 1987	Hydrobiidae	New Mexico hotspring snail	NM.
2	U	R2	*"Fontelicella" trivialis* (Taylor, 1987)	Hydrobiidae	Three Forks springsnail	AZ.
2	U	R5	*Fontigens holsingeri* (Hubricht, 1976)	Hydrobiidae	Tapered cavesnail	WV.
2	U	R5	*Fontigens turritella* (Hubricht, 1976)	Hydrobiidae	Greenbrier cavesnail	WV.
2	U	R2	*Gastrocopta dalliana dalliana* Sterki, 1898.	Pupillidae	Shortneck snaggletooth (snail)	NM.
2	U	R4	*Glyphyalinia clingmani* (Dall, 1890)	Zonitidae	Fragile supercoil (snail)	NC
2	U	R4	*Glyphyalinia pecki* Hubricht, 1966	Zonitidae	Blind glyph (snail)	AL.
2	D	R5	*Glyphyalinia raderi* (Dall, 1898)	Zonitidae	Maryland glyph (snail)	KY, MD, VA, WV.
3A	N	R4	*Gyrotoma excisa* (I. Lea, 1843)	Pleuroceridae	Excised slitshell	AL.
3A	N	R4	*Gyrotoma lewisi* (I. Lea, 1869)	Pleuroceridae	Striate slitshell	AL.
3A	N	R4	*Gyrotoma pagoda* (I. Lea, 1845)	Pleuroceridae	Pagoda slitshell	AL.
3A	N	R4	*Gyrotoma pumila* (I. Lea, 1860)	Pleuroceridae	Ribbed slitshell	AL.
3A	N	R4	*Gyrotoma pyramidata* (Shuttleworth, 1845).	Pleuroceridae	Pyramid slitshell	AL.
3A	N	R4	*Gyrotoma walkeri* (H. H. Smith, 1924).	Pleuroceridae	Round slitshell	AL.
2	U	R5	*Helicodiscus diadema* Grimm, 1967	Helicodiscidae	Shaggy coil (snail)	VA.
2	U	R4	*Helicodiscus hexodon* Hubricht, 1966.	Helicodiscidae	Toothy coil (snail)	TN.
2	U	R6	*Helisoma jacksonense (subgen. Carinifex)* (Henderson, 1932).	Planorbidae	Jackson Lake snail	WY.
2	U	R1	*Helminthoglypta allynsmithi* (Pilsbry, 1939).	Helminthoglyptidae	Merced Canyon shoulderband (=Allyn Smith's banded snail).	CA.
2	U	R1	*Helminthoglypta arrosa pomoensis* (A. G. Smith, 1938).	Helminthoglyptidae	Pomo bronze shoulderband (snail)	CA.
2	U	R1	*Helminthoglypta arrosa williamsi* (A. G. Smith, 1938).	Helminthoglyptidae	Williams' bronze shoulderband (snail).	CA.
2	U	R1	*Helminthoglypta callistoderma* (Pilsbry & Ferris, 1918).	Helminthoglyptidae	Kern shoulderband (snail)	CA.
2	U	R1	*Helminthoglypta mohaveena* (Berry, 1927).	Helminthoglyptidae	Victorville shoulderband (snail)	CA.
2	U	R1	*Helminthoglypta nickliniana awania* (Bartsch, 1919).	Helminthoglyptidae	(Nicklin's) Peninsula Coast Range shoulderband (snail).	CA.
2	U	R1	*Helminthoglypta nickliniana bridgesi* (Newcomb, 1861).	Helminthoglyptidae	Bridges' Coast Range shoulderband (snail).	CA.
2	U	R1	*Helminthoglypta sequoicola consors* (Berry, 1938).	Helminthoglyptidae	Redwood shoulderband (snail, no subspcific name).	CA.
2	U	R1	*Helminthoglypta traski coelata* (Bartsch, 1916).	Helminthoglyptidae	Peninsular Range shoulderband (snail, no subspecific name).	CA.
PE	D	R1	*Helminthoglypta walkeriana* (Hemphill, 1911).	Helminthoglyptidae	Morro shoulderband (=Banded dune snail).	CA.
2	I	R5	*Io fluvialis* (Say, 1834)	Pleuroceridae	Spiny riversnail	TN, VA.
2	D	R1	*Laminella sanguinea*	Amastridae	No common name	HI
2	D	R1	*Leptachatina lepida*	Amastridae	No common name	HI
2	U	R4	*Leptoxis ampla* (Anthony, 1855)	Pleuroceridae	Round rocksnail	AL.
3A	N	R4	*Leptoxis clipeata* (H. H. Smith, 1922)	Pleuroceridae	Agate rocksnail	AL.
2	U	R4	*Leptoxis compacta* (Anthony, 1854)	Pleuroceridae	Oblong rocksnail	AL.
2	U	R4	*Leptoxis crassa (=Athearnia c.)* (Haldeman, 1841).	Pleuroceridae	Boulder (=crass river) snail	AL, GA, TN.
3A	N	R4	*Leptoxis formanii* (I. Lea, 1843)	Pleuroceridae	Interrupted rocksnail	AL.
3A	N	R4	*Leptoxis formosa* (I. Lea, 1860)	Pleuroceridae	Maiden rocksnail	AL.
3A	N	R4	*Leptoxis ligata* (Anthony, 1860)	Pleuroceridae	Rotund rocksnail	AL.
3A	N	R4	*Leptoxis lirata* (H. H. Smith, 1922)	Pleuroceridae	Lyrate rocksnail	AL.
2	U	R4	*Leptoxis melanoidus* (Conrad, 1834)	Pleuroceridae	Black mudalia (snail)	AL.
2	U	R4	*Leptoxis minor* (Hinckley, 1912)	Pleuroceridae	Knob mudalia (snail)	AL.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
3A	N	R4	*Leptoxis occulata* (H. H. Smith, 1922).	Pleuroceridae	Bigmouth rocksnail	AL.
2	U	R4	*Leptoxis picta* (Conrad, 1834)	Pleuroceridae	Spotted rocksnail	AL.
2	U	R4	*Leptoxis plicata* (Conrad, 1834)	Pleuroceridae	Plicate rocksnail	AL.
2	U	R4	*Leptoxis praerosa* (Say, 1821)	Pleuroceridae	Onyx rocksnail (=mainstream river snail).	KY, TN.
3A	N	R4	*Leptoxis showalteri* (I. Lea, 1860)	Pleuroceridae	Coosa rocksnail	AL.
2	U	R4	*Leptoxis taeniata* (Conrad, 1834)	Pleuroceridae	Painted rocksnail	AL.
2	U	R4	*Leptoxis virgata* (I. Lea, 1841)	Pleuroceridae	Smooth rocksnail	AL, TN, NC.
3A	N	R4	*Leptoxis vittata* (I. Lea, 1860)	Pleuroceridae	Striped rocksnail	AL.
2	U	R4	*Lepyrium showalteri* (I. Lea, 1861)	Hydrobiidae	Flat pebblesnail	AL.
2	U	R4	*Lioplax cyclostomaformis* (I. Lea, 1841).	Viviparidae	Cylindrical lioplax (snail)	AL, GA, LA.
2	U	R4	*Lithasia armigera* (Say, 1821)	Pleuroceridae	Armored rocksnail (=armigerous river snail).	AL, IN, KY, TN.
2	U	R4	*Lithasia armigera* (Say, 1821)	Pleuroceridae	Armored rocksnail	AL, IN, KY, TN.
2	U	R4	*Lithasia curta* (I. Lea, 1868)	Pleuroceridae	Knobby rocksnail	AL.
2	U	R4	*Lithasia duttoniana* (Lea, 1841)	Pleuroceridae	Helmet rocksnail (=Dutton's river snail).	TN.
2	U	R4	*Lithasia geniculata* (Haldeman, 1840).	Pleuroceridae	Ornate rocksnail (=geniculate river snail).	AL, KY, TN.
2	U	R4	*Lithasia jayana* (Lea, 1841)	Pleuroceridae	Rugose rocksnail (=Jay's river snail)	TN.
2	U	R4	*Lithasia lima* (Conrad, 1834)	Pleuroceridae	Warty rocksnail (=Elk River file snail)	AL, TN.
2	U	R4	*Lithasia salebrosa* (Conrad, 1834)	Pleuroceridae	Muddy rocksnail (=rugged river snail).	AL, TN.
2	U	R4	*Lithasia verrucosa* (Rafinesque, 1820).	Pleuroceridae	Varicose rocksnail (=verrucose file snail).	AL, KY, OH, TN.
2	U	R4	*Mesodon clausus trossulus* Hubricht, 1966.	Polygyridae	(Snail, no common name)	AL.
2	U	R4	*Mesodon clenchi* (Rehder, 1932)	Polygyridae	Calico Rock oval (=Clench's middle-toothed land snail).	AR.
2	U	R4	*Mesodon clingmanicus* (Pilsbry, 1904).	Polygyridae	Clingman covert (snail)	NC, TN.
3C	N	R4	*Mesodon orestes* Hubricht, 1975	Polygyridae	Engraved covert (snail)	NC.
2	U	R1	*Micrarionta facta* (Newcomb, 1864)	Helminthoglyptidae	Santa Barbara islandsnail (=concentrated snail).	CA.
2	U	R1	*Micrarionta feralis* (Hemphill, 1901)	Helminthoglyptidae	San Nicolas islandsnail (=fraternal snail).	CA.
2	U	R1	*Micrarionta gabbi* (Newcomb, 1864)	Helminthoglyptidae	San Clemente islandsnail (=Gabb's snail).	CA.
2	U	R1	*Micrarionta opuntia* Roth, 1975	Helminthoglyptidae	Pricklypear islandsnail (=prickly pear snail).	CA.
2	U	R1	*Micrarionta rowelli bakerensis* (Pilsbry & Lowe, 1934).	Helminthoglyptidae	(Snail, no common name)	CA.
2	U	R1	*Micrarionta rowelli mccoiana* (Willet, 1935).	Helminthoglyptidae	California McCoy snail	CA.
2	U	R1	*Monadenia circumcarinata* (Stearns, 1879).	Helminthoglyptidae	Keeled sideband (snail)	CA.
2	U	R1	*Monadenia fidelis minor* (W. G. Binney, 1885).	Helminthoglyptidae	Dalles (=Minor Pacific) sideband (snail).	OR.
2	U	R1	*Monadenia fidelis pronotis* (Berry, 1931).	Helminthoglyptidae	Rocky coast Pacific sideband (snail)	CA.
2	U	R1	*Monadenia hillebrandi yosemitensis* (Lowe, 1916).	Helminthoglyptidae	Yosemite mariposa sideband (=Indian Yosemite snail).	CA.
2	U	R1	*Monadenia mormonum buttoni* (Pilsbry, 1900).	Helminthoglyptidae	Button's Sierra sideband (snail)	CA.
2	U	R1	*Monadenia mormonum hirsuta* (Pilsbry, 1927).	Helminthoglyptidae	Hirsute Sierra sideband (snail)	CA.
2	U	R1	*Monadenia setosa* (Talmadge, 1952)	Helminthoglyptidae	Trinity bristlesnail (=California northern river snail).	CA.
2	U	R1	*Monadenia troglodytes* (Hanna & Smith, 1933).	Helminthoglyptidae	Shasta sideband (snail)	CA.
2	U	R4	*Neoplanorbis carinatus* Walker, 1908	Planorbidae	(Snail, no common name)	AL.
2	U	R4	*Neoplanorbis smithi* Walker, 1908	Planorbidae	(Snail, no common name)	AL.
2	U	R4	*Neoplanorbis tantillus* Pilsbry, 1906	Planorbidae	(Snail, no common name)	AL.
2	U	R4	*Neoplanorbis umbilicatus* Walker, 1908.	Planorbidae	(Snail, no common name)	AL.
2	U	R1	*Neritilia hawaiiensis* (Kay, 1979)	Neritidae	(Snail, no common name)	HI.
2	D	R1	*Nucombia canaliculata* (Baldwin, 1905).	Achatinellidae	Newcomb's tree snail	HI
2	D	R1	*Nucombia cumingi* (Newcomb, 1853)	Achatinellidae	Newcomb's tree snail	HI

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Category	Trend					
2	D	R1	*Nucombia perkinsi* Skyes, 1896	Achatinellidae	Newcomb's tree snail	HI
2	D	R1	*Nucombia pfeifferi* (Newcomb, 1853)	Achatinellidae	Newcomb's tree snail	HI
2	D	R1	*Nucombia plicata* (Mighels, 1912-1914).	Achatinellidae	Newcomb's tree snail	HI
2	D	R1	*Nucombia sulcata* (Pfeiffer, 1857)	Achatinellidae	Newcomb's tree snail	HI
2	U	R2	*Oreohelix florida* Pilsbry, 1939	Oreohelicidae	Florida mountainsnail	NM
2	U	R1	*Oreohelix idahoensis idahoensis* Newcomb, 1866.	Oreohelicidae	Idaho banded mountainsnail	ID.
2	U	R1	*Oreohelix jugalis (=Oreohelox jugalis jugalis)* (Hemphill, 1890).	Oreohelicidae	Boulder pile mountainsnail	ID.
2	U	R1	*Oreohelix nevadensis* S. S. Berry, 1932.	Oreohelicidae	Schell Creek (=Nevada) mountainsnail.	NV.
3B	N	R6	*Oreohelix peripherica weberiana* (Pilsbry, 1939).	Oreohelicidae	Coalville mountainsnail	UT.
2	U	R2	*Oreohelix pilsbryi* Ferriss, 1917	Oreohelicidae	Mineral Creek mountainsnail	NM.
2	U	R6	*Oreohelix strigosa cooperi*	Oreohelicidae	Cooper's rocky mountainsnail	SD., WY.
2	U	R1	*Oreohelix strigosa goniogyra* Pilsbry, 1933.	Oreohelicidae	Carinated rocky (=striate banded) mountainsnail.	ID.
2	U	R1	*Oreohelix vortex (=Oreohelix jugalis vortex)* (Berry, 1932).	Oreohelicidae	Whorled (=vortex banded) mountainsnail.	ID.
2	U	R1	*Oreohelix waltoni* (Solem, 1975)	Oreohelicidae	Lava rock (=Walton's banded) mountainsnail.	ID.
1	D	R1	*Ostodes strigatus*	Potaridae	(Snail, no common name)	AS.
2	U	R4	*Paravitrea aulacogyra* (Pilsbry & Ferris, 1906).	Zonitidae	(Snail, no common name)	AR.
2	U	R5	*Paravitrea ceres* Hubricht, 1978	Zonitidae	Sidelong supercoil (snail)	WV.
2	U	R4	*Paravitrea ternaria* Hubricht, 1978	Zonitidae	Sculpted supercoil (snail)	NC., TN.
2	U	R4	*Paravitrea varidens* Hubricht, 1978	Zonitidae	Roan supercoil (snail)	NC., TN.
1	D	R1	*Partula gibba*	Partulidae	Humped tree snail	GU.
1	D	R1	*Partula langfordi*	Partulidae	Langford's tree snail	GU.
1	D	R1	*Partula radiolata*	Partulidae	Guam tree snail	GU.
2*	D	R1	*Partula salifana*	Partulidae	Alifan tree snail	GU.
2	D	R1	*Partulina anceyana* Baldwin, 1895	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina carnicolor* Baldwin, 1906	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina confusa* (Skyes, 1900)	Achatinellidae	Hawai'i tree snail	HI
2	D	R1	*Partulina crassa* (Newcomb, 1853)	Achatinellidae	Lanai tree snail	HI
2	D	R1	*Partulina crocea* (Gulick, 1856)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina dolei* Baldwin, 1895	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina dubia* (Newcomb, 1853)	Achatinellidae	Waianae tree snail	HI
2	D	R1	*Partulina dwightii* (Newcomb, 1855)	Achatinellidae	Moloka'i tree snail	HI
2	D	R1	*Partulina fusoidea* (Newcomb, 1853)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina germana* (Newcomb, 1853)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina gouldii* (Newcomb, 1853)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina grisea* (Newcomb, 1853)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina horneri* (Baldwin, 1895)	Achatinellidae	Hawai'i tree snail	HI
2	D	R1	*Partulina induta* (Newcomb, 1853)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina kaaeana* Baldwin, 1906	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina lemmoni* Baldwin, 1906	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina marmorata* (Gould, 1847)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina mighelsiana* (Pfeiffer, 1847)	Achatinellidae	Moloka'i tree snail	HI
2	D	R1	*Partulina mucida* (Baldwin, 1895)	Achatinellidae	Moloka'i tree snail	HI
2	D	R1	*Partulina mutabilis* Baldwin, 1908	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina natti* (Baldwin and Hartman, 1888).	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina nivea* (Baldwin, 1895)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina perdix* (Reeve, 1850)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina physa* (Newcomb, 1853)	Achatinellidae	Hawai'i tree snail	HI
2	D	R1	*Partulina plumbea* (Gulick, 1856)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina porcellana* (Newcomb, 1853).	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina proxima* (Pease, 1862)	Achatinellidae	Moloka'i tree snail	HI
2	D	R1	*Partulina radiata* (Gould, 1845)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina redfieldii* (Newcomb, 1853)	Achatinellidae	Moloka'i tree snail	HI
2	D	R1	*Partulina rufa* (Newcomb, 1853)	Achatinellidae	Moloka'i tree snail	HI
2	D	R1	*Partulina semicarinata* (Newcomb, 1853).	Achatinellidae	Lanai tree snail	HI
2	D	R1	*Partulina splendida* (Newcomb, 1853).	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina subpolita* Hyatt and Pilsbry, 1912-1914.	Achatinellidae	Moloka'i tree snail	HI

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Category	Trend					
2	D	R1	*Partulina tapaniana* (C.B. Adams, 1851).	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina terebra* (Newcomb, 1853)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina tessellata* (Newcomb, 1853).	Achatinellidae	Moloka'i tree snail	HI
2	D	R1	*Partulina thaanumiana* Pilsbry, 1912-1914.	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina theodorei* (Baldwin, 1895)	Achatinellidae	Moloka'i tree snail	HI
2	D	R1	*Partulina ustulata* (Gulick, 1856)	Achatinellidae	Maui tree snail	HI
2	D	R1	*Partulina variabilis* (Newcomb, 1853)	Achatinellidae	Lanai tree snail	HI
2	D	R1	*Partulina virgulata* (Mighels, 1845)	Achatinellidae	Moloka'i tree snail	HI
2	D	R1	*Partulina winniei* Baldwin, 1908	Achatinellidae	Maui tree snail	HI
2	D	R1	*Perdicella carinella* Baldwin, 1906	Achatinellidae	(Snail, no common name)	HI
2	D	R1	*Perdicella fulgurans* (Skyes, 1912-1914).	Achatinellidae	(Snail, no common name)	HI
2	D	R1	*Perdicella helena* (Newcomb, 1855)	Achatinellidae	(Snail, no common name)	HI
2	D	R1	*Perdicella kuhnsi* (Pilsbry, 1912-1914).	Achatinellidae	(Snail, no common name)	HI
2	D	R1	*Perdicella mauiensis* (Pfeiffer, 1855)	Achatinellidae	(Snail, no common name)	HI
2	D	R1	*Perdicella ornata* (Newcomb, 1853)	Achatinellidae	(Snail, no common name)	HI
2	D	R1	*Perdicella thwingii* (Pilsbry and Cooke, 1912-1914).	Achatinellidae	(Snail, no common name)	HI
2	D	R1	*Perdicella zebra* (Newcomb, 1855)	Achatinellidae	(Snail, no common name)	HI
2	D	R1	*Perdicella zebrina* (Pfeiffer, 1855)	Achatinellidae	(Snail, no common name)	HI
2	U	R2	*Phreatodrobia imitata* (Herschler & Longley, 1986).	Hydrobiidae	Mimic cavesnail	TX.
2*	D	R6	*Physella microstriata (=Stenophysa m.)* (Chamberlain & Berry, 1930).	Physidae	Fish Lake physa (=Fish Lake snail)	UT.
2	U	R6	*Physella spelunca (=Physa s.)* (Turner & Clench, 1925).	Physidae	Cave physa (=Wyoming cave snail)	WY.
2	D	R6	*Physella utahensis (=Physa u.)* (Clench, 1925).	Physidae	Utah physa (=Utah bubble snail)	UT.
2	S	R6	*Physella zionis (=Physa z.)* (Pilsbry, 1905).	Physidae	Wet-rock physa (=Zion Canyon snail).	UT.
2	D	R4	*Planorbella magnifica (=Helisoma m.)* (Pilsbry, 1903).	Planorbidae	Magnificent (=Cape Fear) rams-horn (snail).	NC.
2	U	R3	*Planorbella multivolvis* (Case, 1847)	Planorbidae	Acorn rams-horn (snail)	MI.
2	U	R4	*Pleurocera (=Elimia) annulifera* (Conrad, 1834).	Pleuroceridae	Ringed hornsnail	AL.
2	U	R4	*Pleurocera alveare* (Conrad, 1834)	Pleuroceridae	Rugged hornsnail	AL, AR, KY, MO, TN.
2	U	R4	*Pleurocera brumbyi* (I. Lea, 1852)	Pleuroceridae	Spiral hornsnail	AL.
2	U	R4	*Pleurocera corpulenta* (Anthony, 1854).	Pleuroceridae	Corpulent hornsnail	AL, TN.
2	U	R4	*Pleurocera curta* (Haldeman, 1841)	Pleuroceridae	Shortspire hornsnail	AL, TN.
2	U	R4	*Pleurocera foremani* (I. Lea, 1843)	Pleuroceridae	Rough hornsnail	AL, GA.
2	U	R4	*Pleurocera postelli* (I. Lea, 1862)	Pleuroceridae	Broken hornsnail	AL.
2	U	R4	*Pleurocera pyrenella* (Conrad, 1834)	Pleuroceridae	Skirted hornsnail	AL, GA.
2	U	R4	*Pleurocera showalteri* (I. Lea, 1862)	Pleuroceridae	Upland hornsnail	AL, GA.
2	U	R4	*Pleurocera viridulum* (Anthony, 1854).	Pleuroceridae	(Snail, no common name)	GA
2	U	R4	*Pleurocera walkeri* Goodrich, 1928	Pleuroceridae	Telescope hornsnail	AL, TN.
2	U	R2	*Polygyra hippocrepis* (Pheiffer, 1848)	Polygyridae	Horseshoe liptooth (snail)	TX.
2	U	R4	*Polygyra peregrina* Rehder, 1932	Polygyridae	White liptooth (=strange many-whorled land snail).	AR.
2	U	R4	*Pyrgulopsis (=Marstonia)* sp.	Hydrobiidae	Briley Creek pyrg (snail)	AL
2	U	R4	*Pyrgulopsis (=Marstonia)* sp.	Hydrobiidae	Spring Creek pyrg (snail)	AL
2	U	R4	*Pyrgulopsis (=Marstonia)* sp.	Hydrobiidae	Flint River pyrg (snail)	AL
2	D	R1	*Pyrgulopsis aardhali*	Hydrobiidae	Aardhals springsnail	CA
2	U	R4	*Pyrgulopsis agarhecta (=Marstonia a.)* (Thompson, 1969).	Hydrobiidae	Ocmulgee marstonia (snail)	GA.
2	U	R2	*Pyrgulopsis bacchus* Hershler, 1988	Hydrobiidae	Grand Wash springsnail	AZ.
2	U	R4	*Pyrgulopsis castor (=Marstonia c.)* (Thompson, 1977).	Hydrobiidae	Beaver pond marstonia (snail)	GA.
2	U	R2	*Pyrgulopsis conicus* Hershler, 1988	Hydrobiidae	Kingman springsnail	AZ.
2	U	R1	*Pyrgulopsis cristalis* Hershler & Sada, 1987.	Hydrobiidae	Crystal Spring springsnail	NV.
2	U	R1	*Pyrgulopsis erythropoma (=Fluminicola e.)* (Pilsbry, 1899).	Hydrobiidae	Ash Meadows pebblesnail (=Point of Rocks Spring snail).	NV.
2	U	R1	*Pyrgulopsis fairbanksensis* Hershler & Sada, 1987.	Hydrobiidae	Fairbanks springsnail	NV.

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Category	Trend					
2	U	R2	*Pyrgulopsis glandulosus* Hershler, 1988.	Hydrobiidae	Verde Rim springsnail	AZ.
2	U	R1	*Pyrgulopsis isolatus* Hershler & Sada, 1987.	Hydrobiidae	Elongate-gland springsnail	NV.
2	U	R1	*Pyrgulopsis micrococcus (=Fontelicella m.)* (Pilsbry, 1893).	Hydrobiidae	Oasis Valley springsnail	NV.
2	U	R2	*Pyrgulopsis montezumensis* Hershler, 1988.	Hydrobiidae	Montezuma Well springsnail	AZ.
2	U	R2	*Pyrgulopsis morrisoni* Hershler, 1988	Hydrobiidae	Page springsnail	AZ.
2	U	R1	*Pyrgulopsis nanus* Hershler & Sada, 1987.	Hydrobiidae	Distal-gland springsnail (=Large-gland Nevada spring snail).	NV.
PE	S	R4	*Pyrgulopsis ogmoraphe (=Marstonia o.)* (Thompson, 1977).	Hydrobiidae	Royal (=obese) marstonia (snail)	TN.
2	U	R4	*Pyrgulopsis olivacea (=Marstonia o.)* (Pilsbry, 1895).	Hydrobiidae	Olive marstonia (snail)	AL.
2	D	R1	*Pyrgulopsis owensensis*	Hydrobiidae	Owens springsnail	CA
2	U	R4	*Pyrgulopsis ozarkensis* Hinkley, 1915.	Hydrobiidae	Ozark pyrg (snail)	AR.
2	S	R4	*Pyrgulopsis pachyta (=Marstonia p.)* (F. G. Thompson, 1977).	Hydrobiidae	Armored (=thick-shelled) marstonia (snail).	AL.
2	S	R1	*Pyrgulopsis perturbata*	Hydrobiidae	Fish Slough springsnail	CA
2	U	R1	*Pyrgulopsis pisteri* Hershler & Sada, 1987.	Hydrobiidae	Median-gland Nevada springsnail	NV.
2	D	R6	*Pyrgulopsis robusta (=Fontelicella r.)* (Walker, 1908).	Hydrobiidae	Jackson Lake springsnail (=Elk Island snail).	WY.
2	U	R2	*Pyrgulopsis simplex* Hershler, 1988	Hydrobiidae	Fossil springsnail	AZ.
2	U	R2	*Pyrgulopsis solus* Hershler, 1988	Hydrobiidae	Brown springsnail	AZ.
2	U	R2	*Pyrgulopsis thompsoni* Hershler, 1988.	Hydrobiidae	Huachuca springsnail	AZ, Mexico.
2	D	R1	*Pyrgulopsis wongi*	Hydrobiidae	Wongs springsnail	CA
2	U	R1	*Radiocentrum avalonensis (=Oreohelix a.)* (Hemphill in Pilsbry, 1905.	Oreohelicidae	Catalina mountainsnail	CA.
2	U	R4	*Rhodacmea elatior* (Anthony, 1855)	Ancylidae	Domed ancylid (snail)	AL.
2	U	R4	*Rhodacmea filosa* (Conrad, 1834)	Ancylidae	Wicker ancylid (snail)	AL.
2	D	R1	*Samoana conica*	Partulidae	Samoana tree snail	AS.
1	D	R1	*Samoana fragilis*	Partulidae	Fragile tree snail	GU.
2	D	R1	*Samoana thurstoni*	Partulidae	Ofu tree snail	AS.
2	U	R4	*Somatogyrus amnicoloides* Walker, 1915.	Hydrobiidae	Caddo pebblesnail	AR.
2	U	R4	*Somatogyrus aureus* Tryon, 1865	Hydrobiidae	Golden pebblesnail	AL.
2	U	R4	*Somatogyrus biangulatus* Walker, 1906.	Hydrobiidae	Angular pebblesnail	AL.
2	U	R4	*Somatogyrus constrictus* Walker, 1904.	Hydrobiidae	Knotty pebblesnail	AL.
2	U	R4	*Somatogyrus coosaensis* Walker, 1904.	Hydrobiidae	Coosa pebblesnail	AL.
2	U	R4	*Somatogyrus crassilabris*	Hydrobiidae	Thick-lipped pebblesnail	AR.
2	U	R4	*Somatogyrus crassus* Walker, 1904	Hydrobiidae	Stocky pebblesnail	AL.
2	U	R4	*Somatogyrus currierianus* (I. Lea, 1863).	Hydrobiidae	Tennessee pebblesnail	AL.
2	U	R4	*Somatogyrus deciphens* Walker, 1909.	Hydrobiidae	Hidden pebblesnail	AL.
2	U	R4	*Somatogyrus excavatus* Walker, 1906.	Hydrobiidae	Ovate pebblesnail	AL.
2	U	R4	*Somatogyrus hendersoni* Walker, 1909.	Hydrobiidae	Fluted pebblesnail	AL.
2	U	R4	*Somatogyrus hinkleyi* Walker, 1904	Hydrobiidae	Granite pebblesnail	AL.
2	U	R4	*Somatogyrus humerosus* Walker, 1906.	Hydrobiidae	Atlas pebblesnail	AL.
2	U	R4	*Somatogyrus nanus* Walker, 1904	Hydrobiidae	Dwarf pebblesnail	AL.
2	U	R4	*Somatogyrus obtusus* Walker, 1904	Hydrobiidae	Moon pebblesnail	AL.
2	U	R4	*Somatogyrus parvulus* (Tryon, 1865)	Hydrobiidae	Sparrow pebblesnail	TN.
2	U	R4	*Somatogyrus pilsbryanus* Walker, 1904.	Hydrobiidae	Tallapoosa pebblesnail	AL.
2	U	R4	*Somatogyrus pygmaeus* Walker, 1909.	Hydrobiidae	Pygmy pebblesnail	AL.
2	U	R4	*Somatogyrus quadratus* Walker, 1906.	Hydrobiidae	Quadrate pebblesnail	AL.
2	U	R4	*Somatogyrus sargenti* Pilsbryi, 1895	Hydrobiidae	Mud pebblesnail	AL.

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Category	Trend					
2	U	R4	*Somatogyrus strengi* Pilsbry & Walker, 1906.	Hydrobiidae	Rolling pebblesnail	AL.
2	U	R4	*Somatogyrus tenax* (Thompson, 1969).	Hydrobiidae	Savannah pebblesnail	GA.
2	U	R4	*Somatogyrus tennesseensis* Walker, 1906.	Hydrobiidae	Opaque pebblesnail	AL, TN.
2	U	R4	*Somatogyrus virginicus* (Walker, 1904).	Hydrobiidae	Panhandle pebblesnail	NC, VA
2	U	R4	*Somatogyrus wheeleri* Walker, 1915	Hydrobiidae	Channeled pebblesnail	AR.
2*	E	R1	*Somoana abbreviata* (Mousson, 1869).	Partulidae	Short Samoan tree snail	AS.
2	U	R2	*Sonorella* sp.	Helminthoglyptidae	Ladybug Saddle talussnail	AZ.
2	U	R2	*Sonorella allynsmithi* Gregg & Miller, 1989.	Helminthoglyptidae	Squaw Park talussnail	AZ.
2	S	R2	*Sonorella christenseni* Fairbanks & Reeder, 1980.	Helminthoglyptidae	Clark Peak talussnail	AZ.
PE	S	R2	*Sonorella eremita* (Pilsbry & Ferris, 1915).	Helminthoglyptidae	San Xavier talussnail	AZ.
2	D	R2	*Sonorella grahamensis* Pilsbry & Ferris, 1919.	Helminthoglyptidae	Pinaleno talussnail	AZ.
1	S	R2	*Sonorella macrophallus* Fairbanks & Reeder, 1980.	Helminthoglyptidae	Wet Canyon talussnail	AZ.
2	U	R2	*Sonorella metcalfi* (Miller, 1976)	Helminthoglyptidae	Franklin Mountain talussnail	TX.
2	U	R2	*Sonorella todseni* W. B. Miller, 1976	Helminthoglyptidae	Doña Ana talussnail	NM.
3A	N	R6	*Stagnicola utahensis (=Lymnaea kingii)* (Call, 1844.	Lymnaeidae	Thickshell pondsnail (=Utah band snail).	UT.
2	U	R4	*Stenotrema pilsbryi* (Ferris, 1900)	Polygyridae	Rich Mt. slitmouth (=Pilsbry's narrow-apertured land snail).	AR, OK.
3C	N	R1	*Sterkia clementina* (Sterki, 1890)	Pupillidae	San Clemente Island blunt-top snail (=Insular birddrop).	CA.
2	S	R4	*Stiobia nana* (Thompson, 1978)	Hydrobiidae	Sculpin snail	AL.
2	U	R3	*Succinea* sp.	Succineidae	Minnesota Pleistocene succineid (snail).	MN, IA.
2	U	R3	*Succinea* sp.	Succineidae	Iowa Pleistocene succineid (snail)	IA, MN.
2*	D	R1	*Succinea guamensis*	Succineidae	(Snail, no common name)	GU.
2	D	R1	*Succinea piratarum*	Succineidae	(Snail, no common name)	GU.
2	D	R1	*Succinea quadrasi*	Succineidae	(Snail, no common name)	GU.
2	U	R4	*Triodopsis occidentalis* (Pilsbry & FerrisS, 1894).	Polygyridae	Arkansas wedge (=western three-toothed land snail).	AR.
2	U	R4	*Triodopsis soelneri* (J. B. Henderson, 1907).	Polygyridae	Cape Fear threetooth (snail)	NC.
2	D	R1	*Trochomorpha apia*	Trochomorphidae	(Snail, no common name)	AS.
1	S	R2	*Tryonia adamantina* Taylor, 1987	Hydrobiidae	Diamond Y Spring snail	TX.
2	U	R1	*Tryonia angulata* Hershler & Sada, 1987.	Hydrobiidae	Sportinggoods tryonia (snail)	NV.
2	U	R2	*Tryonia brunei* Taylor, 1987	Hydrobiidae	Brune's tryonia (snail)	TX.
2	U	R2	*Tryonia cheatumi* (Pilsbry, 1935)	Hydrobiidae	Phantom tryonia (=Cheatum's snail)	TX.
2	U	R1	*Tryonia clathrata* Stimpson, 1865	Hydrobiidae	Grated tryonia (=White River snail)	NV.
2	U	R1	*Tryonia elata* Hershler & Sada, 1987	Hydrobiidae	Point of Rocks tryonia (snail)	NV.
2	U	R1	*Tryonia ericae* Hershler & Sada, 1987.	Hydrobiidae	Minute tryonia (=minute slender tryonia snail).	NV.
2	U	R2	*Tryonia gilae* Taylor, 1987	Hydrobiidae	Gila tryonia (snail)	AZ.
2	U	R1	*Tryonia imitator* (Pilsbry, 1899)	Hydrobiidae	Mimic tryonia (=California brackish water snail).	CA.
1	S	R2	*Tryonia kosteri* Taylor, 1987	Hydrobiidae	Koster's tryonia (springsnail)	NM.
2	D	R1	*Tryonia margae*	Hydrobiidae	Grapevine Springs elongate tryonia	CA
2	U	R2	*Tryonia quitobaquitae* Hershler, 1988	Hydrobiidae	Quitobaquito tryonia (snail)	AZ.
2	D	R1	*Tryonia robusta*	Hydrobiidae	Robust tryonia	CA
2	D	R1	*Tryonia rowlandsi*	Hydrobiidae	Grapevine Springs squat tryonia	CA
1	S	R2	*Tryonia stocktonensis* Taylor, 1987	Hydrobiidae	Gonzales Spring tryonia (snail)	TX.
2	U	R1	*Tryonia variegata* Hershler & Sada, 1987.	Hydrobiidae	Amargosa tryonia (=Amargosa & small solid tryonia snail).	NV.
2	U	R1	*Valvata virens*	Valvatudae	(Snail, no common name)	CA
2	U	R3	*Vertigo* sp.	Pupillidae	Iowa Pleistocene vertigo (snail)	IA.
2	U	R4	*Vertigo alabamensis* Clapp, 1915	Pupillidae	Alabama vertigo (snail)	AL.
2	U	R3	*Vertigo briarensis* (Leonard, 1972)	Pupillidae	Briarton Pleistocene snail	MN, IA, WI.
2	U	R4	*Vertigo hebardi* Vannatta, 1912	Pupillidae	Keys vertigo (snail)	FL.
2	U	R3	*Vertigo hubrichti* (Pilsbry, 1934)	Pupillidae	Hubricht's vertigo (snail)	MN, IA, WI.
2	U	R3	*Vertigo meramacensis* (Van DaVender, 1977).	Pupillidae	Meramac River vertigo (snail)	IA, MO.
2	U	R3	*Vertigo occulta* (Leonard, 1972)	Pupillidae	Occult vertigo (snail)	IA, MN.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	U	R2	*Vertigo ovata* Say, 1822	Pupillidae	Ovate vertigo (snail)	NM.
2	U	R1	*Vespericola karokorum* Talmage, 1962.	Polygyridae	Karok hesperian (=Karok Indian snail).	CA.
2	U	R2	*Yaquicoccus bernardinus* Taylor, 1987.	Hydrobiidae	San Bernadino springsnail	AZ.
3B	N	R1	Genus and species undescribed	Hydrobiidae	Virile Amargosa snail	NV.
2	U	R6	*Oreohelix eurekensis eurekensis* J. Henderson and Daniels, 1916.	Oreohelicidae	Eureka mountainsnail	UT.
2	U	R6	*Oreohelix eurekensis uinta*	Oreohelicidae	Uinta mountainsnail	UT.
2	U	R6	*Oreohelix haydeni corugata*	Oreohelicidae		UT.
2	U	R6	*Oreohelix haydeni haydeni* Gabb, 1869.	Oreohelicidae	Lyrate mountainsnail	UT.
2	D	R6	*Oreohelix parowanensis*	Oreohelicidae	(Mountainsnail, no common name)	UT.
1	U	R6	*Oreohelix peripherica wasatchensis* (Binney, 1886).	Oreohelicidae	Ogden Rocky mountainsnail	UT.
2	U	R6	*Oreohelix strigosas p.*	Oreohelicidae	Pahasapa mountainsnail	SD, WY.
2	U	R6	*Oreohelix strigosa berryi*	Oreohelicidae	Berry's mountainsnail	MT, WY.
2	U	R6	*Oreohelix yavapai* Pilsbry, 1905	Oreohelicidae	Yavapai mountainsnail	AZ, UT.
1	D	R6	*Stagnicola bonnevillensis* (Call, 1884).	Lymnaeidae	Fat-whorled pondsnail	UT.
2	U	R6	*Vertigo arthuri* Von Martens, 1882	Pupillidae	Callused vertigo	MN, ND, SD, WY.
2	U	R6	*Vertigo arthuri* Sterki, 1900	Pupillidae	Mystery vertigo	ME, MI, SD, WY, Canada.
			CLAMS & MUSSELS (Mollusks, Class Bivalvia).			
2	D	R6	*Alasmidonta marginata*	Unionidae	Elktoe	AL, IN, KS, MD, OK, MI, MO, MN, ND, NY, OH, OK, PA, SD, TN, VA, WI, WV, Canada.
2	U	R4	*Alasmidonta arcula* (I. Lea, 1838)	Unionidae	Altamaha arc-mussel	GA.
PE	D	R4	*Alasmidonta atropurpurea* (Rafinesque, 1831).	Unionidae	Cumberland elktoe (mussel)	KY, TN.
PE	D	R4	*Alasmidonta raveneliana* (I. Lea, 1834).	Unionidae	Appalachian elktoe (mussel)	NC.
2	U	R5	*Alasmidonta varicosa* (Lamarck, 1819).	Unionidae	Brook floater (mussel)	CT, GA, MA, MD, ME, NC, NH, NJ, NY, PA, SC, VA, VT, WV, Canada.
2	U	R4	*Alasmidonta wrightiana* (Walker, 1901).	Unionidae	Florida arc-mussel	FL.
PE	D	R4	*Amblema neislerii* (I.Lea, 1858)	Unionidae	Fat three-ridge (mussel)	FL, GA.
2	D	R2	*Anodonta californiensis* Lea, 1852	Unionidae	California floater (mussel)	AZ, CA, ID, NV, OR, UT, WA, Canada, Mexico
2	D	R4	*Anodontoides denigrata* (I. Lea, 1852).	Unionidae	Cumberland papershell	KY, TN
2	D	R4	*Cumberlandia monodonta* (Say, 1829).	Margaritiferidae	Spectacle case (pearly mussel)	AL, AR, IA, IN, IL, KY, MO, NE?, OH, TN, VA, WI.
2	U	R4	*Cyprogenia aberti* (Conrad, 1850)	Unionidae	Western fanshell (=western fan-shell pearly mussel).	AR, KS, MO, OK.
2	U	R2	*Disconaias salinasensis* (Simpson, 1908).	Unionidae	Salina mucket (mussel)	TX, Mexico.
2	U	R4	*Elliptio* sp.	Unionidae	Waccamaw lance pearlymussel	NC.
PE	D	R4	*Elliptio chipolaensis*	Unionidae	Chipola slabshell	AL, FL
2	D	R4	*Elliptio judithae* Clark, 1986	Unionidae	Neuse slabshell (mussel)	NC.
2	D	R4	*Elliptio lanceolata* (I. Lea, 1828)	Unionidae	Yellow lance (mussel)	NC, VA.
3B	N	R4	*Elliptio marsupiobesa* Fuller, 1972	Unionidae	Cape Fear spike (mussel)	NC.
2	U	R4	*Elliptio monroensis* (I. Lea, 1843	Unionidae	St. Johns elephantear	FL
2	U	R4	*Elliptio nigella* (I. Lea, 1852)	Unionidae	Winged spike (=recovery pearly mussel).	AL, GA.
2	U	R4	*Elliptio shepardiana* (I.Lea, 1834)	Unionidae	Altamaha lance (mussel)	GA.
2	U	R4	*Elliptio spinosa* (I. Lea, 1836)	Unionidae	Altamaha spinymussel (=Georgia spiny mussel).	GA.
2	U	R4	*Elliptio waccamawensis* (I. Lea, 1863).	Unionidae	Waccamaw spike (mussel)	NC.
2	U	R4	*Elliptio waltoni* (B.H. Wright, 1888)	Unionidae	Florida lance	FL

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Category	Trend					
PE	D	R4	*Elliptoideus sloatianus* (I. Lea, 1840)	Unionidae	Purple bankclimber (mussel)	AL, GA, FL.
PE	D	R4	*Epioblasma brevidens* (I. Lea, 1831)	Unionidae	Cumberlandian combshell	AL, KY, TN, VA.
PE	D	R4	*Epioblasma capsaeformis* (I. Lea, 1834).	Unionidae	Oyster mussel	AL, KY, TN, VA.
2	D	R4	*Epioblasma triquetra* (Rafinesque, 1820).	Unionidae	Snuffbox mussel	AL, IA, IL, IN, KS, KY, MS, MI, MO, OH, PA, TN, VA, WI, WV, Canada.
2	U	R4	*Fusconaia escambia* Clench and Turner, 1956.	Unionidae	Narrow pigtoe (mussel)	AL, FL.
2	D	R4	*Fusconaia masoni* (Conrad, 1834)	Unionidae	Atlantic pigtoe (mussel)	GA, NC, SC, VA.
2	D	R4	*Lampsilis australis* Simpson, 1900	Unionidae	Southern sandshell (mussel)	AL, FL.
2	D	R4	*Lampsilis binominata* Simpson, 1900	Unionidae	Lined pocketbook (mussel)	AL, GA.
2	U	R5	*Lampsilis cariosa* (Say, 1817)	Unionidae	Yellow lampmussel	CT, GA, MA, MD, ME, NC, NH, NJ, NY, PA, SC, VA, VT, WV, Canada.
2	U	R4	*Lampsilis fullerkati* R. I. Johnson, 1984.	Unionidae	Waccamaw fatmucket (mussel)	NC.
2	D	R4	*Lampsilis haddletoni* Athearn, 1964	Unionidae	Haddleton lampmussel	AL, FL
2	U	R4	*Lampsilis rafinesqueana* Frierson, 1927.	Unionidae	Neosho mucket (=Neosho pearly mussel).	AR, KS, MO, OK.
PE	D	R4	*Lampsilis subangulata* (I.Lea, 1840)	Unionidae	Shiny-rayed pocketbook (mussel)	AL, FL, GA.
2	D	R4	*Lasmigona* sp.	Unionidae	Barrens heelsplitter (mussel)	TN.
2	D	R4	*Lasmigona holstonia* (I. Lea, 1838)	Unionidae	Tennessee heelsplitter (mussel)	AL, GA, IL, IN, KY, TN, VA.
2	D	R5	*Lasmigona subviridis* (Conrad, 1835)	Unionidae	Green floater (mussel)	KY, MD, NC, NJ, NY, PA, SC, TN, VA, WV.
2	U	R3	*Leptodea leptodon* (Rafinesque, 1820).	Unionidae	Scaleshell (mussel)	AR, IA, IL, IN, KY, MO, OH, OK, SD.
2	D	R4	*Lexingtonia dolabelloides* (I. Lea, 1840).	Unionidae	Slabside pearlymussel	AL, TN, VA.
2	D	R4	*Margaritifera marrianae* Johnson, 1983.	Margaritiferidae	Alabama pearlshell	AL.
PE	D	R4	*Medionidus penicillatus*	Unionidae	Gulf moccasinshell	AL, FL, GA
PE	D	R4	*Medionidus simpsonianus*	Unionidae	Ochlockonee moccasinshell	FL, GA
2	D	R4	*Medionidus walkeri* (B.H. Wright 1897).	Unionidae	Suwanee moccasinshell	FL
2	U	R4	*Obovaria rotulata* (B.H. Wright, 1899).	Unionidae	Round ebonyshell (mussel)	AL, FL.
2	U	R2	*Pisidium sanguinichristi* Taylor, 1987	Sphaeriidae	Sangre de Cristo peaclam	NM.
2	U	R1	*Pisidium ultramontanum* Prime, 1865	Sphaeriidae	(Peaclam, no common name)	CA, OR.
2	D	R4	*Pleurobema oviforme* (Conrad, 1834).	Unionidae	Tennessee clubshell (mussel)	KY, TN, VA.
2	D	R4	*Pleurobema pyramidatum (=rubrum)* (Rafinesque, 1820).	Unionidae	Pink pigtoe (mussel)	AL, KY, MS, TN.
PE	D	R4	*Pleurobema pyriforme* (I.Lea, 1857)	Unionidae	Oval pigtoe (mussel)	AL, FL, GA.
2	D	R4	*Pleurobema rubellum* (Conrad, 1834).	Unionidae	Warrior pigtoe (mussel)	AL.
2	D	R4	*Pleurobema strodeanum* (B.H. Wright 1898).	Unionidae	Fuzzy pigtoe (mussel)	AL, FL
2	D	R4	*Pleurobema verum* (I.Lea, 1860)	Unionidae	True pigtoe (mussel)	AL.
2	U	R2	*Popenaias popei* (I.Lea, 1857)	Unionidae	Texas hornshell (mussel)	NM, TX, Mexico.
2	U	R2	*Potamilus amphichaenus* (Frierson, 1898).	Unionidae	Texas heelsplitter (mussel)	LA, TX.
2	D	R4	*Ptychobranchus jonesi* (van der Schalie, 1934).	Unionidae	Southern kidneyshell (mussell)	AL, FL.
2	D	R6	*Ptychobranchus occidentalis* (Conrad, 1836).	Unionidae	Ouachita kidneyshell	AR, KS, MO, OK.
2	D	R4	*Quadrula cylindrica cylindrica* (Say, 1817).	Unionidae	Rabbitsfoot (mussel)	AL, AR, IL, IN, KY, MO, OH, OK, PA, TN, WV
PE	D	R4	*Quadrula cylindrica strigillata* (B.H.Wright, 1898).	Unionidae	Rough rabbitsfoot (mussel)	KY, TN, VA.
2	D	R4	*Quincuncina burkei* Walker, 1922	Unionidae	Tapered pigtoe (mussel)	AL, FL
2	U	R2	*Quincuncina mitchelli* (Simpson, 1896).	Unionidae	False spike (mussel)	TX.

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Category	Trend					
2	D	R5	*Simpsonaias ambigua* (Say, 1825)	Unionidae	Salamander mussel	AR, IA, IL, IN, KY, MI, MO, NY, OH, TN, PA, WI, WV, Canada.
2	D	R4	*Toxolasma lividus* (Rafinesque, 1831).	Unionidae	Purple lilliput (mussel)	IL, IN, KY, MI, MO, OH, TN.
2	S	R4	*Toxolasma pullus* (Conrad, 1838)	Unionidae	Savannah lilliput (mussel)	GA, NC, SC.
2	U	R2	*Truncilla cognata* (I.Lea, 1860)	Unionidae	Mexican fawnsfoot (mussel)	TX, Mexico.
2	U	R4	*Villosa choctawensis* Athearn, 1964	Unionidae	Choctaw bean (=Choctaw pearly mussel).	AL, FL.
2	U	R5	*Villosa fabalis* (Lea, 1831)	Unionidae	Rayed bean (mussel)	AL, IL, IN, KY, MI, NY, OH, TN, PA, VA, WV, Canada.
2	D	R4	*Villosa ortmanni* (Walker, 1925)	Unionidae	Kentucky creekshell (=Ortman's pearly mussel).	KY.
PE	D	R4	*Villosa perpurpurea* (I. Lea, 1861)	Unionidae	Purple bean (=Fine-rayed purple pearly mussel).	TN, VA.
			MILLIPEDES (Class Diplopoda).			
2	U	R2	*Toltecus chihuanus*	Atopetholidae	(Millipede, no common name)	NM, Mexico.
			INSECTS (Class Insecta).			
			ROCKHOPPERS & BRISTLETAILS (Insects, Order Archeognatha).			
2	U	R1	*Machiloides (=Machiloides) perkinsi*	Machilidae	Perkin's club-palp bristletail	HI.
2	U	R1	*Neomachiloides (=Machiloides) heteropus.*	Machilidae	Hawaiian long-palp bristletail	HI.
			SPRINGTAILS (Insects, Order Collembola).			
2	U	R5	*Pseudosinella certa*	Entomobryidae	Gandy Creek cave springtail	WV.
2	U	R5	*Pseudosinella testa*	Entomobryidae	Shelled cave springtail	WV.
			MAYFLIES (Insects, Order Ephemeroptera).			
2	U	R3	*Acanthometropus pecatonica*	Siphlonuridae	Pecatonica River mayfly	WI, IL*.
2	U	R2	*Ameletus falsus*	Siphlonuridae	False ameletus mayfly	AZ.
2*	U	R4	*Brachycercus flavus*	Caenidae	Yellow brachycercus mayfly	LA.
2	S	R4	*Dolania americana*	Behningiidae	American sandburrowing mayfly	AL, FL, GA, LA, SC, NC, WI.
2*	U	R5	*Ephemera triplex*	Ephemeridae	West Virginia burrowing mayfly	WV.
2	U	R3	*Ephemerella argo*	Ephemerellidae	Argo ephemerellan mayfly	GA, IL, IN, SC.
2	U	R4	*Heterocleon berneri*	Baetidae	Berner's two-winged mayfly	GA.
2	U	R4	*Homoeoneuria cahabensis*	Oligoneuridae	Cahaba sandfiltering mayfly	AL, MS.
2	U	R4	*Homoeoneuria dolani*	Oligoneuridae	Blackwater sandfiltering mayfly	FL, GA, SC.
2	U	R4	*Paraleptophlebia calcarica*	Leptophlebiidae	(Mayfly, no common name)	AR.
2*	U	R3	*Seratella frisoni*	Ephemerellidae	Frison's seratellan mayfly	AL, IL, MO.
2*	U	R4	*Seratella spiculosa*	Ephemerellidae	Spiculose seratellan mayfly	TN, NC.
2	S	R5	*Siphlonisca aerodromia*	Siphlonuridae	Tomah mayfly	ME, NY, Canada*.
2	U	R3	*Spinadis wallacei*	Heptageniidae	Wallace's deepwater mayfly	GA, IN, MS, WI.
			DRAGONFLIES & DAMSELFLIES (Insects, Order Odonata).			
2	U	R2	*Argia* sp.	Coenagrionidae	Balmorhea damselfly	TX.
2	U	R2	*Argia* sp.	Coenagrionidae	Sabino Canyon damselfly	AZ.
2	U	R4	*Cordulegaster sayi*	Cordulegastridae	Say's spiketail (dragonfly)	FL, GA.
2	U	R5	*Enallagma laterale*	Coenagrionidae	Lateral bluet (damselfly)	IN, MA, ME, NG, NJ, NY, PA.
2	U	R4	*Gomphus consanguis (subgen. Gomphurus).*	Gomphidae	Cherokee clubtail (dragonfly)	AL, GA, NC, SC, TN, VA.
2	U	R1	*Gomphus lynnae*	Gomphidae	Lynn's clubtail (dragonfly)	WA.
2	U	R3	*Gomphus notatus (subgen. Stylurus)*	Gomphidae	Elusive clubtail (dragonfly)	MD, WI, Canada, IA*, IL*, IN*, KY*, MI*, MN*, NY*, OH*, PA*, TN*, WV*, AL?*, GA?*.
2	D	R4	*Gomphus parvidens carolinus (subgen. Hylogomphus).*	Gomphidae	Sandhills clubtail (dragonfly)	NC, SC.
2	U	R4	*Gomphus sandrius (subgen. Gomphurus).*	Gomphidae	Tennessee clubtail (dragonfly)	TN.

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Category	Trend					
2	U	R4	*Gomphus septima (subgen. Gomphurus).*	Gomphidae	Septima's clubtail (dragonfly)	AL, NC.
2	U	R4	*Gomphus westfalli*	Gomphidae	Westfall's clubtail (dragonfly)	FL.
2	U	R5	*Macromia margarita*	Macromiidae	Margarita River skimmer (dragonfly)	VA, NC, GA*, SC, TN.
2*	U	R3	*Macromia wabashensis*	Macromiidae	Wabash belted skimmer (dragonfly)	OH*, IN*, TX*.
2	U	R1	*Megalagrion adytum*	Coenagrionidae	Adytum megalagrion damselfly	HI.
3B	N	R1	*Megalagrion amaurodytum fallax*	Coenagrionidae	Fallax megalagrion damselfly	HI.
2*	U	R1	*Megalagrion amaurodytum peles*	Coenagrionidae	Pele megalagrion damselfly	HI.
2*	U	R1	*Megalagrion amaurodytum waianaeanum.*	Coenagrionidae	Waianae megalagrion damselfly	HI.
1	D	R1	*Megalagrion leptodemus*	Coenagrionidae	Leptodemas megalagrion damselfly	HI.
2	U	R1	*Megalagrion molokaiense*	Coenagrionidae	Molokai megalagrion damselfly	HI.
2	D	R1	*Megalagrion nesiotes*	Coenagrionidae	Nesiotes megalagrion damselfly	HI.
2	U	R1	*Megalagrion nigrohamatum*	Coenagrionidae	Nigrohamatum megalagrion damselfly.	HI.
1	D	R1	*Megalagrion nigrolineatum*	Coenagrionidae	Blackline megalagrion damselfly	HI.
2	U	R1	*Megalagrion oahuenses*	Coenagrionidae	Oahu megalagrion damselfly	HI.
1	D	R1	*Megalagrion oceanicum*	Coenagrionidae	Oceanic megalagrion damselfly	HI.
1	D	R1	*Megalagrion pacificum*	Coenagrionidae	Pacific megalagrion damselfly	HI.
1	D	R1	*Megalagrion xanthomelas*	Coenagrionidae	Orangeblack megalagrion damselfly	HI.
2	U	R4	*Neurocordulia clara*	Corduliidae	Apalachicola twilight skimmer (dragonfly).	AL, FL.
2	U	R3	*Ophiogomphus* sp.	Gomphidae	St. Croix snaketail (dragonfly)	MN, WI.
2	U	R3	*Ophiogomphus anomalus*	Gomphidae	Extra-striped snaketail (dragonfly)	ME, WI, Canada, NJ*, NY?*, PA*.
2*	U	R4	*Ophiogomphus edmundo*	Gomphidae	Edmund's snaketail (dragonfly)	NC.
2	U	R4	*Ophiogomphus howei*	Gomphidae	Midget snaketail (dragonfly)	KY, ME, NC, PA, TN, VA, WI, MA*, NY*.
2	U	R4	*Ophiogomphus incurvatus alleghaniensis.*	Gomphidae	Alleghany snaketail (dragonfly)	AL, GA, TN, VA, WV.
2	U	R4	*Ophiogomphus westfalli*	Gomphiidae	Ozark snaketail (dragonfly)	AR, KS, MO.
2	U	R4	*Progomphus bellei*	Gomphidae	Variegated clubtail (dragonfly)	AL, FL, NC.
PE	S	R3	*Somatochlora hineana*	Corduliidae	Hine's (=Ohio) emerald dragonfly	IL, WI, OH*, IN*.
2	U	R2	*Somatochlora margarita*	Corduliidae	Big Thicket emerald dragonfly	TX.
2	U	R4	*Stylurus (=Gomphus) townesi*	Gomphidae	Bronze clubtail (dragonfly)	AL, FL, SC, NC, TN.
2	U	R5	*Williamsonia lintneri*	Corduliidae	Banded bog skimmer (dragonfly)	CT, NY*, NJ*, MA, RI, NH.
			STONEFLIES (Insects, Order Plecoptera).			
2	D	R4	*Alloperla natchez*	Chloroperlidae	Natchez stonefly	MS.
2	5	R4	*Beloneuria jamesae*	Perlidae	Cheaha beloneurian stonefly	AL.
2	U	R1	*Capnia lacustra*	Capniidae	Lake Tahoe benthic stonefly	CA, NV.
2	D	R4	*Haploperla chukcho*	Chloroperlidae	Chukcho stonefly	MS.
2	U	R6	*Lednia tumana*	Nemouridae	Meltwater lednian stonefly	MT.
2	U	R1	*Megaleuctra sierra*	Leuctridae	Shirttail Creek stonefly	CA.
2	U	R1	*Soliperla fenderi*	Peltoperlidae	Fender's soliperlan stonefly	WA.
2	U	R2	*Taeniopteryx starki*	Taeniopterygidae	Leon River winter stonefly	TX.
2	U	R1	*Zapada (=Nemoura) wahkeena*	Nemouridae	Wahkeena Falls flightless stonefly	OR.
			COCKROACHES (Insects, Order Blattodea).			
2	U	R4	*Aspiduchus cavernicola*	Blaberidae	Tuna Cave roach	PR.
			GRASSHOPPERS & ALLIES (Insects, Order Orthoptera).			
2	U	R1	*Acrolophitus pulchellus*	Acrididae	Idaho pointheaded grasshopper	ID.
2	U	R1	*Ammopelmatus kelsoensis*	Stenopelmatidae	Kelso Jerusalem cricket	CA.
2	U	R1	*Ammopelmatus muwu*	Stenopelmatidae	Point Conception Jerusalem cricket	CA.
2*	U	R3	*Appalachia arcana*	Acrididae	Michigan bog grasshopper	MI.
2	U	R1	*Banza nihoa*	Tettigoniidae	Nihoa banza conehead katydid	HI.
2	U	R4	*Belocephalus micanopy*	Tettigoniidae	Big Pine Key conehead katydid	FL.
2	U	R4	*Belocephalus sleighti*	Tettigoniidae	Keys shortwinged conehead katydid	FL.
2	U	R1	*Caconemobius howarthi*	Gryllidae	Howarth's cave cricket	HI.
2	U	R1	*Caconemobius schauinslandi*	Gryllidae	Schauinsland's bush cricket	HI.
2	U	R1	*Caconemobius varius*	Gryllidae	Kaumana Cave cricket	HI.
2	U	R1	*Chloealtis aspasma*	Acrididae	Siskiyou chloealtis grasshopper	OR.
2	U	R4	*Cycloptilum irregularis*	Gryllidae	Keys scaly cricket	FL.
2	U	R2	*Daihinibaenetes arizonensis*	Rhaphidophoridae	Arizona giant sand treader cricket	AZ.
2	U	R2	*Eumorsea pinaleno*	Eumastacidae	Pinaleno monkey grasshopper	AZ.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2*	U	R2	*Eximacris phenax*	Acrididae	Big Cedar grasshopper	OK.
2*	U	R2	*Eximacris superbum (=Spharagemon s.).*	Acrididae	Superb grasshopper	TX.
2	S	R3	*Gryllotalpa major*	Gryllidae	Prairie mole cricket	AR, MO, KS, OK, IL*, MS*.
2	U	R1	*Idiostatus kathleenae*	Tettigoniidae	Pinnacles shield-back katydid	CA.
2	U	R1	*Idiostatus middlekauffi*	Tettigoniidae	Middlekauf's shieldback katydid	CA.
2	U	R1	*Leptogryllus deceptor*	Gryllidae	Oahu deceptor bush cricket	HI.
2	U	R1	*Macrobaenetes kelsoensis*	Rhaphidophoridae	Kelso giant sand treader cricket	CA.
2	U	R1	*Macrobaenetes valgum*	Rhaphidophoridae	Coachella giant sand treader cricket	CA.
2	U	R1	*Neduba longipennis*	Tettigoniidae	Santa Monica shieldback katydid	CA.
2	U	R3	*Oecanthus laricis*	Gryllidae	Laricis tree cricket	MI, OH*.
2	U	R1	*Pristoceuthophilus* sp.	Rhaphidophoridae	Samwell Cave cricket	CA.
2	U	R1	*Psychomastix deserticola*	Eumastacidae	Desert monkey grasshopper	CA, NV.
2	U	R1	*Stenopelmatus cahuilaensis*	Stenopelmatidae	Coachella Valley Jerusalem cricket	CA.
2	U	R2	*Stenopelmatus navajo*	Stenopelmatidae	Navajo Jerusalem cricket	AZ.
2	U	R1	*Tetrix sierrana*	Tetrigidae	Sierra pygmy grasshopper	CA.
2	U	R4	*Tettigidea empedonepia*	Tetrigidae	Torreya pygmy grasshopper	FL.
2	U	R1	*Thaumatogryllus cavicola*	Gryllidae	Volcanoes cave cricket	HI.
2	U	R1	*Thaumatogryllus variegatus*	Gryllidae	Kauai thinfooted bush cricket	HI.
2	U	R3	*Trimerotropis huroniana*	Acrididae	Lake Huron locust	MI, WI, Canada.
PE	U	R1	*Trimerotropis infantilis*	Acrididae	Zayante band-winged grasshopper	CA.
2	U	R6	*Utabaenetes tanneri*	Rhaphidophoridae	Tanner's black camel cricket	UT.
			ZOROAPTERANS (Insects, Order Zoroaptera).			
2	U	R1	*Zorotypus swezeyi*	Zorotypidae	Swezey's zoroapteran	HI.
			TRUE BUGS (Insects, Order Hemiptera).			
2	U	R4	*Acalyptera susanae*	Tingidae	(Lace bug, no common name)	AR.
2	D	R1	*Ambrysus funebris*	Naucoridae	(True bug, no common name)	CA.
2	U	R1	*Belostoma saratogae*	Belostomatidae	Saratoga Springs belostoman bug	CA.
2	U	R1	*Cavaticovelia aaa*	Mesoveliidae	Aaa water treader bug	HI.
2	D	R3	*Chlorochroa belfragi*	Pentatomidae	Belfragi's chlorochroan bug	IA, IL, NE, SD.
2*	U	R5	*Chlorochroa dismalia*	Pentatomidae	Dismal Swamp chlorochroan bug	VA.
2	U	R2	*Chlorochroa rita*	Pentatomidae	Santa Rita Mountains chlorochroan bug.	AZ.
2	D	R1	*Coleotichus blackburniae*	Scutellaridae	Koa shield bug	HI.
2*	U	R1	*Empicoris pulchrus*	Reduviidae	Pulchrus thread bug	HI.
2	U	R1	*Ithamar annectans*	Rhopalidae	Annectans rhopalid bug	HI.
2	U	R1	*Ithamar hawaiiense*	Rhopalidae	Hawaiian rhopalid bug	HI.
2	U	R1	*Kalania* sp.	Miridae	Oahu kalanian leaf bug	HI.
2	U	R1	*Kalania hawaiiensis*	Miridae	Lanai kalanian leaf bug	HI.
2	U	R1	*Metrarga obscura*	Lygaeidae	Mauna Loa metrargan seed bug	HI.
2	U	R1	*Neseis alternatus*	Lygaeidae	Kauai band-legged seed bug	HI.
2	U	R1	*Neseis haleakalae*	Lygaeidae	Mt. Haleakala seed bug	HI.
2	U	R1	*Nesidiolestes ana*	Reduviidae	Ana wingless thread bug	HI.
2	U	R1	*Nesidiolestes insularis*	Reduviidae	Mt. Tantalus wingless thread bug	HI.
2	U	R1	*Nesidiolestes roberti*	Reduviidae	Robert's wingless thread bug	HI.
2	U	R1	*Nesidiolestes selium*	Reduviidae	Selium wingless thread bug	HI.
2	U	R1	*Nesocryptias villosa*	Lygaeidae	Villosan flightless seed bug	HI.
2	U	R1	*Nysius frigatensis*	Lygaeidae	French Frigate Shoal seed bug	HI.
2	U	R1	*Nysius fullawayi*	Lygaeidae	Fullaway's seed bug	HI.
2	U	R1	*Nysius neckerensis*	Lygaeidae	Necker goosefoot seed bug	HI.
2	U	R1	*Nysius nihoae*	Lygaeidae	Nihoa nysius seed bug	HI.
2	U	R1	*Nysius suffusus*	Lygaeidae	Necker bunchgrass seed bug	HI.
2	U	R1	*Oceanides bryani*	Lygaeidae	Bryan's oceanides seed bug	HI.
2	U	R1	*Oceanides perkinsi*	Lygaeidae	Perkins' oceanides seed bug	HI.
2	U	R1	*Oceanides rugosiceps*	Lygaeidae	Rough-headed oceanides seed bug	HI.
2	D	R1	*Oechalia grisea*	Pentatomidae	Gray oechalia stink bug	HI.
2	D	R1	*Oechalia patruelis*	Pentatomidae	Patruelis oechalia stink bug	HI.
2	U	R1	*Oravelia pege*	Macroveliidae	Dry Creek cliff strider bug	CA.
2	U	R1	*Pelocoris shoshone*	Naucoridae	Amargosa naucorid (bug)	CA, NV.
2	U	R1	*Saicella smithi*	Reduviidae	Smith's siacellan reduviid (bug)	HI.
			CICADAS AND ALLIES (Insects, Order Homoptera).			
2	U	R3	*Aflexia rubranura (=Flexamia r.)*	Cicadellidae	Redveined prairie leafhopper	WI, Canada, IL*.
2*	D	R1	*Clavicoccus erinaceus*	Pseudococcidae	Oahu abutilon clavicoccus mealybug	HI.
2	U	R1	*Clavicoccus tribulus*	Pseudococcidae	Oahu ke'oke'o clavicoccus mealybug	HI.
2	S	R5	*Limotettix* sp.	Cicadellidae	Barrens sedge leafhopper	MD.

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Category	Trend					
2	U	R1	*Nesorestias filicicola*	Delphacidae	Mt. Tantalus short-wing fern planthopper.	HI.
2	U	R1	*Nesosydne acuta*	Delphacidae	Iao Valley nesosydne planthopper	HI.
2	U	R1	*Nesosydne bridwelli*	Delphacidae	Bridewell's nesosydne planthopper	HI.
2	U	R1	*Nesosydne cyrtandrae*	Delphacidae	Nahiku nesosydne planthopper	HI.
2	U	R1	*Nesosydne cyrtandricola*	Delphacidae	Glenwood nesosydne planthopper	HI.
2	U	R1	*Nesosydne kuschei*	Delphacidae	Kusche's nesosydne planthopper	HI.
2	U	R1	*Nesosydne leahi*	Delphacidae	Diamond Head nesosydne planthopper.	HI.
2	U	R1	*Nesosydne longipes*	Delphacidae	Long-footed nesosydne planthopper	HI.
2	U	R1	*Nesosydne sulcata*	Delphacidae	Keanae nesosydne planthopper	HI.
2	U	R1	*Oliarus consimilis*	Cixiidae	Kauai parti-colored oliarus planthopper.	HI.
2	U	R1	*Oliarus discrepans*	Cixiidae	Oliarus wild cotton planthopper	HI.
3B	N	R1	*Oliarus lanaiensis*	Cixiidae	Lanai oliarus planthopper	HI.
2	U	R1	*Oliarus lihue*	Cixiidae	Lihue oliarus planthopper	HI.
2	U	R1	*Oliarus myoporicola*	Cixiidae	Barber's Point oliarus planthopper	HI.
2	U	R1	*Oliarus priola*	Cixiidae	Priolan oliarus planthopper	HI.
2	U	R1	*Paurotriozana adaptata*	Psyllidae	Oahu holio gall psyllid	HI
2	U	R1	*Phyllococcus antricolens*	Pseudococcidae	Oahu iliahi gall mealybug	HI
2	U	R1	*Phyllococcus oahuensis*	Pseudococcidae	Opuhe gall mealybug	HI
			LACEWINGS & ALLIES (Insects, Order Neuroptera).			
2	U	R1	*Distoleon (=Eidoleon) perjerus*	Myrmeleontidae	Molokai antlion	HI.
2	U	R1	*Micromus (=Nesothauma) haleakalae.*	Hemerobiidae	Haleakala micromus brown lacewing	HI.
2	U	R1	*Micromus (=Pseudopsectra) cookeorum.*	Hemerobiidae	Cookes' brown lacewing	HI.
2	U	R1	*Micromus (=Pseudopsectra) lobipennis.*	Hemerobiidae	Lobe-wing brown lacewing	HI.
2	U	R1	*Micromus (=Pseudopsectra) swezeyi*	Hemerobiidae	Swezey's brown lacewing	HI.
2	U	R1	*Nothochrysa californica*	Chrysopidae	San Francisco lacewing	CA.
2	U	R1	*Oliarces clara*	Ithonidae	Cheese-weed moth lacewing	AZ, CA.
2	U	R1	*Pseudopsectra usingeri*	Hemerobiidae	Usinger's brown lacewing	HI.
			BEETLES (Insects, Order Coleoptera).			
2	U	R1	*Acneus beeri*	Eubriidae	Beer's false water penny (beetle)	OR.
2	U	R1	*Acneus burnelli*	Eubriidae	Burnell's false water penny (beetle)	OR.
1	D	R1	*Aegialia concinna*	Scarabaeidae	Ciervo aegialian scarab (beetle)	CA.
2	U	R1	*Aegialia crescenta*	Scarabaeidae	Crescent Dune aegialian scarab (beetle).	NV.
2	U	R1	*Aegialia hardyi*	Scarabaeidae	Hardy's aegialian scarab (beetle)	NV.
2	U	R1	*Aegialia magnifica*	Scarabaeidae	Large aegialian scarab (beetle)	NV.
2	U	R1	*Agabus rumppi*	Dytiscidae	Death Valley agabus diving beetle	CA, NV.
2	U	R1	*Agonum belleri*	Carabidae	Beller's ground beetle	WA, OR.
2	U	R4	*Alabameubria starki*	Eubriidae	Stark's false water penny (beetle)	AL.
2	D	R1	*Anchotefflus gracilis*	Carabidae	Gracile anchotefflus ground beetle	HI
2*	U	R4	*Anomala exigua*	Scarabaeidae	Exiguous anomalan scarab (beetle)	FL.
2*	U	R4	*Anomala eximia*	Scarabaeidae	Archbold anomalan scarab (beetle)	FL.
2*	U	R2	*Anomala tibialis*	Scarabaeidae	Tibial scarab (beetle)	TX.
2	U	R1	*Anthicus antiochensis*	Anthicidae	Antioch Dunes anthicid (beetle)	CA.
2	U	R1	*Anthicus sacramento*	Anthicidae	Sacramento anthicid (beetle)	CA.
2	U	R1	*Aphodius* sp.	Scarabaeidae	Crescent Dune aphodius scarab (beetle).	NV.
2	U	R1	*Aphodius* sp.	Scarabaeidae	Big Dune aphodius scarab (beetle)	NV.
2	U	R1	*Aphodius* sp.	Scarabaeidae	Sand Mountain aphodius scarab (beetle).	NV.
2	U	R4	*Aphodius fordi*	Scarabaeidae	Ford's aphodius scarab (beetle)	GA.
2	U	R4	*Aphodius troglodytes*	Scarabaeidae	Aphodius tortoise commensal scarab (beetle).	FL, SC.
2	U	R1	*Apterocyclus honoluluensis*	Lucanidae	Kauai flightless stag beetle	HI.
2	U	R4	*Arianops sandersoni*	Pselaphidae	Magazine Mountain mold beetle	AR.
2	U	R4	*Ataenius superficialis*	Scarabaeidae	Big Pine Key ataenius dung beetle	FL.
2	U	R4	*Ataenius woodruffi*	Scarabaeidae	Woodruff's ataenius dung beetle	FL.
2*	U	R1	*Atelothrus transiens*	Carabidae	Transient atelothrus ground beetle	HI
2	U	R1	*Atractelmis wawona*	Elmidae	Wawona riffle beetle	CA.
2	U	R2	*Batrisodes venyivi*	Pselaphidae	Helotes mold beetle	TX
2*	D	R1	*Blackburnia insignis*	Carabidae	Oahu blackburnia ground beetle	HI
2	U	R1	*Chaetarthria leechi*	Hydrophilidae	Leech's chaetarthrian water scavenger beetle.	CA.

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Category	Trend					
2	U	R6	*Chaetarthria utahensis*	Hydrophilidae	Utah chaetarthrian water scavenger beetle.	UT.
2	I	R1	*Cicindela arenicola*	Cicindelidae	Idaho dunes tiger beetle	ID.
2*	U	R2	*Cicindela cazieri*	Cicindelidae	Cazier's tiger beetle	TX.
2*	U	R2	*Cicindela chlorocephala smythi*	Cicindelidae	Smyth's tiger beetle	TX.
2	D	R4	*Cicindela highlandensis*	Cicindelidae	Scrub tiger beetle	FL.
2	U	R1	*Cicindela hirticollis abrupta*	Cicindelidae	Sacramento Valley tiger beetle	CA.
2*	U	R1	*Cicindela latesignata obliviosa*	Cicindelidae	Oblivious tiger beetle	CA.
1	D	R6	*Cicindela limbata albissima*	Cicindelidae	Coral Pink Dunes tiger beetle	UT.
2	U	R5	*Cicindela marginipennis*	Cicindelidae	Cobblestone tiger beetle	AL, IN, MS, NH, NJ, OH, VT, NY*, PA*, WV*.
2	D	R6	*Cicindela nevadica lincolniana*	Cicindelidae	Salt Creek tiger beetle	NE.
2	U	R2	*Cicindela nevadica olmosa*	Cicindelidae	Los Olmos tiger beetle	TX, NM, Mexico?.
2	U	R2	*Cicindela nigrocoerula subtropica*	Cicindelidae	Subtropical blue-black tiger beetle	TX.
2*	U	R2	*Cicindela obsoleta neojuvenalis*	Cicindelidae	Neojuvenile tiger beetle	TX.
2	U	R2	*Cicindela oregona maricopa*	Cicindelidae	Maricopa tiger beetle	AZ.
2	U	R2	*Cicindela politula barbarannae*	Cicindelidae	Barbara Ann's tiger beetle	TX.
2	U	R2	*Cicindela politula petrophila*	Cicindelidae	Guadalupe Mountains tiger beetle	TX.
2	D	R1	*Cicindela tranquebarica viridissima*	Cicindelidae	Greenest tiger beetle	CA.
2	U	R1	*Cicindella hirticollis gravida*	Cicindelidae	Sandy beach tiger beetle	CA, Mexico.
2	U	R1	*Cicindella tranquebarica* ssp.	Cicindelidae	San Joaquin tiger beetle	CA.
2	U	R1	*Coelus globosus*	Tenebrionidae	Globose dune beetle	CA, Mexico.
1	D	R1	*Coelus gracilis*	Tenebrionidae	San Joaquin dune beetle	CA.
2	U	R1	*Coelus pacificus*	Tenebrionidae	Channel Islands dune beetle	CA.
2	U	R1	*Coenonycha clementina*	Scarabaeidae	San Clemente Island coenonycha beetle.	CA.
2	U	R4	*Copris gopheri*	Scarabaeidae	Copris tortoise commensal scarab (beetle).	FL.
2*	U	R4	*Cyclocephala miamiensis*	Scarabaeidae	Miami roundhead scarab (beetle)	FL.
2	U	R2	*Cylloepus parkeri*	Elmidae	Parker's riffle beetle	AZ.
2	U	R2	*Cymbiodyta arizonica*	Hydrophilidae	Chiricahua water scavenger beetle	AZ.
2	U	R1	*Deinocossonus nesiotes*	Curculionidae	Oahu nesiotes weevil	HI.
2	U	R2	*Deronectes neomexicana*	Dytiscidae	Bonita diving beetle	NM, TX.
2	U	R1	*Deropristus deroderus*	Carabidae	Haleakala deropristus ground beetle	HI
2*	U	R4	*Desmopachria cenchramis*	Dytiscidae	Fig seed diving beetle	FL.
2	U	R3	*Dicranopselaphus variegatus*	Eubriidae	Variegated false water penny (beetle).	IL.
2*	U	R1	*Disenochus micantipennis*	Carabidae	Kauai disenochus ground beetle	HI
2	U	R4	*Dryobius sexnotatus*	Cerambycidae	Sixbanded longhorn beetle	KY, LA, MD, MS, OH, PA, AL*, AR*, IN*, KS*, MI*, MO*, TN*, VA*, WV*.
3C	N	R5	*Dubiraphia* sp.	Elmidae	Dubiraphian riffle beetle (undescribed).	ME.
2	U	R1	*Dubiraphia brunnescens*	Elmidae	Brownish dubiraphian riffle beetle	CA.
2	U	R1	*Dubiraphia giulianii*	Elmidae	Giuliani's dubiraphian riffle beetle	CA.
2	U	R4	*Dubiraphia parva*	Elmidae	Little riffle beetle	OK, LA.
2	U	R3	*Dubiraphia robusta*	Elmidae	Robust dubiraphian riffle beetle	WI.
2	U	R1	*Eanus hatchi*	Elateridae	Hatch's click beetle	WA, Canada?
2	U	R1	*Eopenthes ambiguus*	Elateridae	Ambiguous eopenthes click beetle	HI
2	U	R1	*Eopenthes arduus*	Elateridae	Arduous eopenthes click beetle	HI
2	U	R1	*Eopenthes auratus*	Elateridae	Golden eopenthes click beetle	HI
2	U	R1	*Eopenthes celatus*	Elateridae	Hidden eopenthes click beetle	HI
2	U	R1	*Eopenthes cognatus*	Elateridae	Cognatus eopenthes click beetle	HI
2	U	R1	*Eopenthes debilis*	Elateridae	Weak eopenthes click beetle	HI
2	U	R1	*Eopenthes deceptor*	Elateridae	Deceptive eopenthes click beetle	HI
2	U	R1	*Eopenthes funebris*	Elateridae	Death eopenthes click beetle	HI
2	U	R1	*Eopenthes germanus*	Elateridae	Germanus eopenthes click beetle	HI
2	U	R1	*Eopenthes kauaiensis*	Elateridae	Kauai eopenthes click beetle	HI
2	U	R1	*Eopenthes muticus*	Elateridae	Muticus eopenthes click beetle	HI
2	U	R1	*Eopenthes pallipes*	Elateridae	Pallipes eopenthes click beetle	HI
2	U	R1	*Eopenthes plebeius*	Elateridae	Common eopenthes click beetle	HI
2	U	R1	*Eopenthes politus*	Elateridae	Politus eopenthes click beetle	HI
2	U	R1	*Eopenthes tarsalis*	Elateridae	Tarsalis eopenthes click beetle	HI
2	U	R1	*Eopenthes tinctus*	Elateridae	Tinged eopenthes click beetle	HI
2	U	R1	*Eopenthes unicolor*	Elateridae	Unicolored eopenthes click beetle	HI
2	U	R1	*Glacicavicola bathysciodes*	Leiodidae	Blind cave leiodid (beetle)	ID.
2	U	R1	*Glaresis arenata*	Scarabaeidae	Kelso Dune glaresis scarab (beetle)	CA.

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Category	Trend					
2	U	R4	*Gronocarus multispinosus*	Scarabaeidae	Spiny Florida sandhill scarab (beetle).	FL.
2	U	R4	*Gymnocthebius maureenae*	Hydraenidae	Maureen's gymnocthebius minute moss beetle.	MS.
2	U	R2	*Haideoporus texanus*	Dytiscidae	Texas cave diving beetle	TX.
2*	U	R2	*Haliplus nitens*	Haliplidae	Disjunct crawling water beetle	TX?, Canada.
2	U	R1	*Heteramphus filicum*	Curculionidae	Oahu heteramphus fern weevil	HI.
1	U	R2	*Heterelmis comalensis*	Elmidae	Comal Springs riffle beetle	TX.
2	U	R2	*Heterelmis stephani*	Elmidae	Stephan's riffle beetle	AZ.
2	U	R1	*Holcobius pikoensis*	Anobiidae	Piko anobiid beetle	HI.
2*	U	R5	*Horologion speokoites*	Carabidae	Arbuckle Cave ground beetle	WV.
2	U	R2	*Huleechius marroni carolus*	Elmidae	Marron's San Carlos riffle beetle	AZ.
2	S	R5	*Hydraena maureenae*	Hydraenidae	Maureen's hydraenan minute moss beetle.	VA.
2	U	R1	*Hydrochara ricksecker*	Hydrophilidae	Ricksecker's water scavenger beetle	CA.
2	U	R5	*Hydrochus* sp.	Hydrophilidae	Seth Forest water scavenger beetle	MD.
2*	U	R5	*Hydroporus elusivus*	Dytiscidae	Elusive hydroporus diving beetle	NH.
2	U	R4	*Hydroporus folkertsi*	Dytiscidae	Folkerts' hydroporus diving beetle	AL.
2	U	R1	*Hydroporus hirsutus*	Dytiscidae	Wooly hydroporus diving beetle	CA.
2	U	R1	*Hydroporus leechi*	Dytiscidae	Leech's skyline diving beetle	CA.
2	U	R1	*Hydroporus simplex*	Dytiscidae	Simple hydroporus diving beetle	CA.
2	U	R6	*Hydroporus spangleri*	Dytiscidae	Spangler's hydroporus diving beetle	UT.
2*	U	R4	*Hydroporus sulphurius*	Dytiscidae	Sulphur Springs hydroporus diving beetle.	AR.
2	U	R6	*Hydroporus utahensis*	Dytiscidae	Utah hydroporus diving beetle	UT.
2	U	R1	*Hygrotus curvipes*	Dytiscidae	Curved-foot hygrotus diving beetle	CA.
2	S	R6	*Hygrotus diversipes*	Dytiscidae	Narrow-foot hygrotus diving beetle	WY.
2	U	R1	*Hygrotus fontinalis*	Dytiscidae	Travertine band-thigh diving beetle	CA.
2	U	R3	*Hygrotus sylvanus*	Dytiscidae	Sylvan hygrotus diving beetle	MN, MA*, NY*.
2	U	R1	*Itodacnus novicornis*	Elateridae	Necker itodacnus click beetle	HI.
2	U	R1	*Itodacnus paradoxus*	Elateridae	Strange itodacnus click beetle	HI
2	U	R1	*Lichnanthe albopilosa*	Scarabaeidae	White sand bear scarab (beetle)	CA.
2	U	R1	*Lichnanthe ursina*	Scarabaeidae	Bumblebee scarab (beetle)	CA.
2	U	R2	*Limnebius aridus*	Hydraenidae	Animas minute moss beetle	NM.
2	U	R2	*Limnebius texanus*	Hydraenidae	Texas minute moss beetle	TX.
2	U	R6	*Limnebius utahensis*	Hydraenidae	Utah minute moss beetle	UT.
2*	U	R5	*Lordithon niger*	Staphylinidae	Black lordithon rove beetle	AR, CT, DC, GA, IL, KY, MI, MO, NY, NC, OH, PA, TX, VA, WV, Canada.
2	U	R1	*Lytta hoppingi*	Meloidae	Hopping's blister beetle	CA.
2*	U	R1	*Lytta inseparata*	Meloidae	Mojave Desert blister beetle	CA.
2	U	R2	*Lytta mirifica*	Meloidae	Anthony blister beetle	NM*, Mexico.
2*	U	R1	*Lytta moesta*	Meloidae	Moestan blister beetle	CA.
2	U	R1	*Lytta molesta*	Meloidae	Molestan blister beetle	CA.
2	U	R1	*Lytta morrisoni*	Meloidae	Morrison's blister beetle	CA.
2	D	R1	*Metromenus bardus*	Carabidae	Heavy metromenus ground beetle	HI
2*	D	R1	*Metromenus cuneipennis*	Carabidae	Wedge-winged metromenus ground beetle.	HI
2*	U	R1	*Metromenus oceanicus*	Carabidae	Oceanic metromenus ground beetle	HI
2	D	R1	*Microcylleopus fomicoideus*	Elmidae	No common name	CA
2	D	R1	*Microcylleopus similis*	Elmidae	No common name	CA
2	S	R6	*Microcylloepus browni*	Elmidae	Brown's microcylloepus riffle beetle	MT.
2	U	R4	*Micronaspis floridana*	Lampyridae	Florida intertidal firefly	FL.
2	U	R1	*Miloderes nelsoni*	Curculionidae	Nelson's miloderes weevil	CA.
2	U	R1	*Miloderes rulieni*	Curculionidae	Rulien's miloderes weevil	NV.
2	U	R4	*Mycotrupes pedester*	Scarabaeidae	Scrub Island burrowing scarab (beetle).	FL.
2	U	R1	*Nebria darlingtoni*	Carabidae	South Forks ground beetle	CA.
2	U	R1	*Nebria gebleri siskiyouensis*	Carabidae	Siskiyou ground beetle	CA.
2	U	R1	*Nebria sahlbergii triad*	Carabidae	Trinity Alps ground beetle	CA.
2	U	R1	*Necydalis rudei*	Cerambycidae	Rude's longhorn beetle	CA.
2	U	R1	*Nesotocus giffordi*	Curculionidae	Gifford's nesotocus weevil	HI.
2*	U	R1	*Nesotocus kauaiensis*	Curculionidae	Kauai nesotocus weevil	HI.
2	U	R1	*Nesotocus munroi*	Curculionidae	Munro's nesotocus weevil	HI.
2	U	R1	*Ochthebius crassatus*	Hydraenidae	Wing-shoulder minute moss beetle	CA.
2*	U	R3	*Ochthebius putnamensis*	Hydraenidae	Putnam minute moss beetle	IN.
2	U	R1	*Ochthebius reticulatus*	Hydraenidae	Wilbur Springs minute moss beetle	CA.
2	D	R4	*Onthophagus polyphemi*	Scarabaeidae	Onthophagus tortoise commensal scarab (beetle).	SC, GA, FL, AL, MS.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	U	R1	*Onychobaris langei*	Curculionidae	Lange's El Segundo Dune weevil	CA.
2	U	R1	*Oodemas breviscapum*	Curculionidae	Nihoa oodemas weevil	HI
2	U	R1	*Oodemas erro*	Curculionidae	Wandering oodemas weevil	HI
2	U	R1	*Oodemas laysanensis*	Curculionidae	Laysan oodemas weevil	HI
2	U	R1	*Oodemas neckeri*	Curculionidae	Necker oodemas weevil	HI
2	U	R4	*Optioservus browni*	Elmidae	Brown's optioservus riffle beetle	AR.
2	U	R1	*Optioservus canus*	Elmidae	Pinnacles optioservus riffle beetle	CA.
2	S	R6	*Optioservus phaeus*	Elmidae	Scott optioservus riffle beetle	KS.
2*	U	R1	*Paleoxenus dohrni*	Eucnemidae	Dohrn's elegant eucnemid beetle	CA.
2	U	R4	*Peltotrupes youngi*	Scarabaeidae	Ocala burrowing scarab (beetle)	FL.
2	U	R1	*Pentarthrum blackburni*	Curculionidae	Blackburn's pentarthrum weevil	HI.
2	U	R1	*Pentarthrum obscura*	Curculionidae	Obscure pentarthrum weevil	HI.
2	U	R4	*Photuris* sp.	Lampyridae	Turtle Mound firefly	FL.
2	U	R4	*Photuris brunnipennis floridana*	Lampyridae	Everglades brownwing firefly	FL.
2	U	R1	*Plagiithmysus swezeyanus*	Cerambycidae	Ahinahina long-horned beetle	HI
2	U	R1	*Plagithmysus alani*	Cerambycidae	Maui alani long-horned beetle	HI
2	U	R1	*Plagithmysus annectans*	Cerambycidae	Kauai annectant long-horned beetle	HI
2	U	R1	*Plagithmysus bidensae*	Cerambycidae	Bidens long-horned beetle	HI
2	U	R1	*Plagithmysus bridwelli*	Cerambycidae	Bridwell's long-horned beetle	HI
2	U	R1	*Plagithmysus claviger*	Cerambycidae	Hawaii clubbed long-horned beetle	HI
2	U	R1	*Plagithmysus decorus*	Cerambycidae	Hawaii decorus long-horned beetle	HI
2	U	R1	*Plagithmysus dubautianus*	Cerambycidae	Maui dubautia long-horned beetle	HI
2	U	R1	*Plagithmysus elegans*	Cerambycidae	Hawaii elegant long-horned beetle	HI
2	U	R1	*Plagithmysus forbesianus*	Cerambycidae	Forbes' Kauai long-horned beetle	HI
2	U	R1	*Plagithmysus forbesii*	Cerambycidae	Forbes' Maui long-horned beetle	HI
2	U	R1	*Plagithmysus fractus*	Cerambycidae	Molokai fractured long-horned beetle	HI
2	U	R1	*Plagithmysus greenwelli*	Cerambycidae	Greenwell's long-horned beetle	HI
2	U	R1	*Plagithmysus haasi*	Cerambycidae	Haas' 'iliahi long-horned beetle	HI
2	U	R1	*Plagithmysus ignotus*	Cerambycidae	Kauai kalia long-horned beetle	HI
2	U	R1	*Plagithmysus koae*	Cerambycidae	Maui koa long-horned beetle	HI
2	U	R1	*Plagithmysus kohalae*	Cerambycidae	Kohala long-horned beetle	HI
2	U	R1	*Plagithmysus kraussi*	Cerambycidae	Krauss' long-horned beetle	HI
2	U	R1	*Plagithmysus kuhnsi*	Cerambycidae	Kuhns' Oahu long-horned beetle	HI
2	U	R1	*Plagithmysus lanaiensis*	Cerambycidae	Lanai 'ohi'a long-horned beetle	HI
2	U	R1	*Plagithmysus laticollis*	Cerambycidae	Maui wide-necked long-horned beetle.	HI
2	U	R1	*Plagithmysus longicollis*	Cerambycidae	Long-necked long-horned beetle	HI
2	U	R1	*Plagithmysus mezoneuri*	Cerambycidae	Hawaii uhiuhi long-horned beetle	HI
2	U	R1	*Plagithmysus muiri*	Cerambycidae	Muir's ala'a long-horned beetle	HI
2	U	R1	*Plagithmysus nihoae*	Cerambycidae	Nihoa long-horned beetle	HI
2	U	R1	*Plagithmysus paludis*	Cerambycidae	Kauai swamp long-horned beetle	HI
2	U	R1	*Plagithmysus permundus*	Cerambycidae	Kauai 'ahakea long-horned beetle	HI
2	U	R1	*Plagithmysus pipturicola*	Cerambycidae	Maui mamaki long-horned beetle	HI
2	U	R1	*Plagithmysus platydesmae*	Cerambycidae	Pilo kea long-horned beetle	HI
2	U	R1	*Plagithmysus podagricus*	Cerambycidae	Hawaii podagricus long-horned beetle.	HI
2	U	R1	*Plagithmysus polystictus*	Cerambycidae	Kauai holio long-horned beetle	HI
2	U	R1	*Plagithmysus pulvillatus*	Cerambycidae	Ohi'a long-horned beetle	HI
2	U	R1	*Plagithmysus rubi*	Cerambycidae	Maui 'akala long-horned beetle	HI
2	U	R1	*Plagithmysus simillimus*	Cerambycidae	Maui similar long-horned beetle	HI
2	U	R1	*Plagithmysus simplicollis*	Cerambycidae	Simple-necked long-horned beetle	HI
2	U	R1	*Plagithmysus speculifer*	Cerambycidae	Maui speculifer long-horned beetle	HI
2	U	R1	*Plagithmysus sulphurescens*	Cerambycidae	Hawaii opuhe long-horned beetle	HI
2	U	R1	*Plagithmysus superstes*	Cerambycidae	Oahu super long-horned beetle	HI
2	U	R1	*Plagithmysus swezeyi*	Cerambycidae	Swezey's long-horned beetle	HI
2	U	R1	*Plagithmysus sylvai*	Cerambycidae	Maui forest long-horned beetle	HI
2	U	R1	*Plagithmysus vicinus*	Cerambycidae	Hawaii alani long-horned beetle	HI
PE	U	R1	*Pleocoma conugens conjugens*		Santa Cruz rain beetle	CA
2	U	R4	*Polylamina pubescens*	Scarabaeidae	Wooly Gulf dune scarab (beetle)	FL.
2	U	R1	*Polyphylla anteronivea*	Scarabaeidae	Saline Valley snow-front June beetle	CA.
2	U	R6	*Polyphylla avittata*	Scarabaeidae	Spotted Warner Valley Dunes June beetle.	UT.
PE	D	R1	*Polyphylla barbata*	Scarabaeidae	Mount Hermon (=barbate) June beetle.	CA.
2	U	R1	*Polyphylla erratica*	Scarabaeidae	Death Valley June beetle	CA.
2	U	R1	*Polyphylla nubila*	Scarabaeidae	Atascodero June beetle	CA.
2	U	R1	*Polyphylla stellata*	Scarabaeidae	Delta June beetle	CA.
2	U	R1	*Proterhinus* 72 spp.	Proterhinidae	Hawaiian proterhinid beetles	HI.
2	U	R2	*Psephenus arizonensis*	Psephenidae	Arizona water penny (beetle)	AZ.
2	U	R2	*Psephenus montanus*	Psephenidae	White Mountains water penny (beetle).	AZ.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
3C	N	R4	*Pseudanophthalmus acherontis*	Carabidae	Snail shell (=Echo) cave beetle	TN.
2	U	R4	*Pseudanophthalmus assimilis*	Carabidae	West Wills Valley cave beetle	AL.
2	U	R4	*Pseudanophthalmus audax*	Carabidae	(Cave beetle, no common name)	KY
2	U	R5	*Pseudanophthalmus avernus*	Carabidae	Avernus cave beetle	VA.
2	U	R4	*Pseudanophthalmus bendermani*	Carabidae	Benderman's cave beetle	TN.
2	U	R4	*Pseudanophthalmus caecus*	Carabidae	(Cave beetle, no common name)	KY
2	U	R4	*Pseudanophthalmus calcareus*	Carabidae	Limestone Cave beetle	KY.
2	U	R4	*Pseudanophthalmus cataryctos*	Carabidae	(Cave beetle, no common name)	KY
2	U	R4	*Pseudanophthalmus catherinae*	Carabidae	Catherine's cave beetle	TN.
2	U	R4	*Pseudanophthalmus conditus*	Carabidae	(Cave beetle, no common name)	KY
2	U	R5	*Pseudanophthalmus cordicollis*	Carabidae	Little Kennedy Cave beetle	VA.
2	U	R5	*Pseudanophthalmus deceptivus*	Carabidae	Deceptive cave beetle	VA.
2	U	R5	*Pseudanophthalmus egberti*	Carabidae	Narrows (=New River Valley) Cave beetle.	VA.
2	U	R4	*Pseudanophthalmus engelhardti*	Carabidae	Engelhardt's cave beetle	TN.
2	U	R4	*Pseudanophthalmus exoticus*	Carabidae	(Cave beetle, no common name)	KY
2	U	R4	*Pseudanophthalmus fastigatus*	Carabidae	Tapered cave beetle	GA.
2	U	R4	*Pseudanophthalmus fowlerae*	Carabidae	Fowler's cave beetle	TN.
2	U	R4	*Pseudanophthalmus frigidus*	Carabidae	Icebox Cave beetle	KY.
2	U	R5	*Pseudanophthalmus fuscus fuscus (=P. subaequalis).*	Carabidae	Greenbrier Valley cave beetle	WV.
2	U	R4	*Pseudanophthalmus georgiae*	Carabidae	Georgian cave beetle	GA.
2	U	R4	*Pseudanophthalmus globiceps*	Carabidae	(Cave beetle, no common name)	KY
2	U	R5	*Pseudanophthalmus hadenoecus*	Carabidae	Timber Ridge Cave beetle	WV.
2	S	R5	*Pseudanophthalmus hirsutus*	Carabidae	Cudjo's (=Lee County) Cave beetle	TN, VA.
1	S	R5	*Pseudanophthalmus holsingeri*	Carabidae	Holsinger's cave beetle	VA.
2	U	R4	*Pseudanophthalmus horni*	Carabidae	(Cave beetle, no common name)	KY
2	U	R5	*Pseudanophthalmus hortulanus*	Carabidae	Garden cave beetle	VA.
2	U	R5	*Pseudanophthalmus hubbardi*	Carabidae	Hubbard's cave beetle	VA.
2	U	R5	*Pseudanophthalmus hubrichti*	Carabidae	Hubricht's cave beetle	VA.
2	U	R4	*Pseudanophthalmus hypolithos*	Carabidae	Stone-dwelling cave beetle	KY.
2	U	R3	*Pseudanophthalmus illinoisensis*	Carabidae	Illinois cave beetle	IL.
2	U	R4	*Pseudanophthalmus inquisitor*	Carabidae	Searcher cave beetle	TN.
2	U	R4	*Pseudanophthalmus insularis*	Carabidae	Baker Station Cave beetle	TN.
2	U	R5	*Pseudanophthalmus intersectus*	Carabidae	Crossroads cave beetle	VA.
2	U	R4	*Pseudanophthalmus jonesi*	Carabidae	Grassy Cove cave beetle	TN.
2	U	R3	*Pseudanophthalmus krameri*	Carabidae	Kramer's cave beetle	OH.
2*	D	R5	*Pseudanophthalmus krekeleri*	Carabidae	Rich Mountain cave beetle	WV
2	U	R5	*Pseudanophthalmus lallemanti*	Carabidae	Lallemant's cave beetle	WV.
2	U	R5	*Pseudanophthalmus limicola*	Carabidae	Shenandoah (=mud-dwelling) cave beetle.	VA
2	U	R4	*Pseudanophthalmus longiceps*	Carabidae	Long-headed cave beetle	TN, VA.
2	U	R4	*Pseudanophthalmus major*	Carabidae	(Cave beetle, no common name)	KY
2	U	R5	*Pseudanophthalmus montanus*	Carabidae	Dry Fork Valley cave beetle	WV.
2	U	R5	*Pseudanophthalmus nelsoni*	Carabidae	Nelson's cave beetle	VA
2	U	R4	*Pseudanophthalmus nortoni*	Carabidae	Norton's cave beetle	TN.
2	U	R4	*Pseudanophthalmus occidentalis*	Carabidae	Cane Creek (=western) cave beetle	TN.
2	U	R3	*Pseudanophthalmus ohioensis*	Carabidae	Ohio cave beetle	OH.
2	U	R4	*Pseudanophthalmus pallidus*	Carabidae	Pale cave beetle	TN.
2	U	R4	*Pseudanophthalmus paradoxus*	Carabidae	Sensabush (=ridgetop) cave beetle	TN.
2	U	R5	*Pseudanophthalmus parvicollis*	Carabidae	Thin-neck cave beetle	VA
2	U	R4	*Pseudanophthalmus parvus*	Carabidae	(Cave beetle, no common name)	KY
2	U	R4	*Pseudanophthalmus paulus*	Carabidae	Nobletts Cave beetle	TN.
2	U	R4	*Pseudanophthalmus paynei*	Carabidae	Payne's cave beetle	TN.
2	U	R5	*Pseudanophthalmus petrunkevitchi*	Carabidae	Petrunkevitch's cave beetle	VA.
2	U	R4	*Pseudanophthalmus pholeter*	Carabidae	(Cave beetle, no common name)	KY
2	U	R5	*Pseudanophthalmus pontis*	Carabidae	Natural Bridge cave beetle	VA.
2	U	R5	*Pseudanophthalmus potomaca potomaca.*	Carabidae	South Branch Valley cave beetle	WV, VA.
2	U	R5	*Pseudanophthalmus potomaca senecae.*	Carabidae	Seneca cave beetle	WV.
2	U	R5	*Pseudanophthalmus praetermissus*	Carabidae	Overlooked cave beetle	VA.
2	U	R5	*Pseudanophthalmus punctatus*	Carabidae	Spotted cave beetle	VA.
2	U	R4	*Pseudanophthalmus pusillus*	Carabidae	Martin (=tiny) cave beetle	TN.
2	U	R4	*Pseudanophthalmus puteanus*	Carabidae	(Cave beetle, no common name)	KY
2	U	R5	*Pseudanophthalmus quadratus*	Carabidae	Straley's Cave beetle	VA.
2	U	R4	*Pseudanophthalmus rogersae*	Carabidae	Rogers' cave beetle	KY.
2	U	R5	*Pseudanophthalmus sanctipauli*	Carabidae	Saint Paul cave beetle	VA.
2	U	R4	*Pseudanophthalmus scholasticus*	Carabidae	Sawmill Hollow (=schoolhouse) cave beetle.	KY.

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Category	Trend					
2	U	R4	*Pseudanophthalmus scutilis*	Carabidae	New Mammoth Cave (=lean) cave beetle.	TN.
2	U	R4	*Pseudanophthalmus sequoyah*	Carabidae	Sequoyah Caverns cave beetle	AL.
2	U	R5	*Pseudanophthalmus sericus*	Carabidae	Silken cave beetle	VA.
2	U	R4	*Pseudanophthalmus sidus*	Carabidae	Meridith Cave beetle	TN.
2	U	R4	*Pseudanophthalmus simplex*	Carabidae	Flyn's hick (=simple) cave beetle	TN.
2	U	R4	*Pseudanophthalmus simulans*	Carabidae	(Cave beetle, no common name)	KY
2	U	R4	*Pseudanophthalmus tenebrosus*	Carabidae	(Cave beetle, no common name)	KY
2	U	R5	*Pseudanophthalmus thomasi*	Carabidae	Thomas' cave beetle	VA.
2	U	R4	*Pseudanophthalmus tiresias*	Carabidae	Indian Grave Point cave beetle	TN.
2	U	R4	*Pseudanophthalmus troglodytes*	Carabidae	(Cave beetle, no common name)	KY
2	U	R4	*Pseudanophthalmus unionis*	Carabidae	Union County cave beetle	TN.
2	U	R4	*Pseudanophthalmus ventus*	Carabidae	Blowing Cave beetle	TN.
2	U	R5	*Pseudanophthalmus virginicus (=Aphanotrechus v.).*	Carabidae	Maiden Spring cave beetle	VA.
2	U	R4	*Pseudanophthalmus wallacei*	Carabidae	Wallace's cave beetle	TN.
2	U	R5	*Pseudanopthalmus* sp.	Carabidae	Maryland cave beetle	MD.
2	U	R5	*Pseudanopthalmus gracilis*	Carabidae	(Cave beetle, no common name)	VA.
2	U	R5	*Pseudanopthalmus sylvaticus*	Carabidae	(Cave beetle, no common name)	WV.
2	U	R5	*Pseudanopthalmus vicarius*	Carabidae	(Cave beetle, no common name)	VA.
2*	U	R1	*Pseudobroscus lentus*	Carabidae	Haleakala pseudobroscus ground beetle.	HI
2	U	R1	*Pseudocotalpa andrewsi*	Scarabaeidae	Andrews' dune scarab (beetle)	CA.
2	U	R1	*Pseudocotalpa giulianii*	Scarabaeidae	Giuliani's dune scarab (beetle)	NV.
2	U	R2	*Pterostichus rothi*	Carabidae	Roth's blind ground beetle	OR.
2	U	R1	*Pterostichus rothi*	Carabidae	Roth's blind ground beetle	OR
2	U	R2	*Rhadine infernalis*	Carabidae	(Ground beetle, no common name)	TX
2	U	R4	*Rhadine ozarkensis*	Carabidae	(Ground beetle, no common name)	AR.
2	U	R1	*Rhyncogonus biformis*	Curculionidae	Necker rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus blackburni*	Curculionidae	Blackburn's rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus bryani*	Curculionidae	Laysan rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus exsul*	Curculionidae	Nihoa rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus freycinetiae*	Curculionidae	le'ie rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus giffardi*	Curculionidae	Giffard's rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus koebelei*	Curculionidae	Koebele's rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus lahainae*	Curculionidae	Lahaina rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus lanaiensis*	Curculionidae	Lanai rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus molokaiensis*	Curculionidae	Molokai rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus mutatus*	Curculionidae	Mutated rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus obsoletus*	Curculionidae	Obsolete rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus oleae*	Curculionidae	Olopua rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus segnis fordi*	Curculionidae	Ford's rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus segnis segnis*	Curculionidae	Slow rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus sharpi*	Curculionidae	Sharp's rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus simplex*	Curculionidae	Simple rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus squamiger*	Curculionidae	Scaley rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus stygius*	Curculionidae	Black rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus sylvicola*	Curculionidae	Kauai forest rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus tuberculatus*	Curculionidae	Tubercled rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus vittatus*	Curculionidae	Striped rhyncogonus weevil	HI
2	U	R1	*Rhyncogonus welchii*	Curculionidae	Welch's rhyncogonus weevil	HI
2	U	R1	*Scaphinotus behrensi*	Carabidae	(Ground beetle, no common name)	CA.
2	U	R4	*Scaphinotus inflectus*	Carabidae	(Ground beetle, no common name)	AR.
2	U	R1	*Scaphinotus longiceps*	Carabidae	Humboldt ground beetle	CA.
2	U	R4	*Scaphinotus parisiana*	Carabidae	(Ground beetle, no common name)	AR.
2	U	R1	*Serica* sp.	Scarabaeidae	Sand Mountain serican scarab (beetle).	NV.
2	U	R1	*Serica* sp.	Scarabaidae	Crescent Dune serican scarab (beetle).	NV.
2	U	R4	*Serica frosti*	Scarabaeidae	Frost's spring serican scarab (beetle).	FL.
2*	U	R4	*Serica tantula*	Scarabaeidae	Tantula serican scarab (beetle)	FL.
2	U	R4	*Spanglerogyrus albiventris*	Gyrinidae	Red Hills unique whirligig (beetle)	AL.
2	U	R5	*Sphaeroderus schaumi* ssp.	Carabidae	Schaum's Blue Ridge ground beetle	VA.
2	S	R1	*Stenelmis calida calida*	Elmidae	Devil's Hole warm spring riffle beetle	NV.
2	U	R1	*Stenelmis calida moapa*	Elmidae	Moapa warm springs riffle beetle	NV.
2	U	R3	*Stenelmis douglasensis*	Elmidae	Douglas stenelmis riffle beetle	WI, IN*, MI*.
2	S	R4	*Stenelmis gammoni*	Elmidae	Gammon's stenelmis riffle beetle	NC, AL, VA.
2	U	R1	*Stenotrupis pritchardiae*	Curculionidae	Nihoa stenotrupis weevil	HI.
1	U	R2	*Stygoparnus comalensis*	Dryopidae	Comal Springs dryopid beetle	TX.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	U	R4	*Trigonopelastes floridana*	Scarabaeidae	Scrub palmetto flower scarab (beetle).	FL.
2	D	R1	*Trigonoscuta* sp.	Curculionidae	Doyen's trigonoscuta dune weevil	CA.
2	U	R1	*Trigonoscuta blaisdelli*	Curculionidae	Blaisdell trigonoscuta weevil	CA.
2*	U	R1	*Trigonoscuta brunnotasselata*	Curculionidae	Brown-tassel trigonoscuta weevil	CA.
2	U	R1	*Trigonoscuta catalina*	Curculionidae	Santa Catalina Island trigonscuta weevil.	CA.
2	U	R1	*Trigonoscuta dorothea dorothea*	Curculionidae	Dorothy's El Segundo Dune weevil	CA.
2	U	R1	*Trigonoscuta stantoni*	Curculionidae	Santa Cruz Island shore weevil	CA.
2	U	R4	*Trox howelli*	Scarabaeidae	Caracara commensal scarab (beetle)	FL.
1	S	R6	*Zaitzevia thermae*	Elmidae	Warm spring zaitzevian riffle beetle	MT.
			SCORPIONFLIES & ALLIES (Insects, Order Mecoptera).			
2	U	R1	*Orbittacus obscurus*	Bittacidae	Gold rush hanging fly	CA.
			FLIES (Insects, Order Diptera).			
2	U	R1	*Ablautus schlingeri*	Asilidae	Oso Flaco robber fly	CA.
2	U	R4	*Asaphomyia floridensis*	Tabanidae	Florida asaphomyian tabanid fly	FL.
2*	U	R2	*Asaphomyia texanus*	Tabanidae	Texas asaphomyian tabanid fly	TX.
2	U	R1	*Bryania bipunctata*	Asteriidae	Nihoa two-spotted asteriid fly	HI.
2	N	R1	*Campsicnemus mirabilis (=Emperoptera m.).*	Dolichopodidae	Ko'olau spurwing long-legged fly	HI.
2*	N	R1	*Chersodromia hawaiiensis*	Empididae	Hawaiian chersodromian dance fly	HI.
2*	U	R1	*Cophura hurdi*	Asilidae	Antioch cophuran robberfly	CA.
2*	N	R1	*Drosophila lanaiensis*	Drosophilidae	Lanai pomace fly	HI.
2	U	R1	*Efferia antiochi*	Asilidae	Antioch efferian robberfly	CA.
2	U	R4	*Eulonchus marialiciae*	Acroceridae	Mary Alice's smallheaded fly	NC.
2	U	R4	*Merycomyia brunnea*	Tabanidae	Brown merycomyian tabanid fly	FL.
2	U	R1	*Metapogon hurdi*	Asilidae	Hurd's metapogon robberfly	CA.
2	U	R4	*Mixogaster delongi*	Syrphidae	Delong's mixogaster flower fly	FL.
2	U	R4	*Nemopalpus nearcticus*	Psychodidae	Sugarfoot moth fly	FL.
2	U	R1	*Paracoenia calida*	Ephydridae	Wilbur Springs shore fly	CA.
			BUTTERFLIES & MOTHS (Insects, Order Lepidoptera).			
2	D	R5	*Acronicta albarufa*	Noctuidae	Albarufan dagger moth	AR, MA, MO, NJ, Canada, CO*, CT*, GA*, NC*, NM*, NY*, OH*, PA*.
2	D	R1	*Adella oplerella*	Incurvariidae	Opler's longhorn moth	CA.
2	U	R2	*Adhemarius blanchardorum*	Sphingidae	Blanchards' sphinx moth	TX.
2	S	R4	*Agrotis buchholzi*	Noctuidae	Buchholz' dart moth	NC, NJ.
2*	U	R1	*Agrotis cremata*	Noctuidae	Cremata agrotis noctuid moth	HI
2*	U	R1	*Agrotis melanoneura*	Noctuidae	Black-veined agrotis noctuid moth	HI
2*	U	R1	*Agrotis microreas*	Noctuidae	Microreas agrotis noctuid moth	HI
2*	U	R1	*Agrotis potophila*	Noctuidae	Potophila agrotis noctuid moth	HI
2	U	R4	*Anaea troglodyta floridalis*	Nymphalidae	Florida leafwing (butterfly)	FL.
2*	U	R1	*Anomis vulpicolor*	Noctuidae	Red anomis noctuid moth	HI
2*	U	R3	*Apamea smythi*	Noctuidae	Smyth's apamea moth	IL, VA*.
2	U	R1	*Areniscythris brachypteris*	Scythrididae	Oso Flaco flightless moth	CA.
2*	U	R5	*Argyresthia castaneela*	Argyresthiidae	Chestnut ermine moth	NH, VT.
2	D	R5	*Atrytone arogos arogos*	Hesperiidae	Eastern beard grass skipper	AL, FL, MS, NC, NY, NJ, SC, GA*, PA*, VA*.
2	U	R1	*Carolella busckana*	Phaloniidae	Busck's gall moth	CA.
2	U	R1	*Carposina (=Heterocrossa) viridis*	Carposinidae	Green carposinid moth	HI.
2	U	R1	*Carterocephalus palaemon* ssp.	Hesperiidae	Sonoma arctic skipper	CA.
2	U	R5	*Catocala pretiosa pretiosa*	Noctuidae	Precious underwing (moth)	MA, NJ, CT*, NH*, NY*, PA*, OH*, MD*, VA*.
2	U	R1	*Cercyonis pegala* ssp.	Nymphalidae	Carson Valley wood nymph (butterfly).	CA, NV.
2	U	R1	*Cercyonis pegala* ssp.	Nymphalidae	White River wood nymph (butterfly)	NV.
2	U	R1	*Chlosyne acastus*	Nymphalidae	Spring Mountains acastus checkerspot (butterfly).	NV.
2	U	R1	*Chlosyne leanira osoflaco*	Nymphalidae	Oso Flaco patch butterfly	CA.
2	U	R1	*Coenonympha tullia yontockett*	Nymphalidae	Yontocket saytr (butterfly)	CA.
2	N	R5	*Coleophora leucochrysella*	Coleophoridae	Chestnut casebearer moth	CT, PA*.
2	U	R5	*Crambus daeckeellus*	Pyralidae	Daecke's pyralid moth	NJ.
2	U	R6	*Decodes stevensi*	Tortricidae	Stevens' tortricid moth	CO.
2*	U	R5	*Ectodemia castaneae*	Nepticulidae	American chestnut nepticulid moth	MD.

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Category	Trend					
2*	U	R5	*Ectodemia phleophaga*	Nepticulidae	Phleophagan chestnut nepticulid moth.	MD.
2	U	R3	*Erythroecia hebardi*	Noctuidae	Hebard's noctuid moth	OH, NJ, VA*.
2	U	R6	*Ethmia monachella*	Ethmiidae	Lost ethmiid moth	CO.
2	U	R5	*Euchlaena milnei*	Geometridae	(Looper moth, no common name)	VA, WI, WV, IL*, NC*, OH*.
2	U	R1	*Euchloe hyantis andrewsi*	Pieridae	Andrew's marble butterfly	CA.
2	U	R1	*Eucosma hennei*	Olethreutidae	Henne's eucosman moth	CA.
2	S	R4	*Eumaeus atala florida*	Lycaenidae	Florida atala (butterfly)	FL.
2	U	R1	*Euphilotes battoides* ssp.	Lycaenidae	Baking Powder Flat blue (butterfly)	NV.
2	U	R1	*Euphilotes enoptes* ssp.	Lycaenidae	Dark blue (butterfly)	NV.
2	U	R1	*Euphilotes rita* ssp.	Lycaenidae	Sand Mountain blue (butterfly)	NV.
2	U	R1	*Euphilotes rita mattoni (=Shijimaeoides r. m.).*	Lycaenidae	Mattoni's blue (butterfly)	NV.
2	U	R1	*Euphydryas anicia morandi*	Nymphalidae	Morand's checkerspot (butterfly)	NV.
2	U	R1	*Euphydryas editha monoensis*	Nymphalidae	Mono checkerspot (butterfly)	CA, NV.
PE	D	R1	*Euphydryas editha quino (=E. e. wrighti).*	Nymphalidae	Quino checkerspot (butterfly)	CA, Mexico.
2	U	R4	*Euphyes bayensis*	Hesperiidae	(Skipper, no common name)	MS.
2	U	R1	*Euphyes vestris harbisoni*	Hesperiidae	Dun skipper	CA.
2	U	R1	*Glyphodes (=Margaronia) cyanomichla.*	Pyralidae	Blue glyphodes moth	HI.
2	U	R1	*Glyphodes (=Margaronia) exaula*	Pyralidae	Green glyphodes moth	HI.
2	D	R5	*Hemileuca* sp.	Saturniidae	(Buckmoth, no common name)	NY, Canada.
2	U	R4	*Hemipachnolia subporphyria subporphyria.*	Noctuidae	Venus flytrap noctuid (moth)	NC
2	U	R4	*Hepialus sciophanes*	Hepialidae	(Ghost moth, no common name)	NC, VA
2	U	R1	*Hesperia comma* ssp.	Hesperiidae	Spring Mountain comma skipper	NV.
2	U	R3	*Hesperia dacotae*	Hesperiidae	Dakota skipper	MN, IA, SD, ND, IL*, Canada.
2	U	R1	*Hesperia mirimae* ssp.	Hesperiidae	White Mountains skipper	CA, NV.
2	U	R1	*Hesperia uncas* ssp.	Hesperiidae	Railroad Valley skipper	NV.
2	D	R1	*Hesperopsis gracielae*	Hesperiidae	MacNeill sooty wing skipper	AZ, CA, NV, UT.
1	U	R1	*Icaricia icarioides* ssp.	Lycaenidae	Point Reyes blue (butterfly)	CA.
2	D	R1	*Icaricia icarioides fenderi*	Lycaenidae	Fender's blue (butterfly)	OR.
2	U	R1	*Icaricia icarioides moroensis*	Lycaenidae	Morro Bay blue (butterfly)	CA.
2		R4	*Idia gopheri*	Noctuidae	Tortoise commensal noctuid moth	FL.
2	U	R1	*Incisalia mossii* ssp.	Lycaenidae	San Gabriel Mountains elfin (butterfly).	CA.
2	U	R1	*Incisalia mossii* ssp.	Lycaenidae	Marin elfin (butterfly)	CA
2	U	R1	*Kauaiina (=Fletcherana) ioxantha*	Geometridae	Ioxanthan looper (moth)	HI.
2*	U	R5	*Lambdina canitiaria*	Geometridae	(Looper moth, no common name)	NY
2	D	R1	*Limenitus archippus lahontani*	Nymphalidae	Nevada viceroy (butterfly)	NV.
2	U	R1	*Limenitus weidemeyerii nevadae*	Nymphalidae	Nevada admiral (butterfly)	NV.
3C	N	R5	*Lithophane lemmeri*	Noctuidae	Lemmer's pinnion (=noctuid) moth	FL, MD, NC, NJ, SC, VA, CT*.
2*	U	R4	*Luperina trigona*	Noctuidae	(Noctuid moth, no common name)	TN.
2	S	R5	*Lycaena dorcas claytoni*	Lycaenidae	Clayton's copper (butterfly)	ME, Canada.
2	U	R1	*Lycaena hermes*	Lycaenidae	Hermes copper (butterfly)	CA, Mexico.
2	U	R1	*Lycaena rubidus* ssp.	Lycaenidae	White Mountains copper (butterfly)	CA, NV.
2	U	R4	*Lytrosis permagnaria*	Geometridae	(Looper moth, no common name)	GA, KY, MO, TN, MS*.
1	D	R1	*Manduca blackburni*	Sphingidae	Blackburn's sphinx moth	HI.
2	U	R5	*Merolonche dolli*	Noctuidae	Doll's merolonche	MI, MN, NJ, NY, PA.
2	U	R4	*Mitoura (=Callophrys) gryneus sweadneri.*	Lycaenidae	Sweadner's olive hairstreak (butterfly).	FL.
2	U	R1	*Mitoura thornei*	Lycaenidae	Thorne's hairstreak (butterfly)	CA.
2	U	R1	*Oeobia dryadopa*	Pyralidae	'Ohenaupaka oeobian moth	HI.
2*	U	R1	*Omoides (=Hedylelpta) asaphombra*	Pyralidae	'Ohe omoides moth	HI.
2*	U	R1	*Omoides (=Hedylepta) anastrepta*	Pyralidae	Molokai sedge omoides moth	HI.
2	U	R1	*Omoides (=Hedylepta) anastreptoides.*	Pyralidae	Kohala Mountain sedge omoides moth.	HI.
2*	U	R1	*Omoides (=Hedylepta) euryprora*	Pyralidae	Ola'a banana omoides moth	HI.
2*	U	R1	*Omoides (=Hedylepta) fullawayi*	Pyralidae	Fullaway's banana omoides moth	HI.
2*	U	R1	*Omoides (=Hedylepta) giffardi*	Pyralidae	Giffard's 'ohe omoides moth	HI.
2*	U	R1	*Omoides (=Hedylepta) iridias*	Pyralidae	Kilauea pa'iniu omoides moth	HI.
2*	U	R1	*Omoides (=Hedylepta) meyricki*	Pyralidae	Meyrick's banana omoides moth	HI.
2*	U	R1	*Omoides (=Hedylepta) monogona*	Pyralidae	Hawaiian bean leafroller (moth)	HI.
2*	U	R1	*Omoides (=Hedylepta) musicola*	Pyralidae	Maui banana omoides moth	HI.
2*	U	R1	*Omoides (=Hedylepta) pritchardii*	Pyralidae	Hawaiian lo'ulu omoides moth	HI.

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Category	Trend					
2	U	R1	*Panoquina errans (=panoquinoides e.).*	Hesperiidae	Wandering (=salt marsh) skipper	CA, Mexico.
2	S	R5	*Papaipema* sp.	Noctuidae	Flypoison borer moth	PA.
2	U	R5	*Papaipema aerata*	Noctuidae	(Noctuid moth, no common name)	IL*, MI*, NH*, NJ*, NY*, PA*, Canada (Que.)
2*	U	R3	*Papaipema aweme*	Noctuidae	(Noctuid moth, no common name)	MI, NY, Canada.
2	U	R3	*Papaipema eryngii*	Noctuidae	Rattlesnake-master borer moth	IL, IN*.
2	U	R5	*Papaipema sulphurata*	Noctuidae	Decodon borer moth	MA.
2*	U	R1	*Petrochroa neckerensis*	Gracilariidae	Necker petrochroan leaf miner (moth).	HI.
2*	D	R1	*Philodoria* sp.	Gracillariidae	Oahu hesperonmannia philodoria moth.	HI
2*	D	R1	*Philodoria naenaeiella*	Gracillariidae	Kauai naenae philodoria moth	HI
2*	U	R1	*Philodoria ureraella*	Gracillariidae	Oahu opuhe leaf mining moth	HI
2	U	R1	*Philotiella speciosa bohartorum*	Lycaenidae	Boharts' blue (butterfly)	CA.
2	U	R3	*Phyciodes batesi*	Nymphalidae	Tawny crescent butterfly	NC, VA, NY, MI, WI, ND, SD, MN, Canada, GA*, WV*, PA*, NJ*.
2	U	R1	*Phyciodes pascoensis* ssp.	Nymphalidae	Steptoe Valley crescentspot (butterfly).	NV.
2	U	R1	*Plebulina emigdionis (=Plebejus e.)*	Lycaenidae	San Emigdio blue (butterfly)	CA.
2	U	R1	*Plejebus icarioides* ssp.	Lycaenidae	White Mountains icarioides blue (butterfly).	CA, NV.
2	U	R1	*Plejebus icarioides* ssp.	Lycaenidae	Spring Mountains icarioides blue (butterfly).	CA, NV.
2	U	R1	*Plejebus saepiolus* ssp.	Lycaenidae	San Gabriel Mountains blue (butterfly).	CA.
2	U	R1	*Plejebus saepiolus* ssp.	Lycaenidae	White Mountains saepiolus blue (butterfly).	CA, NV.
2	D	R1	*Plejebus shasta charlestonensis*	Lycaenidae	Spring Mountains blue (butterfly)	NV.
2*	D	R1	*Plutella capparidis*	Plutellidae	Oahu capper moth	HI
2	U	R5	*Poanes massasiot chermocki*	Hesperiidae	Chermock's mulberry wing skipper	MD.
2	U	R1	*Polites mardon*	Hesperiidae	Mardon skipper	CA.
2	U	R1	*Polites sabuleti albomontana*	Hesperiidae	White Mountains sandhill skipper	CA, NV.
2	U	R1	*Polites sabuleti sinemaculata*	Hesperiidae	Denio sandhill skipper	NV.
2	U	R4	*Problema bulenta*	Hesperiidae	Rare skipper	GA, MD, NC, SC, VA.
2	U	R1	*Psammobotys fordi*	Pyralidae	Ford's sand dune moth	CA.
2	U	R1	*Pseudocopaeodes eunus eunus*	Hesperiidae	Alkali (=wandering) skipper	CA, NV, AZ?, Mexico?.
2	U	R4	*Pyreferra ceromatica*	Noctuidae	Annointed sallow (=ceromatic noctuid) moth.	FL, SC, AL*, CT*, IN*, MA*, ME*, NC*, NJ*, NY*, PA*, Canada*.
PE	U	R1	*Pyrgus ruralis lagunae*	Hesperiidae	Laguna Mountains skipper	CA.
2	D	R5	*Pyrgus wyandot*	Hesperiidae	Grizzled skipper	MD, MI, NY, OH, PA, VA, WV, KY*, NC*, NJ*.
2	U	R1	*Satyrium auretorum fumosum*	Lycaenidae	Santa Monica Mountains hairstreak (butterfly).	CA.
2	U	R3	*Schinia indiana*	Noctuidae	(Noctuid moth, no common name)	MI, MN, WI, AR?*, IL*, IN*, NC?, NE?, TX?.
2	U	R4	*Semiothisa fraserata*	Geometridae	Fraser fir geometrid	NC, VA
2	S	R4	*Spartiniphaga carterae*	Noctuidae	Carter's noctuid moth	NC, NJ.
2	U	R1	*Speyeria adiaste adiaste*	Nymphalidae	Unsilvered fritillary (butterfly)	CA.
2	U	R1	*Speyeria atlantis greyi*	Nymphalidae	Grey's silverspot (butterfly)	NV.
PE	D	R1	*Speyeria callippe callippe*	Nymphalidae	Callippe silverspot (butterfly)	CA.
2	U	R4	*Speyeria diana*	Nymphalidae	Diana fritillary (butterfly)	AR, GA, MO, NC, SC, TN, VA, WV, IL*, IN*, LA*, MD*, MS*, OH*, PA*.
2	U	R1	*Speyeria egleis tehachapina*	Nymphalidae	Tehachapi Mountain silverspot (butterfly).	CA.

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Category	Trend					
2	D	R5	*Speyeria idalia*	Nymphalidae	Regal fritillary (butterfly)	AR, CO, IA, IL, IN, KS, MA, MD, MI, MN, MO, ND, NE, OH, OK, PA, SD, VA, WI, CT*, DE*, ME*, MT*, NC*, NH*, NJ*, NY*, VT*, WV*, Canada.
2	U	R1	*Speyeria nokomis* ssp.	Nymphalidae	Carson Valley silverspot (butterfly)	CA, NV.
2	U	R2	*Speyeria nokomis caerulescens*	Nymphalidae	Blue silverspot (butterfly)	AZ*, Mexico.
2	D	R6	*Speyeria nokomis nokomis*	Nymphalidae	Great basin silverspot (butterfly)	CO, UT.
PE	D	R1	*Speyeria zerene behrensii*	Nymphalidae	Behren's silverspot (butterfly)	CA.
2	U	R1	*Speyeria zerene carolae*	Nymphalidae	Carole's silverspot (butterfly)	NV.
2	U	R1	*Spheterista ohedheana*	Tortricidae	'Ohe'ohe leafroller (moth)	HI.
2	U	R1	*Spheterista pterotropiana*	Tortricidae	Greenbanded 'ohe'ohe leafroller (moth).	HI.
2	U	R1	*Spheterista reynoldsiana*	Tortricidae	Wailupe leafroller (moth)	HI.
2	U	R2	*Stallingsia maculosus*	Megathymidae	Maculated manfreda skipper	TX, Mexico.
2	U	R4	*Strymon acis bartrami*	Lycaenidae	Bartram's hairstreak (butterfly)	FL.
3C	N	R4	*Synanthedon castaneae*	Sesiidae	Chestnut clearwing moth	AL, FL, GA, NC, SC, VA*, PA*, ME*, MS*, NY*.
2	U	R1	*Thyrocopa apatela*	Oecophoridae	Haleakala flightless thyrocopa moth	HI
2*	U	R1	*Thyrocopa sapindiella*	Oecophoridae	Oahu aulu thyrocopa moth	HI
2	U	R1	*Tinostoma smaragditis*	Sphingidae	Fabulous green sphinx of Kauai (moth).	HI.
2*	U	R5	*Tischeria perplexa*	Tischeriidae	Chestnut leaf miner moth	VA.
2	S	R4	*Zale perculta*	Noctuidae	Okefenokee zale moth	GA, FL*.
			CADDISFLIES (Insects, Order Trichoptera).			
2	U	R3	*Agapetus artesus*	Glossosomatidae	Artesian agapetus caddisfly	MO.
2	U	R1	*Agapetus denningi*	Glossosomatidae	Denning's agapetus caddisfly	OR.
2	U	R4	*Agapetus jocassee*	Glossosomatidae	(Caddisfly, no common name)	NC, SC.
2	U	R4	*Agapetus medicus*	Glossosomatidae	Arkansas agapetus caddisfly	AR.
2	U	R4	*Agarodes alabamensis*	Sericostomatidae	(Caddisfly, no common name)	AL.
2	U	R4	*Agarodes stannardi*	Sericostomatidae	Stannard's agarodes caddisfly	MS, TN.
2	U	R4	*Agarodes ziczac*	Sericostomatidae	Zigzag blackwater caddisfly	FL.
2	U	R1	*Apatania tavala (=Radema t.)*	Limnephilidae	Cascades apatanian caddisfly	OR.
2	U	R2	*Austrotinodes* sp.	Ecnomidae	Texas Austrotinodes caddisfly	TX
2	U	R4	*Ceraclea* sp.	Leptoceridae	Lenat's ceraclea	NC
3C	N	R4	*Ceraclea enodis (=sp. nov.)*	Leptoceridae	(Caddisfly, no common name)	AL, NC, Canada.
2*	U	R4	*Ceraclea floridana*	Leptoceridae	Florida ceraclean longhorn caddisfly	FL.
2	U	R1	*Ceraclea vertreesi (=Athripsodes v.)*	Leptoceridae	Vertrees's ceraclean caddisfly	OR.
2	U	R4	*Ceratopsyche (=Hydropsyche) etnieri.*	Hydropsychidae	Buffalo Springs caddisfly	TN.
3C	N	R2	*Cheumatopsyche flinti*	Hydropsychidae	Flint's net-spinning caddisfly	TX.
2	U	R5	*Cheumatopsyche helma*	Hydropsychidae	Helma's net-spinning caddisfly	ME, KY*, PA*, TN*.
2	U	R4	*Cheumatopsyche morsei*	Hydropsychidae	Morse's net-spinning caddisfly	LA.
2*	U	R5	*Cheumatopsyche vannotei*	Hydropsychidae	Vannote's net-spinning caddisfly	PA.
2	U	R3	*Chilostigma itascae*	Limnephilidae	Headwater chilostigman caddisfly	MN.
2	U	R4	*Chimarra holzenthali*	Philoptamidae	(Caddisfly, no common name)	LA.
2	U	R1	*Cryptochia denningi*	Limnephilidae	Denning's cryptic caddisfly	CA.
2	U	R1	*Cryptochia excella*	Limnephilidae	Kings Canyon cryptochian caddisfly	CA.
2	U	R1	*Cryptochia neosa*	Limnephilidae	Blue Mountains cryptochian caddisfly	OR.
2	U	R1	*Cryptochia shasta*	Limnephilidae	Confusion caddisfly	CA.
2	U	R1	*Desmona bethula*	Limnephilidae	Amphibious caddisfly	CA.
2	U	R1	*Diplectrona californica*	Hydropsychidae	California diplectronan caddisfly	CA.
2	U	R4	*Diplectrona rossi*	Hydropsychidae	(Caddisfly, no common name)	LA.
2	U	R1	*Ecclisomyia bilera*	Limnephilidae	King's Creek ecclisomyian caddisfly	CA.
2	U	R1	*Eobrachycentrus gelidae*	Brachycentridae	Mt. Hood primitive brachycentrid caddisfly.	OR.
2	U	R1	*Farula* sp.	Limnephilidae	Long-tailed caddisfly	CA.
2*	U	R1	*Farula davisi*	Limnephilidae	Green Springs Mountain farulan caddisfly.	OR.
2	U	R1	*Farula jewetti*	Limnephilidae	Mt. Hood farulan caddisfly	OR.
2	U	R1	*Farula reaperi*	Limnephilidae	Tombstone Prairie farulan caddisfly	OR.
2	U	R3	*Glyphopsyche missouri*	Limnephilidae	Missouri glyphopsyche caddisfly	MO.
2	U	R1	*Goeracea oregona*	Limnephilidae	Sagehen Creek goeracean caddisfly	CA.
2	U	R4	*Helicopsyche paralimnella*	Helicopsychidae	(Caddisfly, no common name)	NC, SC.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	u	R1	*Homoplectra schuhi*	Hydropsychidae	Schuh's homoplectran caddisfly	OR.
2	U	R1	*Hydropsyche abella*	Hydropsychidae	Abellan hydropsyche caddisfly	OR.
2	U	R2	*Hydropsyche reiseni*	Hydropsychidae	Reisen's hydropsyche caddisfly	OK.
2	U	R4	*Hydroptila chelops*	Hydroptilidae	(Caddisfly, no common name)	AL.
3C	N	R4	*Hydroptila decia*	Hydroptilidae	Knoxville hydroptilan micro caddisfly	TN.
2	U	R4	*Hydroptila englishi*	Hydroptilidae	(Caddisfly, no common name)	NC, SC.
2	U	R4	*Hydroptila lagoi*	Hydroptilidae	(Caddisfly, no common name)	AL.
2	U	R4	*Hydroptila ouachita*	Hydroptilidae	(Caddisfly, no common name)	LA.
2	U	R1	*Lepidostoma ermanae*	Lepidostomatidae	Cold Spring caddisfly	CA.
2	U	R4	*Lepidostoma etnieri*	Lepidostomatidae	(Caddisfly, no common name)	TN
2	U	R1	*Lepidostoma goedeni*	Lepidostomatidae	Goeden's lepidostoman caddisfly	OR.
2	U	R1	*Limnephilus atercus*	Limnephilidae	Fort Dick limnephilus caddisfly	CA, OR.
2	U	R2	*Metrichia volada*	Hydroptilidae	Page Spring micro caddisfly	AZ.
2	U	R1	*Neothremma andersoni*	Limnephilidae	Columbia Gorge neothremman caddisfly.	OR.
2	U	R1	*Neothremma genella*	Limnephilidae	Golden-horned caddisfly	CA.
2	U	R1	*Neothremma siskiyou*	Limnephilidae	Siskiyou caddisfly	CA.
2	U	R3	*Neotrichia kitae*	Hydroptilidae	Kite's neotrichian micro caddisfly	MO.
2	U	R4	*Ochotrichia elongiralla*	Hydroptilidae	(Caddisfly, no common name)	AL.
2	U	R4	*Ochrotrichia contorta*	Hydroptilidae	Contorted ochrotrichian micro caddisfly.	MO, AR.
2*	U	R1	*Ochrotrichia phenosa*	Hydroptilidae	Deschutes ochrotrichian micro caddisfly.	OR.
2	U	R4	*Ochrotrichia provosti*	Hydroptilidae	Provost's ochrotrichian micro caddisfly.	FL.
2	U	R1	*Ochrotrichia vertreesi*	Hydroptilidae	Vertrees's ochrotrichian micro caddisfly.	OR.
2*	U	R4	*Oecetis parva*	Leptoceridae	Little oecetis longhorn caddisfly	FL.
2	U	R1	*Oligophlebodes mostbento*	Limnephilidae	Tombstone Prairie oligophlebodes caddisfly.	OR.
2	U	R4	*Oxyethira florida*	Hydroptilidae	Florida oxyethiran micro caddisfly	FL, TX?.
2	U	R4	*Paduniella nearctica*	Psychomyidae	Nearctic paduniellan caddisfly	AR.
2*	U	R1	*Parapsyche extensa*	Hydropsychidae	King's Creek parapsyche caddisfly	CA.
2*	U	R1	*Philocasca oron*	Limnephilidae	Clatsop philocascan caddisfly	OR.
2	U	R4	*Polycentropus carlsoni*	Polycentropodidae	Carlson's polycentropus caddisfly	SC.
2	U	R4	*Polycentropus harrisi*	Polycentropidae	(Caddisfly, no common name)	AL.
2	U	R2	*Protoptila arca*	Glossosomatidae	San Marcos saddle-case caddisfly	TX.
2	U	R2	*Protoptila balmorhea*	Glossosomatidae	Balmorhea saddle-case caddisfly	AZ, TX.
2	U	R4	*Protoptila cahabensis*	Glossosomatidae	Cahaba saddle-case caddisfly	AL.
2	U	R6	*Rhyacophila alexanderi*	Rhyacophilidae	Alexander's rhyacophilan caddisfly	MT.
2	U	R1	*Rhyacophila colonus*	Rhyacophilidae	Obrien rhyacophilan caddisfly	OR.
2	U	R1	*Rhyacophila haddocki*	Rhyacophilidae	Haddock's rhyacophilan caddisfly	OR.
2	U	R1	*Rhyacophila lineata*	Rhyacophilidae	Castle Crags rhyacophilan caddisfly	CA.
2	U	R1	*Rhyacophila mosana*	Rhyacophilidae	Bilobed rhyacophilan caddisfly	CA.
2	U	R1	*Rhyacophila spinata*	Rhyacophilidae	Spiny rhyacophilan caddisfly	CA.
2	U	R1	*Rhyacophila unipunctata*	Rhyacophilidae	One-spot rhyacophilan caddisfly	OR.
2	D	R4	*Schinia rufipenna*	Noctuidae	Scrub golden aster noctuid moth	FL.
3C	N	R4	*Setodes epicampes*	Leptoceridae	(Caddisfly, no common name)	AL, TN.
2	U	R4	*Stactiobiella cahaba*	Hydroptilidae	(Caddisfly, no common name)	AL.
2	U	R4	*Theliopsyche tallapoosa*	Lepidostomatidae	(Caddisfly, no common name)	AL.
2	U	R1	*Tinodes siskiyou*	Psychomyiidae	Siskiyou caddisfly	OR.
2*	U	R4	*Triaenodes tridonta*	Leptoceridae	Three-tooth long-horned caddisfly	OK, FL.
2	U	R4	*Wormaldia oconee*	Philoptamidae	(Caddisfly, no common name)	SC.
			ANTS, BEES, & WASPS (Insects, Order Hymenoptera).			
2	U	R1	*Bombus franklini*	Apidae	Franklin's bumblebee	OR, CA.
2	U	R1	*Deinomimesa hawaiiensis*	Sphecidae	Hawaiian deinomimesan sphecid wasp.	HI.
2	U	R1	*Deinomimesa punae*	Sphecidae	Puna deinomimesan sphecid wasp	HI.
2*	U	R1	*Ectemnius (=Nesoprosopis) rubrocaudatus.*	Sphecidae	Redtail sphecid wasp (not yellow-faced bee).	HI.
2	U	R1	*Ectemnius bidecoratus (=Nesocrabo b.).*	Sphecidae	Bidecoratus sphecid wasp	HI.
2	U	R1	*Ectemnius curtipes (=Oreocrabro c.)*	Sphecidae	Short-foot ectemnius sphecid wasp	HI.
2	U	R1	*Ectemnius fulvicrus (=Oreocrabro f.)*	Sphecidae	Brown cross ectemnius sphecid wasp.	HI.
2	U	R1	*Ectemnius giffardi (=Nesocrabo g.)*	Sphecidae	Giffard's ectemnius sphecid wasp	HI.
2	U	R1	*Ectemnius haleakalae (=Oreocrabro h.).*	Sphecidae	Haleakala ectemnius sphecid wasp	HI.
2	U	R1	*Eucerceris ruficeps*	Sphecidae	Redheaded sphecid wasp	CA*, NV.
2	U	R1	*Eupelmus nihoaensis*	Eupelmidae	Nihoa eupelmus wasp	HI.

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Category	Trend					
2*	U	R1	*Hylaeus (=Nesoprosopis) andrenoides.*	Hylaeidae	Andrenoid yellow-faced bee	HI.
2	U	R1	*Hylaeus (=Nesoprosopis) anomala*	Hylaeidae	Anomalous yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) anthricina*	Hylaeidae	Anthricinan yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) assimulans.*	Hylaeidae	Assimulans yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) caeruleipennis.*	Hylaeidae	Bluewing yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) chlorosticata.*	Hylaeidae	Chlorostictan yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) comes*	Hylaeidae	Comes yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) coniceps*	Hylaeidae	Conehead yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) crabronoides.*	Hylaeidae	Crabronoid yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) difficilis*	Hylaeidae	Difficult yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) dimidiata*	Hylaeidae	Dimidiatan yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) facilis*	Hylaeidae	Easy yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) filicum*	Hylaeidae	Fern yellow-faced bee	HI.
2	U	R1	*Hylaeus (=Nesoprosopis) flavifrons*	Hylaeidae	Very yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) flavipes*	Hylaeidae	Yellow-foot yellow-faced bee	HI.
2	U	R1	*Hylaeus (=Nesoprosopis) fuscipennis.*	Hylaeidae	Darkwing yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) haleakalae*	Hylaeidae	Haleakala yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) hirsutula*	Hylaeidae	Hirsute yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) hostilis*	Hylaeidae	Hostile yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) hula*	Hylaeidae	Hulan yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) insignis*	Hylaeidae	Insignis yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) kauaiensis*	Hylaeidae	Kauai yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) koae*	Hylaeidae	Koa yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) kona*	Hylaeidae	Kona yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) laeta*	Hylaeidae	Laetan yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) longiceps*	Hylaeidae	Longhead yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) obscurata*	Hylaeidae	Obscuratan yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) ombrias*	Hylaeidae	Ombrias yellow-faced bee	HI.
2	U	R1	*Hylaeus (=Nesoprosopis) perkinsiana.*	Hylaeidae	Perkin's yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) pubescens*	Hylaeidae	Furry yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) satellus*	Hylaeidae	Satellus yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) simplex*	Hylaeidae	Simple yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) specularis*	Hylaeidae	Specular yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) sphecodoides.*	Hylaeidae	Sphecodoid yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) unica*	Hylaeidae	Unique yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) vicina*	Hylaeidae	Vicinan yellow-faced bee	HI.
2*	U	R1	*Hylaeus (=Nesoprosopis) volatilis*	Hylaeidae	Volatile yellow-faced bee	HI.
2	U	R1	*Myrmosula pacifica (=Myrmosa p.)*	Mutillidae	Antioch mutillid wasp	CA.
2	U	R1	*Nesomimesa kauaiensis*	Sphecidae	Kauai nesomimesan sphecid wasp	HI.
2	U	R1	*Nesomimesa perkinsi*	Sphecidae	Perkins' nesomimesan sphecid wasp	HI.
2	U	R1	*Nesomimesa sciopteryx*	Sphecidae	Shade-winged nesomimesan sphecid wasp.	HI.
2	D	R1	*Odynerus nigripennis*	Vespidae	Black-winged odynerus vespid wasp	HI
2	U	R1	*Odynerus niihauensis*	Vespidae	Niihau odynerus vespid wasp	HI.
2	D	R1	*Odynerus radula*	Vespidae	Radulan odynerus vespid wasp	HI
2	U	R1	*Odynerus soror*	Vespidae	Soror odynerus vespid wasp	HI.
2*	U	R1	*Perdita hirticeps luteocincta*	Andrenidae	Yellow-banded andrenid bee	CA.
2	U	R1	*Perdita scitula antiochensis*	Andrenidae	Antioch andrenid bee	CA.
1	D	R1	*Phaeogramma* sp.	Tephritidae	Po'olanui gall fly	HI
2	U	R1	*Philanthus nasalis*	Sphecidae	Antioch sphecid wasp	CA.
2	U	R1	*Proceratium californicum*	Formicidae	Valley oak ant	CA.
2	U	R1	*Sclerodermus nihoaensis*	Bethylidae	Nihoa sclerodermus wasp	HI.
2	U	R1	*Smithistruma reliquia*	Formicidae	Ancient ant	CA.
			ARACHNIDS (Class Arachnida).			
			SPIDERS (Arachnids, Order Aranea).			
1	D	R1	*Adelocosa anops*	Lycosidae	Kauai cave wolf spider (pe'e pe'e maka 'ole).	HI.
2	U	R4	*Cesonia irvingi*	Gnaphosidae	Key gnaphosid spider	FL.
2	U	R2	*Cicurina bandida*	Dictynidae	Bandit Cave spider	TX
2	U	R2	*Cicurina baroni*	Dictynidae	Robber Baron Cave spider	TX
2	U	R2	*Cicurina cueva*	Dictynidae	(Spider, no common name)	TX
2	U	R2	*Cicurina madla*	Dictynidae	Madla's cave spider	TX

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Category	Trend					
2	U	R2	*Cicurina venii*	Dictynidae	Veni's cave spider	TX
2	U	R2	*Cicurina vespera*	Dictynidae	Vesper cave spider	TX
1	U	R2	*Cicurina wartoni*	Dictynidae	Warton's cave spider	TX
2	U	R4	*Cyclocosmia torreya*	Ctenizidae	Torreya trap-door spider	FL.
2	U	R5	*Islandiana speophila*	Lymphiidae	Cavern sheet-web spider	WV.
2	U	R1	*Meta dolloff*	Araneidae	Dolloff Cave spider	CA.
PE		R4	*Microhexura montivaga*	Dipluridae	Spruce-fir moss spider	NC, TN.
2	U	R2	*Neoleptoneta microps*	Leptonetidae	Government Canyon cave spider	TX
2	U	R4	*Nesticus cooperi*	Nesticidae	Lost Nantahala Cave spider	NC.
2	U	R4	*Nesticus dilutus*	Nesticidae	Grassy Creek Cave spider	TN.
2	U	R4	*Nesticus furtivus*	Nesticidae	Crystal Caverns cave spider	TN.
2	U	R4	*Nesticus jonesi*	Nesticidae	Cave Spring Cave spider	AL.
2	U	R4	*Nesticus valentinei*	Nesticidae	Valentine's cave spider	TN.
2	U	R4	*Sosippus placidus*	Lycosidae	Lake Placid funnel wolf spider	FL.
2	U	R1	*Telema* sp.	Telemidae	Santa Cruz telemid spider	CA.
			PSEUDOSCORPIONS (Arachnids, Order Pseudoscorpiones).			
2	U	R1	*Aphrastochthonius grubbsi*	Chthoniidae	Grubbs' cave pseudoscorpion	CA.
2	U	R1	*Aphrastochthonius similis*	Chthoniidae	Carlow's Cave pseudoscorpion	CA.
2	U	R1	*Apochthonius malheuri*	Chthoniidae	Malheur pseudoscorpion	OR.
2	U	R5	*Apochthonius paucispinosus*	Chthoniidae	Dry Fork Valley cave pseudoscorpion.	WV.
2	U	R1	*Archeolarca aalbui*	Garypidae	Aalbu's cave pseudoscorpion	CA.
2	U	R2	*Archeolarca cavicola*	Garypidae	Grand Canyon cave pseudoscorpion	AZ.
2	U	R2	*Archeolarca guadalupensis*	Garypidae	Guadalupe cave pseudoscorpion	TX.
2	U	R5	*Chitrella regina*	Syarinidae	Royal syarinid pseudoscorpion	WV.
2	U	R5	*Kleptochthonius henroti*	Chthoniidae	Greenbrier Valley cave pseudoscorpion.	WV.
2	U	R5	*Kleptochthonius hetricki*	Chthoniidae	Organ Cave pseudoscorpion	WV.
2	U	R5	*Kleptochthonius orpheus*	Chthoniidae	Orpheus cave pseudoscorpion	WV.
2	U	R5	*Kleptochthonius proserpinae*	Chthoniidae	Proserpina cave pseudoscorpion	WV.
2	U	R1	*Larca laceyi*	Garypidae	Lacey's cave pseudoscorpion	CA.
2	U	R1	*Microcreagris imperialis*	Neobisiidae	Empire Cave pseudoscorpion	CA.
2	U	R1	*Pauroctonus maritimus*	Vejovidae	Monterey Dunes scorpion	CA.
2	U	R1	*Pseudogarypus orpheus*	Pseudogarypidae	Music Hall Cave pseudoscorpion	CA.
			HARVESTMEN (Arachnids, Order Opiliones).			
2	U	R1	*Calcina (=Sitalcina) minor*	Phalangodidae	Edgewood blind harvestman	CA.
2	U	R1	*Microcina edgewoodensis*	Phalangodidae	Edgewood Park micro-blind harvestman.	CA.
2	U	R1	*Microcina homi*	Phalangodidae	Hom's micro-blind harvestman	CA.
2	U	R1	*Microcina jungi*	Phalangodidae	Jung's micro-blind harvestman	CA.
2	U	R1	*Microcina leei*	Phalangodidae	Lee's micro-blind harvestman	CA.
2	U	R1	*Microcina lumi*	Phalangodidae	Lum's micro-blind harvestman	CA.
2	U	R1	*Microcina tiburona*	Phalangodidae	Tiburon micro-blind harvestman	CA.
2	U	R2	*Texella cokendolpheri*	Phalangodidae	Robber Baron Cave harvestman	TX
			CRUSTACEANS (Class Crustacea).			
			FAIRY SHRIMPS (Crustaceans, Order Anostraca).			
1	D	R1	*Artemia monica*	Artemiidae	Mono Lake brine shrimp	CA.
PE	U	R1	*Branchinecta conservatio*	Branchinectidae	Conservancy fairy shrimp	CA.
PE	U	R1	*Branchinecta longiantenna*	Branchinectidae	Longhorn fairy shrimp	CA.
PE	D	R1	*Branchinecta lynchi*	Branchinectidae	Vernal pool fairy shrimp	CA.
PE	U	R1	*Branchinecta sandiegoensis*	Branchinectidae	San Diego fairy shrimp	CA.
PE	U	R1	*Lepidurus packardi*	Triopsidae	Vernal pool tadpole shrimp	CA.
PE	D	R1	*Linderiella occidentalis*	Linderiellidae	California linderiella	CA.
			CLAM SHRIMP (Crustaceans, Order Spinicaudata).			
2	U	R5	*Eulimnadia agassizii*	Limnadiidae	Faxon's clam shrimp	MA.
2	U	R5	*Eulimnadia stoningtonensis*	Limnadiidae	Connecticut clam shrimp	CT.
2	U	R5	*Limnadia lenticularis*	Limnadiidae	American clam shrimp	MA, FL*, Greenland, Northern Europe.
			OSTRACODS (Crustaceans, Order Podocopa).			
2	U	R4	*Ascetocthere cosmeta*	Entocytheridae	Grayson crayfish ostracod	NC, VA
2	U	R4	*Cymocythere clavata*	Entocytheridae	Oconee crayfish ostracod	NC, SC
2	U	R4	*Dactylocythere isabelae*	Entocytheridae	(Ostracod, no common name)	NC.

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2	U	R4	*Dactylocythere peedeensis*	Entocytheridae	(Ostracod, no common name)	NC.
2	U	R4	*Dactylocythere prinsi*	Entocytheridae	Whitewater crayfish ostracod	NC
2	U	R4	*Waltoncythere acuta*	Entocytheridae	(Ostracod, no common name)	NC.
2	U	R4	*Diacyclops jeannelli putei*	Cyclopidae	Carolina well diacyclops	NC
2	U	R4	*Skistodiaptomus carolinensis*	Cyclopidae	Carolina skistodiaptomus	NC
			ISOPODS (Crustaceans, Order Isopoda).			
2	U	R4	*Caecidotea barri*	Asellidae	Clifton Cave isopod	KY.
2	U	R5	*Caecidotea cannulus*	Asellidae	(Isopod, no common name)	MD, WV.
2	U	R4	*Caecidotea carolinensis*	Asellidae	Bennets Mill Cave water slater	NC, SC
2	U	R3	*Caecidotea filicispeluncae*	Asellidae	(Isopod, no common name)	OH.
2	S	R5	*Caecidotea franzi*	Asellidae	Franz's isopod	MD, PA.
2	U	R2	*Caecidotea macropoda*	Asellidae	Bat Cave isopod	OK.
2	U	R4	*Caecidotea nickajackensis*	Asellidae	Nickajack Cave isopod	TN.
2	U	R5	*Caecidotea simonini*	Asellidae	(Isopod, no common name)	WV.
2	U	R5	*Caecidotea sinuncus*	Asellidae	(Isopod, no common name)	WV.
2	U	R1	*Caecidotea tomalensis*	Asellidae	(Isopod, no common name)	CA.
2	U	R5	*Lirceus culveri*	Asellidae	Rye Cove Cave isopod	VA.
			AMPHIPODS (Crustaceans, Order Amphipoda).			
2	U	R3	*Allocrangonyx hubrichti*	Gammaridae	Central Missouri cave amphipod	MO.
2	U	R2	*Allocrangonyx pellucidus*	Gammaridae	Oklahoma cave amphipod	OK.
2	U	R5	*Crangonyx dearolfi*	Crangonyctidae	Dearolf's (=Pennsylvania) cave amphipod.	MD, PA*.
2	U	R4	*Crangonyx grandimanus*	Crangonyctidae	Florida cave amphipod	FL.
2	U	R4	*Crangonyx hobbsi*	Crangonyctidae	Hobb's cave amphipod	FL.
1	D	R3	*Gammarus acherondytes*	Gammaridae	Illinois cave amphipod	IL.
2	U	R4	*Gammarus bousfieldi*	Gammaridae	Bousfield's amphipod	KY.
2	U	R2	*Gammarus desperatus*	Gammaridae	Noel's amphipod	NM.
2	U	R2	*Gammarus hyalleloides*	Gammaridae	Diminutive amphipod	TX.
2	U	R2	*Gammarus pecos*	Gammaridae	Pecos amphipod	TX.
2	U	R1	*Metabetaeus lohena*	Alpheidae	(Amphipod, no common name)	HI.
1	U	R1	*Spelaeorchestia koloana*	Talitridae	Kauai cave amphipod	HI.
2	U	R5	*Stygobromus araeus (=Apocrangonyx a.).*	Crangonyctidae	Tidewater interstitial amphipod	VA.
2	U	R2	*Stygobromus arizonensis (=Stygonectes a.).*	Crangonyctidae	Arizona cave amphipod	AZ.
2	U	R2	*Stygobromus balconis (=Stygonectes b.).*	Crangonyctidae	Balcones cave amphipod	TX.
2	U	R3	*Stygobromus barri (=Stygonectes b.)*	Crangonyctidae	Barr's cave amphipod	MO.
2	U	R2	*Stygobromus bifurcatus (=Stygonectes b.).*	Crangonyctidae	Bifurcated cave amphipod	TX.
2	U	R5	*Stygobromus biggersi*	Crangonyctidae	Bigger's amphipod	MD, PA, VA, WV
2	U	R2	*Stygobromus bowmani (=Stygonectes b.).*	Crangonyctidae	Bowman's cave amphipod	OK.
2	U	R4	*Stygobromus carolinensis*	Crangonyctidae	Yancey sideswimmer	NC
2	U	R6	*Stygobromus clantoni (=Stygonectes c.).*	Crangonyctidae	Clanton's cave amphipod	KS, MO.
2	U	R5	*Stygobromus conradi (=Stygonectes c.).*	Crangonyctidae	Burnsville Cove cave amphipod	VA.
2	U	R5	*Stygobromus cooperi (=Stygonectes c.).*	Crangonyctidae	Cooper's cave amphipod	WV.
2	U	R5	*Stygobromus culveri*	Crangonyctidae	Culver's cave amphipod	WV.
2	U	R2	*Stygobromus dejectus (=Stygonectes d.).*	Crangonyctidae	Cascade Cave amphipod	TX.
3B	N	R4	*Stygobromus elatus (=Stygonectes e.).*	Crangonyctidae	Elevated Spring amphipod	AR.
2	U	R2	*Stygobromus flagellatus (=Stygonectes f.).*	Crangonyctidae	Ezell's Cave amphipod	TX.
2	U	R1	*Stygobromus gradyi*	Crangonyctidae	Grady's cave amphipod	CA.
2	U	R2	*Stygobromus hadenoecus (=Stygonectes h.).*	Crangonyctidae	Devil's Sinkhole amphipod	TX.
2	U	R1	*Stygobromus harai*	Crangonyctidae	Hara's cave amphipod	CA.
2	U	R5	*Stygobromus hoffmani*	Crangonyctidae	(Amphipod, no common name)	VA.
2	U	R1	*Stygobromus hubbsi*	Crangonyctidae	Malheur Cave amphipod	OR.
2	U	R5	*Stygobromus indentatus (=Stygonectes i.).*	Crangonyctidae	Tidewater amphipod	MD, NC, VA.
2	U	R2	*Stygobromus longipes (=Stygonectes l.).*	Crangonyctidae	Long-legged cave amphipod	TX.
2	U	R1	*Stygobromus mackenziei*	Crangonyctidae	MacKenzie's cave amphipod	CA.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
3B	N	R4	*Stygobromus montanus (=Stygonectes m.).*	Crangonyctidae	Mountain cave amphipod	AR.
2	U	R5	*Stygobromus morrisoni (=Stygonectes m.).*	Crangonyctidae	Morrison's cave amphipod	VA, WV.
2	U	R5	*Stygobromus mundus (=Stygonectes m.).*	Crangonyctidae	Bath County cave amphipod	VA.
2	U	R5	*Stygobromus nanus*	Crangonyctidae	Pocahontas cave amphipod	WV.
2	U	R4	*Stygobromus nortoni (=Apocrangonyx n.).*	Crangonyctidae	Norton's cave amphipod	TN.
2	U	R5	*Stygobromus parvus (=Apocrangonyx p.).*	Crangonyctidae	Minute cave amphipod	WV.
1	U	R2	*Stygobromus pecki (=Stygonectes p.).*	Crangonyctidae	Peck's cave amphipod	TX.
2	U	R5	*Stygobromus pizzinii (=Stygonectes p.).*	Crangonyctidae	Pizzini's amphipod	DC, MD, PA, VA.
2	U	R3	*Stygobromus putealis*	Crangonyctidae	Wisconsin well amphipod	WI.
2	U	R5	*Stygobromus redactus*	Crangonyctidae	Redacted cave amphipod	WV.
2	U	R2	*Stygobromus redelli (=Stygonectes r.).*	Crangonyctidae	Redell's cave amphipod	TX.
2	U	R4	*Stygobromus smithi*	Crangonyctidae	Alabama well amphipod	AL.
2	U	R5	*Stygobromus spinatus (=Stygonectes s.).*	Crangonyctidae	Spring cave amphipod	WV.
2	U	R5	*Stygobromus stellmacki (=Stygonectes s.).*	Crangonyctidae	Stellmack's cave amphipod	PA.
2	U	R3	*Stygobromus subtilis (=Apocrangonyx s.).*	Crangonyctidae	Subtle cave amphipod	IL, MO.
2	U	R1	*Stygobromus wengerorum*	Crangonyctidae	Wengerors' cave amphipod	CA.
			CRAYFISHES & SHRIMPS (Crustaceans, Order Decapoda).			
2	U	R1	*Antecaridina lauensis*	Atyidae	(Shrimp, no common name)	HI.
2	U	R1	*Calliasmata pholidota*	Hippolytidae	(Shrimp, no common name)	HI.
3C	N	R4	*Cambarus catagius*	Cambaridae	Greensboro burrowing crayfish	NC.
2	U	R4	*Cambarus englishi*	Cambaridae	(Crayfish, no common name)	AL, GA.
2	U	R4	*Cambarus extraneus*	Cambaridae	Chickamauga crayfish	GA, TN.
3C	N	R4	*Cambarus georgiae (subgen. Puncticambarus).*	Cambaridae	Little Tennessee crayfish	NC, GA.
2	U	R4	*Cambarus hiwassensis (subgen. Puncticambarus).*	Cambaridae	Hiwassee crayfish	NC, GA.
2	U	R4	*Cambarus miltus*	Cambaridae	(Crayfish, no common name)	AL.
2	U	R4	*Cambarus obeyensis*	Cambaridae	Obey crayfish	TN.
2	U	R4	*Cambarus parrishi (subgen. Puncticambarus).*	Cambaridae	Parrish crayfish	NC, GA.
2	U	R4	*Cambarus reburrus (subgen. Puncticambarus).*	Cambaridae	French Broad crayfish	NC.
2	U	R2	*Cambarus tartarus*	Cambaridae	(Crayfish, no common name)	OK.
2	U	R5	*Cambarus veteranus*	Cambaridae	(Crayfish, no common name)	VA, WV, KY
2	D	R4	*Distocambarus youngineri*	Cambaridae	Saluda crayfish	SC.
2	U	R4	*Fallicambarus burrisi*	Cambaridae	(Crayfish, no common name)	AL, MS.
2	U	R4	*Fallicambarus danielae*	Cambaridae	(Crayfish, no common name)	MS, AL.
2	U	R4	*Fallicambarus gilpini*	Cambaridae	(Crayfish, no common name)	AR.
2	U	R4	*Fallicambarus gordoni*	Cambaridae	(Crayfish, no common name)	MS.
2	U	R4	*Fallicambarus harpi*	Cambaridae	(Crayfish, no common name)	AR.
2	U	R4	*Fallicambarus jeanae*	Cambaridae	(Crayfish, no common name)	AR.
2	U	R4	*Fallicambarus petilicarpus*	Cambaridae	(Crayfish, no common name)	AR.
2	U	R1	*Halocaridina palahemo*	Atyidae	(Shrimp, no common name)	HI.
2	U	R4	*Hobbseus orconectoides*	Cambaridae	Oktibbeha rivulet crayfish	MS.
2	U	R4	*Orconectes* sp.	Cambaridae	Shelta Cave crayfish	AL.
2	D	R3	*Orconectes indianensis*	Cambaridae	Indiana crayfish	IL, IN.
2	U	R4	*Orconectes jeffersoni*	Cambaridae	Louisville crayfish	KY.
2	U	R4	*Orconectes virginiensis (subgen. Crockerinus).*	Cambaridae	Chowanoke crayfish	NC, VA.
2	U	R4	*Orconectes williamsi*	Camabaridae	(Crayfish, no common name)	AR, MO.
2	U	R1	*Palaemonella burnsi*	Palaemonidae	(Shrimp, no common name)	HI.
2	U	R2	*Palaemonetes antrorum*	Palaemonidae	Texas cave shrimp	TX.
2	U	R4	*Procambarus acherontis*	Cambaridae	Palm Springs Cave crayfish	FL.
3C	N	R4	*Procambarus barbiger*	Cambaridae	Jackson Prairie crayfish	MS.
2	U	R4	*Procambarus cometes*	Cambaridae	Mississippi flatwoods crayfish	MS.
2	U	R4	*Procambarus connus*	Cambaridae	Carrollton crayfish	MS.
2	U	R4	*Procambarus ferrugineus*	Cambaridae	(Crayfish, no common name)	AR.
2	U	R4	*Procambarus fitzpatricki*	Cambaridae	Spinytail crayfish	MS.
3C	N	R4	*Procambarus lagniappe*	Cambaridae	(Crayfish, no common name)	MS.

Status		Lead Region	Scientific name	Family	Common name	Historic range
Category	Trend					
2	D	R4	*Procambarus lepidodactylus*	Cambaridae	Pee Dee lotic crayfish	NC, SC.
2	U	R4	*Procambarus lylei*	Cambaridae	Shutispear crayfish	MS.
2	U	R4	*Procambarus medialis (subgen. Ortmannicus).*	Cambaridae	Albermarle crayfish	NC.
2	D	R4	*Procambarus pictus*	Cambaridae	Black Creek crayfish	FL.
2	U	R4	*Procambarus plumimanus (subgen. Ortmannicus).*	Cambaridae	Croatan crayfish	NC.
2	U	R4	*Procambarus pogum*	Cambaridae	Bearded red crayfish	MS.
2	U	R1	*Procaris hawaiana*	Procarididae	(Shrimp, no common name)	HI.
2	U	R4	*Typhlatya monae*	Atyidae	Mona cave shrimp	PR, West Indies.
2	U	R1	*Vetericaris chaceorum*	Procaridae	(Shrimp, no common name)	HI.
			EARTHWORMS (Annelids, Class Oligochaeta).			
2	U	R1	*Megascolides macelfreshi*	Megascolecidae	Oregon giant earthworm	OR.
			FLATWORMS (Turbellaria).			
2	U	R3	*Kenkia glandulosa (=Macrocotyla g.)*	Kenkiidae	(Planarian, no common name)	MO, IA.
2	U	R1	*Kenkia rhynchida*	Kenkiidae	(Planarian, no common name)	OR.
2	U	R5	*Procotyla typhlops*	Kenkiidae	(Planarian, no common name)	MD, VA.
2	U	R5	*Sphalloplana culveri*	Kenkiidae	Culver's planarian	WV.
2	U	R5	*Sphalloplana pricei*	Kenkiidae	Refton Cave planarian	PA.
2	U	R5	*Sphalloplana virginiana*	Kenkiidae	(Planarian, no common name)	VA.
			HYDROIDS (Cnidaria).			
2	U	R1	*Ostroumovia horii* Naumov	Moerisiidae	(Hydroid, no common name)	HI, Japan
			SPONGES (Porifera).			
2	U	R4	*Corvomeyenia carolinensis*	Spongillidae	Carolina sponge	SC.
2	U	R4	*Dosilia palmeri*	Spongillidae	Oklawaha sponge	FL, Mexico.
2	U	R4	*Ephydatia subtilis*	Spongillidae	Kissimmee sponge	FL.
3B	N	R5	*Heteromeyenia longistylis*	Spongillidae	Pennsylvania sponge	PA.
3B	N	R5	*Spongilla heterosterifa*	Spongillidae	Oneida sponge	NY.

Dated: August 31, 1994.

Mollie H. Beattie

Director, U.S. Fish and Wildlife Service

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Tuesday
November 15, 1994

Part V

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Years 1995–1996 for Rehabilitation Research and Training Centers.

SUMMARY: The Secretary proposes funding priorities for Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1995–1996. The Secretary takes this action to focus research attention on areas of national need. These proposed priorities are intended to improve outcomes for individuals with disabilities.

DATES: Comments must be received on or before December 15, 1994.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Betty Jo Berland, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3424, Washington, D.C. 20202–2601. Internet address: Training____Centers@ed.gov.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland. Telephone: (202) 205–9739. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains four proposed priorities under the RRTC program. The proposed priorities are for research related to independent living and disability policy, management and services of Centers for Independent Living (CILs), low-functioning deaf individuals, and rehabilitation in long-term mental illness. These proposed priorities support the National Education Goals that call for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private entities, including institutions of higher education and Indian tribes or tribal organizations, to conduct coordinated research and training activities. To be eligible, these entities must be of sufficient size, scope, and quality to carry out effectively the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide such training.

The Secretary may make awards through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities. Under the regulations for this program (see 34 CFR 352.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

Description of the Rehabilitation Research and Training Center Program

RRTCs must be operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for service providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of these individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to service providers in order to enhance the quality and effectiveness of services provided to individuals with disabilities. They also provide training, including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to service providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs, and similar activities.

The statute requires that each applicant for a grant from NIDRR demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities. NIDRR encourages all Centers to involve individuals with disabilities and minorities as recipients in both research training and clinical training.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) state that the Secretary reviews the extent to which applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General

The Secretary proposes that the following requirements will apply to all of the RRTCs pursuant to the priorities:

Each RRTC must conduct an integrated program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct a coordinated and advanced program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each Center must disseminate and encourage the use of new rehabilitation knowledge. They must make available all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers, in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following proposed priorities. The Secretary will fund under this competition only applications that meet one of these absolute priorities:

Proposed Priorities 1 and 2: Independent Living

Background

Independent Living (IL) programs operate from a philosophy of consumer control, self-help, advocacy, development of peer relationships and peer role models, and equal access of individuals with significant disabilities to society, programs, and activities. The IL philosophy stresses the concept of empowerment of individuals with disabilities to control their own lives through participation in service planning, management of their own personal assistants, informed decisionmaking, and self-advocacy. In its 25-year history, "Independent Living" has been a philosophy, a social movement, and a service program. These priorities address all of the aspects of independent living, and propose investigations into new applications of independent living concepts, as well as studies and training related to the operations of the publicly-supported IL programs.

The 1992 Amendments to the Rehabilitation Act made major changes to Title VII, which authorizes the support of Centers for Independent Living (CILs) and IL programs under the Federal-State vocational rehabilitation program. The changes that are of most relevance to these priorities are: Establishment of Statewide Independent Living Councils (SILCs) to jointly develop and sign the State plan for independent living; a new definition of a CIL as a consumer-controlled, community-based, cross-disability, nonresidential, private non-profit agency that is designed and operated within a local community by individuals with disabilities and provides an array of independent living services; changes in the State and Federal responsibilities for making grants; and the specific authorization of advocacy services.

NIDRR has funded RRTCs in independent living since 1980. Current RRTCs focus on disability policy, IL management, and IL for underserved populations. The current Centers on policy and management will receive their final funding in fiscal year 1994. In order to determine the continued need for RRTCs in IL, and some possible research needs, NIDRR convened a two-day focus group of experts in IL research and administration in Washington in January, 1994. The following proposed priorities are based largely on the work of this focus group as well as reports from the current research centers and input from other Federal agencies. Focus group participants raised issues for further investigation in the following areas of program operations: compliance with program standards; outcome measures and accountability; improved program services; reaching diverse populations; training, recruitment, and retention of staff; and effective operations of governing boards and SILCs.

The focus group also discussed a number of issues concerning new roles for CILs in societal developments such as violence, homelessness, and information technology, and in the formulation and implementation of policy in areas with particular implications for individuals with disabilities, such as the Americans with Disabilities Act (ADA) and the reform of the health care delivery system.

The RRTC on CIL management and services will be funded jointly by NIDRR and RSA and will be required to work closely with the RSA grantee providing training, technical assistance, and transition assistance to CILs under Part C of Title VII of the amended Rehabilitation Act.

Proposed Priority 1: Independent Living and Disability Policy

An RRTC on independent living and disability policy shall—

- Develop policies and strategies to enhance leadership and empowerment among individuals with disabilities; define the nature and characteristics of empowerment for individuals with disabilities; analyze how empowerment is achieved; assess the roles of participation in disability culture and of peer support in achieving empowerment and successful independent living; identify similarities and differences in the characteristics of empowerment and the means of achieving it for individuals with disabilities from minority ethnic or cultural backgrounds, women, youth, and elderly persons; and develop recommendations for policies and strategies for CILS to enhance empowerment in individuals with disabilities;
- Develop and test an assessment instrument to evaluate the appropriateness for and accessibility to individuals with significant disabilities of generic community services—including vulnerable individuals such as persons with disabilities who are homeless, who are at risk for societal abuse and violence, and those who are from minority backgrounds—and develop strategies for CILs to promote accessible communities in areas where lack of access can be identified;
- Analyze CIL policies regarding activities to promote implementation of the ADA, and develop strategies that CILs might adopt, including an analysis of the implications and consequences of various options;
- Analyze issues related to health care reform as they relate to independent living and the ability of persons with significant disabilities to maintain themselves and their health in settings of their own choice, and develop appropriate strategies for CIL participation in the redesign of the health care system, including roles in influencing reforms, assessing the impact of reforms, educating consumers and providers, and assessing consumer satisfaction;
- Develop strategies and models for the most effective participation of the CIL staff and consumers in the design and conduct of research, and develop policy recommendations for disability consumer organizations and research agencies based on these models; and
- Provide training and information to CILs, policymakers, administrators, and advocates on research findings and policy developments affecting independent living.

Proposed Priority 2: Independent Living Center Management and Services

An RRTC on independent living center management and services shall—

- Develop self-evaluation and management information systems for use by CILs in assessing and improving operations and services, including appropriate outcome measures for CILs, minimum data elements necessary for documenting outcomes, and minimally obtrusive and least cumbersome systems for data collection;
- Develop and implement methodologies to assess compliance with statutory and regulatory requirements, including Federal standards and indicators, and design and test interventions to ensure and maintain compliance;
- Identify best practices and develop and test improved models for CIL services to linguistic, cultural, and ethnic minorities and for the delivery of IL services to diverse populations;
- Identify best practices and develop and test optimal roles for CILs in expanding services to youth with disabilities and in interfacing with education and transition programs to prepare youth for independent living;

• Define appropriate preservice and inservice training for CIL staff, and develop or adapt and pilot test curricula and training with a cross-section of CIL staff;

• Identify best practices in the operation of CIL governing boards and design and deliver training to a sample of CIL governing boards and senior staff, documenting the long-term impact of this effort on CIL operations and outcomes;

• Review the funding patterns of CILs and analyze the impact on Center activities of receiving funding from diverse sources, and design and test several options for generating funding from a variety of sources, including sources independent of public financing;

• Develop models for the use of the National Information Infrastructure (NII) and other communications technologies to enhance the ability of CILs to communicate, share information, and provide improved services to clients;

• Document the initial development, composition, and operation of the SILCs, and develop and provide training and technical assistance to a selected sample of SILCs and document the impact of this effort; and

• Coordinate with and provide investigative methodologies, instruments, and curricula, as well as research findings, to the RSA grantee providing training, technical assistance, and transition assistance to CILs under Part C of Title VII of the amended Rehabilitation Act.

Proposed Priority 3: Improved Outcomes for Individuals with Long-Term Mental Illness

Background

Findings of the National Institute of Mental Health Epidemiological Catchment Area program are that more than 20 percent of all Americans has a diagnosable mental disorder in any given year. (Office of Technology Assessment, *Psychiatric Disabilities, Employment, and the Americans with Disabilities Act*, 1994). Of the population with mental disorders, 4 to 5 million adults are considered "seriously mentally ill" (Rutman, "How Psychiatric Disability Expresses Itself as a Barrier to Employment," NIDRR Consensus Validation Conference on "Strategies to Secure and Maintain Employment for Persons With Long Term Mental Illness", 1993). This priority focuses on that part of the population that has serious and persistent mental disorders that interfere with normal activities of daily life; the term "long-term mentally ill" (LTMI) is also commonly used to refer to this population.

A number of consumer-run community-based programs have developed in recent years offering vocational counseling, educational and training programs, job placement services, and ongoing peer support. These programs often are a low-cost augmentation of scarce community services. (Parrish, J., Center for Mental Health Services, 1994) The programs are, however, very difficult to evaluate (Goldklang, D., American Journal of Community Psychiatry, October, 1991). Nevertheless, in order to identify those elements of community-based programs that are most effective in meeting the needs of individuals with LTMI, there is a need to evaluate the effectiveness of various models of consumer-run programs in: Serving the most significantly disabled individuals; providing appropriate services for individuals from minority cultures; obtaining diverse funding sources; maintaining accountability; training peer service providers; providing an appropriate range and quality of services; providing crisis response services; and achieving optimal outcomes.

In addition, peer-support programs may have a significant role in crisis response and in minimizing the need for involuntary institutionalization or treatment. The Community Support Program (CSP) of the Center for Mental Health Services (CMHS) convened meetings in 1991–1993, "Round Tables on Alternatives to Involuntary Treatment", to identify approaches for minimizing the use of coercive interventions that can impede recovery, independent living, and maintenance of employment. The leadership and the staff of peer-support organizations require appropriate training and preparation if they are to be effective in crisis intervention.

The mental health field has become increasingly aware of the special concerns and unmet needs of women with LTMI. A recent study indicated that 40 percent of the children in foster care in New York City have mothers with mental illness (New York State Office of Mental Health). Peer-operated programs are a potential resource to assist these women to develop the capacity to parent children and to obtain and maintain housing, employment, and social supports in the community (Salasin, S., Center for Mental Health Services, 1994).

There are strong indications that consumer-run mental health organizations have not been as prevalent or as effective in minority cultures. Approaches to this problem include providing more training in cultural awareness and sensitivity (Cook, *J. A., NAMI Outreach Strategies to African American and Hispanic Families: Results of a National Telephone Survey*, 1992) to existing peer-operated programs, and developing programs operated by or representing minority individuals and cultures.

The National Task Force for Rehabilitation and Employment of Persons with Psychiatric Disabilities called, in 1993, for improved dissemination of useful research findings and best practices to all appropriate target audiences. The Task Force also recommended that the findings be translated in ways that are useful for policymakers, administrators, consumers, and families of diverse cultural backgrounds. The mental health field currently does not make full use of computerized information systems to access knowledge about long-term mental illness, or to link researchers, service providers, trainers, educators, and consumers for on-line discussion and information sharing. (Nance, R., Illinois Dept. of Mental Health and Developmental Disabilities, 1993, letter to CMHS). With effective training and technical assistance, consumer organizations could use technology to access resources, establish electronic bulletin boards, and conduct conferences and training.

The National Institute on Disability and Rehabilitation Research proposes to support an RRTC on LTMI in collaboration with the Center for Mental Health Services of the Substance Abuse and Mental Health Services Administration. This RRTC on LTMI will focus on the role of peer support and consumer-operated community-based programs in improving independence, employment, and community integration.

Priority

An RRTC on improved outcomes for individuals with long-term mental illness shall—

• Develop and test an evaluation protocol for consumer-run programs using outcome measures based on empirical data on recovery, independence, empowerment, employment, community integration, and cultural competency;

• Develop methodology and identify and evaluate community-based and workplace-based early intervention and crisis response services, including those using peer support, in terms of effective crisis planning approaches, avoidance of coercive treatment strategies, and

rapid return to employment and independent living in the community;

• Identify best practices to meet the special needs of women with LTMI, considering such areas as personal support networks and contingency plans, parenting skills, and techniques for vocational planning;

• Identify and analyze specific characteristics of the structure and process of consumer-run programs for various major ethnic, cultural, and linguistic minorities and develop models for cultural diversity training and for supporting the development of peer-support programs in minority cultures;

• Develop and test methodologies for participatory research and consumer interface with the research process;

• Develop, test, and implement model training programs for preservice and inservice training of peers as service providers, ensuring that culturally sensitive training modules are developed for use with minorities; and

• Identify channels of information exchange among and between consumers and service providers, and develop training and technical assistance strategies to promote the use of electronic information networks.

Proposed Priority 4: Improved Outcomes for Low-Functioning Deaf Individuals

Background

Approximately one of every 1,000 infants is born with a hearing impairment that is severe enough to prevent the spontaneous development of spoken language, according to the *National Strategic Research Plan for Deafness and Hearing Impairment*, National Institute on Deafness and Other Communication Disorders (NIDCD), 1992. While many of these prelingually deaf and severely hearing-impaired individuals complete education and attain employment and independence, the report of the Commission on the Education of the Deaf (COED) indicates that the majority of deaf students do not go into any postsecondary education, and that many need further education or training to obtain appropriate employment (COED, Toward Equality: Education of the Deaf, 1988). Moreover, an estimated 100,000 deaf people are unemployed or seriously underemployed due to such problems as deficiencies in language performance and related psychological, vocational, and social underdevelopment. (COED, 1988, p. 69.)

These "low-functioning" deaf (LFD) individuals often do not have comprehensive rehabilitation training and related services accessible and available to them. This segment of the deaf population—sometimes called "low functioning", "low achieving", "multiple disabled deaf", or "traditionally underserved deaf"—requires long term and intensive habilitative and rehabilitative services and is the focus of this priority.

The deaf individuals to be addressed by the proposed research frequently exhibit deficits in vocational skills, independent living skills, manual and oral communication skills, social skills, and academic skills, and many have significant secondary disabilities. Many are from socioeconomically and culturally disadvantaged backgrounds, and many are from ethnic or linguistic minorities. Services to this population are scarce and fragmented. In addition to understanding the social, vocational, and educational implications of the disability, service providers must also be able to communicate with the individuals, often through less than optimal means, such as rudimentary sign language.

In 1990, NIDRR funded an RRTC on Traditionally Underserved Persons Who are Deaf, located at the University of Northern Illinois, to study the parameters and service needs of this population. Funding for this Center ends in fiscal year 1994. Activities of this Center include a needs assessment, development of a model service program, outcome studies, qualitative and quantitative analyses and surveys, development of curriculum and training materials, conduct of training seminars, and provision of technical assistance. This new proposed Center will have the benefit of the work of the previous Center on Traditionally Underserved Deaf Populations. The new Center will be required to coordinate its activities with related projects for this population funded by RSA and projects dealing with hearing-impaired children and youth funded by the Office of Special Education Programs.

In January 1994, NIDRR convened a focus group of consumers and providers of services, researchers, and advocates to consider the issue of the need for ongoing research in the area of low-functioning deaf individuals and to identify specific questions. The input from the panel and other experts from the field has contributed to the decision to fund additional research to understand more fully the population of low-functioning deaf individuals, especially those with secondary disabilities, and to develop improved interventions and service systems for those individuals.

Priority

An RRTC on improved services for low-functioning deaf individuals shall—

• Define the population further by detailing the social, cultural, educational, physical, psychological, communicative, and cognitive characteristics of these individuals, especially those with secondary disabilities;

• Determine the effectiveness of existing assessment techniques for deaf persons who have other disabilities and develop and evaluate new assessment methods and techniques with particular attention to the cultural relevance and cognitive appropriateness of these assessment tools;

• Evaluate the applicability of a variety of language and literacy development strategies, including alternatives such as survival skills language and functional workplace literacy training, to enhance language and literacy skills in this population, including those from minority cultural backgrounds;

• Identify the range of services and service resources required to meet the needs of this population; examine patterns of service usage; develop mechanisms for coordination among agencies and across service systems to foster a comprehensive system of educational, social service, vocational, housing, mental health, and recreational services for low-functioning deaf individuals, with specific attention to systems that serve individuals from diverse cultural backgrounds; and recommend Federal and State level policy changes needed to promote comprehensive service systems;

• Identify the rehabilitation service needs of low-functioning deaf individuals from minority populations, identify the cultural and physical barriers to accessing services for these populations, and develop culturally sensitive service models and test these in existing service delivery programs;

• Determine the necessary competencies and attitudes for service providers working with low-functioning deaf individuals, identify and develop appropriate personnel training and train service providers to deliver enhanced services to this population; and

• Develop effective materials and media to enhance the dissemination of new knowledge on LFD to appropriate audiences, including LFD individuals and their families, independent living centers, educators, and health care practitioners.

Invitation to Comment

Interested persons are invited to submit comments and recommendations

regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3423, Mary Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 8:00 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR Parts 350 and 352

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers).

Dated: November 8, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–28096 Filed 11–14–94; 8:45 am]

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federal register

Tuesday
November 15, 1994

Part VI

Department of the Treasury

Fiscal Service

31 CFR Parts 306 and 357
General Regulations Governing U.S. Securities and Book-Entry Treasury Bonds, Notes and Bills; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 306 and 357

General Regulations Governing U.S. Securities; Regulations Governing Book-Entry Treasury Bonds, Notes and Bills

AGENCY: Department of the Treasury, Fiscal Service, Bureau of the Public Debt.

ACTION: Final rule.

SUMMARY: This rule amends agency regulations to recognize as certifying individuals for transactions in and assignments of Treasury marketable securities officers and employees of securities brokers, dealers, and related institutions that are members of the Securities Transfer Agents Medallion Program (STAMP), the Stock Exchanges Medallion Program (SEMP), and the New York Stock Exchange Incorporated Medallion Signature Program (MSP). The change is being made to conform Treasury procedures with currently accepted commercial practice, in order to make it more convenient for investors to have their signatures certified (guaranteed) in transactions in marketable Treasury securities.

EFFECTIVE DATE: November 15, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas A. Tracy, Office of the Assistant Commissioner (Securities and Accounting Services), (202) 874–4190, or Cynthia Reese, Office of the Chief Counsel, (202) 219–3320.

SUPPLEMENTARY INFORMATION: Treasury has determined that it would be in keeping with currently accepted commercial practice to recognize officers and employees of members of the STAMP, SEMP, and MSP signature guarantee programs as certifying individuals for transactions in and assignments of marketable Treasury securities. Under the regulations governing marketable Treasury securities, a certifying individual, in certifying an investor's signature, makes assurances to Treasury that the signature is genuine. Depository institutions (such as banks) are already recognized as institutions whose officers and employees are eligible to act in this capacity; many of these institutions are members of STAMP. Treasury currently recognizes their use of the STAMP signature guarantee stamp as evidence of their authority.

This action is in response to the recent establishment of the STAMP, SEMP, and MSP signature guarantee programs as a consequence of the promulgation of Rule 17 Ad–15 (17 CFR 240.17Ad–15), issued under authority of the Securities Exchange Act of 1934. STAMP, SEMP, and MSP have been endorsed by the Securities Transfer Association and these programs are widely accepted in the financial community.

Other changes have been made in order to update, clarify and conform the certification provisions of existing Part 306, governing registered definitive securities, to their counterparts in more recently issued Part 357, governing book-entry Treasury securities.

In addition, a class of certifying officials whose authority is limited to assignments for redemption of certificated securities is deleted as obsolete. (See current § 306.45(c)(1).) Such assignments and, hence, certifications are no longer required. Finally, a cross reference in Section 357.30 has been corrected.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action", pursuant to Executive Order 12866. The regulatory review procedures, therefore, do not apply. The notice, public comment, and delayed effective date provisions of the Administrative Procedure Act do not apply because this final rule relates to public contracts and procedures for United States securities, 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, do not apply. There are no collections of information required by this final rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Parts 306 and 357

Banks, Banking, Bonds, Government Securities, Federal Reserve System.

Dated: November 7, 1994.

Gerald Murphy,

Fiscal Assistant Secretary.

Parts 306 and 357 of Chapter II of Title 31 of the Code of Federal Regulations are amended as follows:

PART 306—GENERAL REGULATIONS GOVERNING U.S. SECURITIES

1. The authority citation for Part 306 is revised to read as follows:

Authority: 31 U.S.C. Chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

2. In § 306.2, paragraphs (p) through (r) are redesignated (r) through (t), paragraphs (g) through (o) are redesignated (h) through (p), and new paragraphs (g) and (q) are added to read as follows:

§ 306.2 Definitions of words and terms as used in these regulations.

* * * * *

(g) *Depository institution* means an entity described in section 19(b)(1)(A)(i)—(vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)—(vi)). Under section 19(b) of the Federal Reserve Act, the term *depository institution* includes:

(1) Any insured bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(2) Any mutual savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(3) Any savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(4) Any insured credit union as defined in 12 U.S.C. 1752 or any credit union which is eligible to make application to become an insured credit union under 12 U.S.C. 1781;

(5) Any member as defined in 12 U.S.C. 1422; and

(6) Any savings association (as defined in 12 U.S.C. 1813) which is an insured depository institution, as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1811, *et seq.*, or is eligible to apply to become an insured depository institution under such Act.

* * * * *

(q) *Signature guarantee program* means a signature guarantee program established in response to Rule 17 Ad–15 (17 CFR 240.17Ad–15), issued under authority of the Securities Exchange Act of 1934. For the purpose of the regulations, in this part, the Securities Transfer Agents Medallion Program (STAMP), the Stock Exchanges Medallion Program (SEMP), and the New York Stock Exchange, Inc. Medallion Signature Program (MSP) are recognized by Treasury as such signature guarantee programs.

* * * * *

3. Section 306.40 is revised to read as follows:

§ 306.40 Execution of assignments.

The assignment of a registered security should be executed by the owner, or his or her authorized representative, in the presence of an individual authorized to certify assignments. All assignments must be made on the backs of the securities, unless otherwise authorized by the

Bureau, a Federal Reserve Bank or branch. An assignment by mark (X) must be witnessed not only by a certifying individual, but also by at least one other person, who should add an endorsement substantially as follows: "Witness to signature by mark," followed by the witness' signature and address.

4. Section 306.45 is revised to read as follows:

§306.45 Certifying individuals.

(a) *General.* The following individuals may certify assignments of, or forms with respect to, securities:

(1) Officers and employees of depository institutions, corporate central credit unions, and institutions that are members of Treasury-recognized signature guarantee programs who have been authorized:

(i) Generally to bind their respective institutions by their acts;

(ii) Unqualifiedly to guarantee signatures to assignments of securities; or

(iii) To certify assignments of securities.

(2) Officers and authorized employees of Federal Reserve Banks and branches.

(3) Officers of Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives, and Federal Home Loan Banks.

(4) Commissioned officers and warrant officers of the Armed Forces of the United States but only with respect to signatures executed by Armed Forces personnel, civilian field employees, and members of their families.

(5) U.S. Attorneys, Collectors of Customs, and Regional Commissioners, District Directors, and Service Center Directors, Internal Revenue Service.

(6) Judges and Clerks of U.S. Courts.

(7) Such other persons as the Commissioner of the Public Debt or his designee may authorize.

(b) *Foreign countries.* The following individuals are authorized to certify assignments of, or forms with respect to, securities executed in a foreign country:

(1) United States diplomatic or consular officials.

(2) Managers and officers of foreign branches of depository institutions and institutions that are members of Treasury-recognized signature guarantee programs.

(3) Notaries public and other officers authorized to administer oaths, provided their official position and authority are certified by a United States diplomatic or consular official under seal of the office.

(c) *Duties and liabilities of certifying individuals.*

(1) *General.* Except as specified in paragraph (c)(2) of this section, a certifying individual shall require that the security or related form be signed in the certifying individual's presence after he or she has established the identity of the person seeking the certification. An employee who is not an officer should insert the words "Authorized signature" in the space provided for the title. A certifying individual and the organization for which he or she is acting are jointly and severally liable for any loss the United States may incur as a result of the individual's negligence in making the certification.

(2) *Signature guaranteed.* The assignment or related form need not be executed in the presence of a certifying individual if he or she unqualifiedly guarantees the signature, in which case the certifying individual shall, after the signature, add the following endorsement: "Signature guaranteed, First National Bank of Smithville, Smithville, NH, by A.B. Doe, President", and add the date. In guaranteeing a signature, the certifying individual and the organization for which he or she is acting warrant to the Department that the signature is genuine and that the signer had the legal capacity to execute the assignment or related form.

(3) *Absence of signature guaranteed by depository institution.* A security or related form need not be actually signed by the owner in any case where a certifying individual associated with a depository institution has placed an endorsement on the security or the form reading substantially as follows: "Absence of signature by owner and validity of transaction guaranteed, Second State Bank of Jonesville, Jonesville, NC, by B.R. Butler, Vice President". The endorsement should be dated, and the seal of the institution should be added. This form of endorsement is an unconditional guarantee to the Department that the institution is acting for the owner under proper authorization.

(d) *Evidence of certifying individual's authority.* The authority of a certifying individual to act is evidenced by affixing to the certification the following:

(1) *Officers and employees of depository institutions.* The institution's seal or signature guarantee stamp; if the institution is an authorized paying agent for U.S. Savings Bonds, a legible imprint of the paying agent's stamp; or, if the institution is a member of the Securities Transfer Agents Medallion Program (STAMP), a legible imprint of the STAMP signature guarantee stamp.

(2) *Officers and authorized employees of institutions that are members of Treasury-recognized signature guarantee programs.* A legible imprint of the program's signature guarantee stamp, e.g., the STAMP, SEMP, or MSP stamp for members of the Securities Transfer Agents Medallion Program, the Stock Exchanges Medallion Program, or the New York Stock Exchange Incorporated Medallion Signature Program, respectively.

(3) *Officers and authorized employees of Federal Reserve Banks.* Whatever is prescribed in procedures established by the Department.

(4) *Officers and employees of corporate central credit unions and other entities listed in paragraph (a)(3) of this section.* The entity's seal.

(5) *Notaries public, diplomatic or consular officials.* The official seal or stamp of the office. If the certifying individual has no seal or stamp, then the official's position must be certified by some other authorized individual, under seal or stamp, or otherwise proved to the satisfaction of the Department.

(6) *Commissioned or warrant officers of the United States Armed Forces.* A statement which sets out the officer's rank and the fact that the person executing the assignment or form is one whose signature the officer is authorized to certify under the regulations in this part.

(7) *A judge or clerk of the court.* The seal of the court.

(8) *Any other certifying individual.* The official seal or stamp of the office. If the certifying individual has no seal or stamp, then the certifying individual's position and signature must be certified by some other authorized individual under official seal or stamp, or otherwise proved to the satisfaction of the Department.

(e) *Interested persons not to act as certifying individual.* Neither the transferor, the transferee, nor any person having an interest in a security involved in the transaction may act as a certifying individual. However, an authorized officer or employee of a depository institution or of an institution that is a member of a Treasury-recognized signature guarantee program may act as a certifying individual on a security or related form for transfer of a security to the institution, or any security or related form executed by another individual on behalf of the institution.

5. Sections 306.46, 306.47, 306.48 and 306.49 are removed.

PART 357—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS

6. The authority citation for Part 357 is revised to read as follows:

Authority: 31 U.S.C. Chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

7. Section 357.3 is amended as follows:

A. In the definition of *Depository institution*, paragraph (g) is removed, and the introductory text and paragraphs (d), (e), and (f) are revised to read as follows:

§ 357.3 Definitions.

* * * * *

Depository institution means an entity described in section 19(b)(1)(A)(i)–(vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)–(vi). Under section 19(b) of the Federal Reserve Act, the term *depository institution* includes:

* * * * *

(d) Any insured credit union as defined in 12 U.S.C. 1752 or any credit union which is eligible to make application to become an insured credit union under 12 U.S.C. 1781;

(e) Any member as defined in 12 U.S.C. 1422; and

(f) Any savings association (as defined in 12 U.S.C. 1813) which is an insured depository institution, as defined in the Federal Deposit Insurance Act, 12 U.S.C. 1811, *et seq.*, or is eligible to apply to become an insured depository institution under such Act.

B. A new definition is added to § 357.3, between the definitions for *Security interest and pledge* and *Taxpayer identifying number or TIN*, to read as follows:

* * * * *

Signature guarantee program means a signature guarantee program established in response to Rule 17 Ad–15 (17 CFR 240.17Ad–15), issued under authority of the Securities Exchange Act of 1934. For the purpose of the regulations in this part, the Securities Transfer Agents Medallion Program (STAMP), the Stock Exchanges Medallion Program (SEMP), and the New York Stock Exchange, Inc. Medallion Signature Program (MSP) are recognized by Treasury as such signature guarantee programs.

* * * * *

8. Section 357.30 is amended by revising the first sentence to read as follows:

§ 357.30 Cases of delay or suspension of payment.

If evidence required by the Department in support of a transaction request is not received by the Department at least twenty (20) calendar days before the maturity date of the security, or if payment at maturity has been suspended pursuant to § 357.26(d), then, except as provided in § 357.27, in cases of reinvestment, the Department will redeem the security and hold the redemption proceeds in the same form of registration as the security redeemed, pending further disposition.* * *

9. Section 357.31 is revised to read as follows:

§ 357.31 Certifying individuals.

(a) *General.* The following individuals may certify signatures on transaction request forms:

(1) Officers and employees of depository institutions, corporate central credit unions, and institutions that are members of Treasury-recognized signature guarantee programs who have been authorized:

(i) Generally to bind their respective institutions by their acts;

(ii) Unqualifiedly to guarantee signatures to assignments of securities; or

(iii) To certify assignments of securities.

(2) Officers and authorized employees of Federal Reserve Banks.

(3) Officers of Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives, the Central Bank for Cooperatives, and Federal Home Loan Banks.

(4) Commissioned officers and warrant officers of the Armed Forces of the United States but only with respect to signatures executed by Armed Forces personnel, civilian field employees, and members of their families.

(5) Such other persons as the Commissioner of the Public Debt or his designee may authorize.

(b) *Foreign countries.* The following individuals are authorized to certify signatures on transaction request forms executed in a foreign country:

(1) United States diplomatic or consular officials.

(2) Managers and officers of foreign branches of depository institutions and institutions that are members of Treasury-recognized signature guarantee programs.

(3) Notaries public and other officers authorized to administer oaths, provided their official position and authority are certified by a United States diplomatic or consular official under seal of the office.

(c) *Duties and liabilities of certifying individuals.*

(1) *General.* Except as specified in paragraph (c)(2) of this section, a certifying individual shall require that the transaction request form be signed in the certifying individual's presence after he or she has established the identity of the person seeking the certification. An employee who is not an officer should insert the words "Authorized signature" in the space provided for the title. A certifying individual and the organization for which he or she is acting are jointly and severally liable for any loss the United States may incur as a result of the individual's negligence in making the certification.

(2) *Signature guaranteed.* The transaction request form need not be executed in the presence of a certifying individual if he or she unqualifiedly guarantees the signature, in which case the certifying individual shall, after the signature, add the following endorsement: "Signature guaranteed, First National Bank of Smithville, Smithville, NH, by A.B. Doe, President", and add the date. In guaranteeing a signature, the certifying individual and the organization for which he or she is acting warrant to the Department that the signature is genuine and that the signer had the legal capacity to execute the transaction request.

(3) *Absence of signature guaranteed by depository institution.* A transaction request form need not be actually signed by the owner in any case where a certifying individual associated with a depository institution has placed an endorsement on the form reading substantially as follows: "Absence of signature by owner and validity of transaction guaranteed, Second State Bank of Jonesville, Jonesville, NC, by B.R. Butler, Vice President". The endorsement should be dated, and the seal of the institution should be added. This form of endorsement is an unconditional guarantee to the Department that the institution is acting for the owner under proper authorization.

(d) *Evidence of certifying individual's authority.* The authority of a certifying individual to act is evidenced by affixing to the certification the following:

(1) *Officers and employees of depository institutions.* The institution's seal or signature guarantee stamp; if the institution is an authorized paying agent for U.S. Savings Bonds, a legible imprint of the paying agent's stamp; or, if the institution is a member of the Security Transfer Agents Medallion Program (STAMP), a legible imprint of the STAMP signature guarantee stamp.

(2) *Officers and authorized employees of institutions that are members of Treasury-recognized signature guarantee programs.* A legible imprint of the program's signature guarantee stamp, e.g., the STAMP, SEMP, MSP stamp for members of the Securities Transfer Agents Medallion Program, the Stock Exchanges Medallion Program, or the New York Stock Exchange Incorporated Medallion Signature Program, respectively.

(3) *Officers and authorized employees of Federal Reserve Banks.* Whatever is prescribed in procedures established by the Department.

(4) *Officers and employees of corporate central credit unions and other entities listed in paragraph (a)(3) of this section.* The entity's seal.

(5) *Notaries public, diplomatic or consular officials.* The official seal or stamp of the office. If the certifying individual has no seal or stamp, then the official's position must be certified by some other authorized individual, under seal or stamp, or otherwise proved to the satisfaction of the Department.

(6) *Commissioned or warrant officers of the United States Armed Forces.* A statement which sets out the officer's rank and the fact that the person executing the transaction request is one whose signature the officer is authorized to certify under the regulations in this part.

(7) *Such other persons as the Commissioner of the Public Debt or his designee may authorize.* The evidence specified by the Commissioner or his designee.

(e) *Interested persons not to act as certifying individual.* Neither the transferor, the transferee, nor any person having an interest in a security involved in the transaction may act as a certifying individual. However, an authorized officer or employee of a depository institution or of an institution that is a member of a Treasury-recognized signature guarantee program may act as a certifying individual on a transaction request for transfer of a security to the institution, or any request executed by another individual on behalf of the institution.

[FR Doc. 94–27977 Filed 11–14–94; 8:45 am]

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Federal Register

Tuesday
November 15, 1994

Part VII

National Transportation Safety Board

49 CFR Parts 821 and 826
Rules of Practice for Aviation and Civil Penalty Proceedings; Final Rules

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 821

Aviation Rules of Practice; General Revisions

AGENCY: National Transportation Safety Board.

ACTION: Final rules.

SUMMARY: The NTSB is adopting numerous revisions to its rules of practice governing air safety enforcement and related cases. These revisions are intended to improve the efficiency and fairness of these rules of practice.

EFFECTIVE DATE: The new rules are effective on January 17, 1995.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 382–6540.

SUPPLEMENTARY INFORMATION: By notice (NPR) in the **Federal Register** published October 20, 1993 (58 FR 54102), the NTSB proposed to revise its rules, at 49 CFR Part 821, that govern practice and procedure in aviation safety enforcement and related cases. The NPR identified a number of rules that we believed should be revised, and we invited users of our rules to recommend other rule changes they considered necessary or desirable. We received six comments and two replies.[1] What follows is a rule-by-rule discussion of the changes we are adopting here.[2]

1. Although we proposed no change to § 821.1, which contains definitions used in the rules of practice, the FAA proposes that we expand the definition of "initial decision" to include orders on motions that have the effect of terminating the proceeding, such as motions for summary judgment. We will adopt that suggestion.

2. We proposed adding a new § 821.3 in which the letter prefixes of our docket-numbering system are explained. The NTSB Bar comments that the current numbering system is self-explanatory, and sees no need for the proposed addition. In contrast, NAAP thinks this change is useful, especially for pro se participants in Board proceedings. We can see only benefits, and adopt the proposal, as corrected by the FAA.[3] We have considered the FAA's other proposed additions, but do not believe them necessary to this relatively simple rule, nor do we see a need to include the FAA case number on our documents. We have, however, updated the statutory citations to reflect the new codification completed in Pub. L. 103–272.

3. We proposed to revise § 821.6(d) to require notices of appearance from parties' representatives as well as their attorneys. NAAP contends that *pro se* participants should be discouraged and objects to provisions allowing the participation of non-attorney representatives. We recognize disadvantages in *pro se* participation and, in our information provided respondents on their filing of a notice of appeal, we invite early retention of counsel. We will not, however, go further, as we do not intend to place greater burdens on respondents by requiring them to hire and pay counsel. Neither the Board's enabling statute nor the Administrative Procedure Act, 5 U.S.C. 500 *et seq.*, requires representation only by attorneys. NAAP's citation to the FA Act, § 1001, relating to the precursor Civil Aeronautics Board, does not govern.

4. Our current rules contain many different copy requirements that often are not followed by the parties. In subparagraph § 821.7(b), we proposed to reduce the number to an original and 1 copy, except where otherwise provided in the rules. We attempted throughout to minimize the number of copies required of the parties. We sought comment especially on whether there should be one uniform copy requirement of an original and 4 copies. In this rule, we also proposed to permit filing and service of pleadings via facsimile transmission.

Most parties that commented on the copy requirement prefer a uniform requirement of an original and 1 copy. We will adopt one rule for all documents, but must require more than 1 copy, as that is not always adequate for our use (for example, we need more than 1 copy of briefs). At a time when the government is increasingly assessing fees for services, it would be inappropriate for the Board to subsidize parties' copying expenses. An original and 3 copies will be required.

Our proposal to allow filing by facsimile produced more questions and complications than expected. Accordingly, we will continue current practice and not adopt the proposal. Faxes may continue to be used as a convenience, for example when immediate receipt by the Board is required, but will not substitute for any filing or copy requirement of these rules. Thus, the document that is faxed must also be sent to the Board via an authorized service method, with the confirmation copy to be noted as such (to minimize confusion). This is normal business practice, and will not create a problem for the Board provided parties properly indicate confirmation copies.

As recommended, we have added addresses and details the parties suggested. We will defer, pending technology improvements, the proposal that we accept two-sided copies.

5. The most significant changes proposed to § 821.8 related to our use of certified mail in serving our decisions and our addition of a sample certificate of service. As to service by others, we have adopted the suggested changes to the sample certificate. As to our service via certified mail, we will adopt the proposed change. That is, we will discontinue serving the FAA via certified mail. We are aware of no receipt problem, having had no difficulty receiving first class mail sent us by the FAA. We are not persuaded by the FAA's equal treatment argument. Certified mail for respondents is appropriate, in light of the nature of the proceedings and their effect on them.

It was suggested that the Board place the service date on the front of every document it serves. We agree, and will do so. We do not agree, however, with the suggestion that, prior to the appearance of an attorney or other representative, service be made not only on the carrier's designated agent (see § 821.8(d)), but also on the carrier's chief executive. The purpose of the agent here is to receive service; it is reasonable to expect the agent will promptly advise its principal.

6. Our proposal, in § 821.9, to liberalize the filing of amicus curiae briefs was well received. We do not, however, see the need to adopt the FAA's suggestion that the standard for filing be the same as for intervention generally. The rule is intended to be more flexible: amicus briefs are encouraged, but may be disallowed if too late.

EAA and NAAP, in connection with their discussion of amicus briefs, recommend that the Board hear oral argument more often, and object to current rule § 821.48(g), which provides that it will not normally be held. We are not inclined to change our rules or practice in this regard. The Aviation Safety Enforcement docket lends itself

[1] Comments were filed by the Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), the Federal Aviation Administration (FAA), attorney Mark T. McDermott, the National Transportation Safety Board Bar Association (NTSB Bar), and North American Aviation Properties, Inc. (NAAP). Replies were filed by the FAA and NAAP.

[2] Where the parties had no comments and we have no further changes, the proposed rule is adopted without discussion. There are also minor editorial changes that we have not discussed. Changes proposed by the parties but not adopted here have been considered nevertheless.

[3] The FAA notes that "CD" stands for certificate denial, not certificates of denial.

to review on a written record. On appeal, the issues are clearly set forth, and may be fully argued in writing. Nevertheless, where we believe oral argument, with discussion and questioning, would be useful, we will not hesitate to schedule it. Accordingly, the rule is adopted as proposed.

7. In our NPR, we invited suggestions for rule changes other than those we proposed. The NTSB Bar proposed to permit parties to stipulate to extensions of time "or other appropriate relief" and to provide that extensions of time or other relief will be granted where there has been "excusable neglect" and no prejudice results. We decline to adopt this proposed change. The Board must be able to control its proceedings and liberally grants extensions. We will, however, codify our existing practice by adding a provision to § 821.11 allowing oral requests for extension of time.

8. Our first proposed change to § 821.12, adding a reference to compliance with statutory requirements in making amendments to a complaint, engendered considerable discussion. Mark McDermott comments that the FAA is making too many last-minute amendments, and suggests that the Board should prohibit amendments in emergency cases. NAAP believes that our proposed reference is too narrow. It proposes, and argues that the law requires, that the Administrator be required to reissue any amended order, and that amendment at the hearing not be permitted. The FAA responds that a rule requiring amendments to be consistent with informal conference requirements is not necessary, but if one is adopted, our proposal should be modified because the statute can be met by other means. It recommends we include language directly from (former) 49 U.S.C. App. 1429(a). The FAA continues that amendments to complaints should be allowed by the law judge when respondent will not be unduly prejudiced and that technical amendments should be permitted at any time. It notes that parties are already able to object to amendments that do not comply with *Oceanair of Florida* v. *Nat. Transp. Safety Bd.*, 888 F.2d 767 (11th Cir. 1989).

We are not convinced that our current practice does not adequately balance the interests and rights of the parties. The law judge has discretion to allow amendment of the complaint, and does so only after full consideration of the positions of the parties and a finding that amendment will not prejudice respondent, or prohibit a fair hearing. Commentors have pointed to no particular case where they believe these concerns were not properly balanced, and the number of amendments, *per se*, does not control any conclusion in this regard.

Accordingly, we will not amend the rule to restrict complaint amendments but will continue to handle the question case by case. There were no comments on our proposal to permit withdrawal of some pleadings without our permission, and we will adopt that language as drafted.

9. We offered no proposed change to § 821.13, which governs the manner in which a party may waive rights (for example, the statutory right in an emergency case that a decision be issued in 60 days). The FAA proposes that we allow oral waivers, especially oral waiver of expedited review in emergencies, as the FAA believes this is common practice. We agree, however, with NAAP, which replies that waivers need to be on the record, and this is what the rule currently requires. To the extent it is not being done (and we are not aware of a serious problem in this regard), the potential for later disputes increases, and we encourage all parties to ensure that waivers are memorialized in the record in some fashion.

10. In light of the parties' suggestions that we specify in the rules to what office documents should be sent, we will amend § 821.14 to include a reference to the Office of General Counsel, rather than the current broad reference to the Board.

11. The rule changes proposed to § 821.19 involve discovery and the preservation of evidence. Mark McDermott suggests that we should only require that discovery documents be filed with the law judges when there is a dispute. The FAA agrees, arguing that review of this material can prejudice the law judge due to prehearing familiarity with a document that is subsequently excluded. NAAP disagrees, and believes that law judges should have prehearing familiarity with the issues and have the skills to disregard excluded evidence.

We have found that both discovery requests and responses are useful in reaching an informed decision, and we see no justifiable concern that our law judges are unable to ignore information they may have read that is later excluded from the record. Advance information about the case, as can come from familiarity with the discovery materials, promotes efficient processing and allows the law judge to be as prepared as the parties when the hearing starts.

The parties also commented extensively on their perceptions of inequities in the discovery process. Mr. McDermott, for example, seeks a rule specifically to authorize protective orders in the case of FAA harassment through excessive discovery. EAA questions whether our proposed change to subparagraph (d) is strong enough. It and NAAP support a more explicit rule authorizing sanctions for failure to comply with discovery. NAAP also seeks a rule that precludes the FAA from using discovery as a substitute for a prior investigation,[4] and believes that the proposed subparagraph (d) does not do enough to prevent destruction of relevant evidence, namely air traffic control tapes.

The FAA, in turn, believes that expansive discovery should be curtailed, and replies to NAAP that subparagraph (d) is not necessary in light of *Administrator* v. *Ryan*, NTSB Order EA–3238 (1990) (when evidence has been requested in a timely fashion, it is incumbent on the Administrator to ensure its safekeeping). If we adopt this proposal, the FAA argues, its language should be more specific and separate the failure to preserve from the failure to produce. The FAA also suggests numerous interpretive difficulties with the wording of this proposed rule.

The parties' disagreement regarding evidence production, and ATC tapes in particular, stems from the FAA's practice of reusing tapes in 15-day cycles if no request to preserve the tape has been made. We have accepted this practice as a reasonable accommodation of the interests of both the FAA and airmen. We have no authority to force FAA to amend its practice, nor are we convinced by the arguments made here that the FAA's failure to preserve a tape should in every case result in an adverse conclusion regarding its contents.[5]

Beyond that, and as a general rule, we believe that the proposed rule is flexible, merely reflects our current precedent and practice, and will allow our law judges, as appropriate, ample authority to compel discovery, to curtail its abuse, and to fashion appropriate remedies in the event it is demonstrated that either party unreasonably has failed to respond completely or has improperly failed to preserve timely requested evidence.

12. In § 821.20(c), we proposed changes that would codify case law on witness fees and apply to Board employee witnesses in enforcement cases the same rules we apply to the

[4] NAAP cites *Administrator* v. *Smith*, 4 NTSB 978, 979 note 6 (1983), in support, but we do not read that case so broadly as to warrant an absolute rule. The decision demonstrates, to the contrary, that the circumstances of each case must be considered in determining the appropriate sanction.

[5] In connection with review of our discovery rules, we have considered the recent amendment to the Federal Rules.

testimony of our employees in accident-related civil proceedings. We received only one comment, suggesting that this rule be expanded to FAA employees as well, thus potentially limiting the testimony of FAA personnel who assisted the Board in its investigation. This is relevant in cases where an investigation of an accident or incident is followed by an FAA enforcement action. The FAA opposes this proposal, stating it would raise questions about the FAA's ability or willingness to assist the Board in its investigations.

We are well aware of NAAP's concerns, but are not convinced that the rule it proposes should be adopted. Our declination here, however, should not be interpreted as lack of interest in the issue. To the contrary, we specifically reserve the point, and intend to study it in the future and continue to discuss with the FAA the proper relationship between the two functions.

13. We proposed minor changes to § 821.24(d), dealing with medical proceedings, to reflect the special issuance process. Mr. McDermott proposes to make the exchange of medical information a mutual obligation instead of putting restrictions on new evidence only on petitioner, as the rule does. He believes that the FAA should be precluded from using medical evidence not provided petitioner at least 30 days before the hearing. FAA responds that, as a practical matter, all medical evidence is in respondent's hands.

Our change in (e) was intended simply to address the situation where, prior to hearing, but unknown to the FAA, a petitioner undergoes new testing or evaluation. If this occurs, the FAA is denied the opportunity to review, in advance of the hearing, medical conclusions that may be different from the medical information (typically obtained from petitioner or from his physicians, with his consent) on which the FAA's denial of certification was based. If the FAA is surprised at the hearing by new evidence, it must have the opportunity for its experts to review the information.[6] In contrast, from a petitioner's standpoint, whatever medical data the FAA has received is either familiar to petitioner, having come from his own doctors, or is discoverable by him prior to the hearing. While we therefore will not make this change proposed by Mr. McDermott, we will add a clarifying sentence to subparagraph (d) explicitly indicating our lack of jurisdiction to review or order special issuances.

14. Section 821.31(a), dealing with filing of the complaint, had produced some confusion in the past due to use of the phrase "filed upon the Administrator" (see *Administrator* v. *Simonton*, NTSB Order EA–3734 (1992)), and we proposed to change the phrase to "received by the Administrator." This produced similar concerns. AOPA and Mr. McDermott think this makes the rule more confusing, and suggest that we count from a service date, as we use service dates for other purposes and this will help the infrequent user of the rules.

We agree. The rule will provide that the complaint must be filed within 10 days of service of the notice of appeal on the Administrator. This will also respond to the FAA's concern that the current 5 days is too short.[7]

15. Although we proposed no change, a number of parties commented on our stale complaint rule, § 821.33. The NTSB Bar, in cases where 6 months has passed before a Notice of Proposed Certificate Action has been issued, wants the FAA's complaint to contain a certification that good cause existed for the delay, and where lack of qualification is alleged, the certification would state that this allegation was made in good faith and was warranted under the facts and the law. The FAA opposes these suggestions, citing our earlier rejection of a certification requirement (Regulatory Docket No. 5, 11/29/88).

The comments of Mark McDermott and the FAA reflect some confusion in the meaning and implementing of subparagraph (b) of the stale complaint rule (*i.e.*, where lack of qualification is alleged, law judge first determines whether it is presented and, if an issue of qualification is raised, the law judge is to proceed to a hearing on that issue only). The FAA disagrees, however, with Mr. McDermott's comment that failure to establish lack of qualifications requires dismissal of stale allegations, noting that it still has the opportunity to justify the delay or show public interest in proceeding despite the delay.

We recognize that subparagraph (b) of the stale complaint rule has caused some interpretive difficulty in the past, but the problem has not been insurmountable and does not require immediate amendment. Because issues regarding this rule are raised in connection with our proposed (and interim) civil penalty rules, we will defer any rule changes here.

16. In response to our proposed change to subparagraph (a) of § 821.37, dealing with the selection of the place for hearing, the FAA agrees that foreign hearings should be rare if we have authority to hold them, but believes we do not. In support, it argues that § 5(1) of the Department of Transportation Act of 1966, Pub. L. 89–670, authorized Civil Aeronautics Board hearings only in the U.S. Although the Independent Safety Board Act of 1974 has no similar language, the FAA argues, we should not assume change was intended.

Our enabling statute does not prohibit foreign hearings, as Congress easily could have done given the prior language. Accordingly, we are not convinced, based on the FAA's argument, that we should change the rule here. Although we will adopt the rule as proposed, any party is free to argue this point further in a particular case.

17. We proposed to change the evidence rule found in § 821.38 to codify our recent ruling in *Administrator* v. *Repacholi*, NTSB Order No. EA–3888 (1993), permitting hearsay in Board proceedings, with its trustworthiness going to the weight and credibility accorded it. Those commentors in opposition (Mark McDermott and AOPA) have not convinced us that our judges are not equipped fairly to measure trustworthiness and credibility of all forms of hearsay, just as they otherwise weigh credibility, and we believe NAAP's changes create unreasonable hurdles to the use of such evidence—even greater hurdles than now exist.

The parties uniformly had difficulty with our proposal in subparagraph (c) to assume the authenticity of evidence absent an objection. It appears that implementation problems would outweigh any benefit such a rule might have in our proceedings and, therefore, we will not adopt it. Nevertheless, we encourage parties to use requests to admit as well as stipulations to establish the authenticity of documents in advance of a hearing. In response to the FAA's comment that subparagraph (b) does not properly reflect the Administrative Procedure Act, we will amend that provision, and we will modify the offer of proof language to make it permissive, rather than mandatory.

18. The NTSB Bar has proposed that, in § 821.42 (initial decisions by law judges), we require the law judge include in his opinion whether the Administrator was substantially justified so that a later EAJA [8] case may

[6] Potentially, that review could lead to a change in the FAA's position and issuance of a certificate.

[7] We are not convinced, however, that the FAA needs 20 days for this filing.

[8] Equal Access to Justice Act.

be expedited. The FAA responds, and we agree, that this is premature and wasteful (*e.g.*, qualification for fee recovery not having been determined) and inconsistent with the separate statutory EAJA scheme that requires a final Board order on the merits. The practice of the same law judge hearing any EAJA application promotes the efficient administration the commentor seeks.

19. Although there were only supporting comments to our proposed change in § 821.47, we are adding a discussion here of when the law judge loses jurisdiction, with further action being by the Board itself. The addition in part reflects current law (see *Administrator* v. *Doll*, NTSB Order EA–3439 (1991) at footnote 9), and is being added in light of frequent questions in this regard. The new portion of the rule provides a method for handling requests to a law judge that he reconsider his own decision. For obvious reasons, the new procedure will not apply in emergency cases.

20. In response to our proposed revisions to § 821.48(e), NAAP suggests that we remove the sentence in subparagraph (g) regarding oral argument. As discussed in connection with § 821.9, we decline to make this change, and in light of our conclusions regarding a uniform copy requirement, we will delete subparagraph (f). Although NAAP also proposes a shorter version of (e), we believe our proposed language is more appropriate to assist the many *pro se* participants in our proceedings.

21. We proposed to revise §§ 821.49 and 821.57(c) to indicate that, if the Board raises a new issue it finds necessary to resolve the proceeding, it will afford the parties the opportunity to submit argument if it believes that such an opportunity is necessary or appropriate. We received a number of comments in opposition to this change, but believe they stem from misunderstanding of our practice and our intent.

We have used this approach on many occasions, with no complaint from any party. Compare, *e.g.*, *Administrator* v. *Nyren*, NTSB Order EA–3930 (1993) (Board reopened for further argument on effect of the FAA Civil Penalty Administrative Assessment Act of 1992 on the shared expense rule) and *Administrator* v. *Miller*, NTSB Order EA–3581 (1992) (Board redefined issue before it and dismissed complaint on finding that Administrator's interpretation of his rule was not reasonable); *Administrator* v. *Shuster*, NTSB Order EA–3613 (1992) (Board dismissed certain charges based on its interpretation of medical application); and *Administrator* v. *Frohmuth and Dworak*, NTSB Order EA–3816 (1993) (Board dismissed complaints based on a new, expanded formulation of case law excusing altitude deviations caused by pilot mistake). Furthermore, Board action is subject to review on petition for reconsideration. On further review, we have conformed the language in § 821.57 with the language in § 821.49.

22. The parties offered no comment regarding our proposed change to § 821.50, but NAAP proposes that we amend subparagraph (f) to indicate that the filing of a petition under this section will always stay the effective date of the order. We decline to make this change. As we recently noted in *Administrator* v. *Frost*, NTSB Order EA–3989 (1993), we agree with this sentiment as a general rule. Nevertheless, NAAP has not convinced us that we do not and should not retain the flexibility (whether specifically expressed in our rules or not) to order otherwise should extraordinary circumstances warrant.

23. In addition to our wording change to § 821.54 to reflect proceedings under Section 609(c)(3) of the Federal Aviation Act where the Administrator issues "immediately effective" orders, see *Administrator* v. *Zacher*, NTSB Order EA–3972 (1993), the FAA recommends, and we agree, that the title of Subpart I should be changed to "Rules Applicable to Emergency Proceedings and other Immediately Effective Orders."

As to the substance of that rule, the parties urge a stricter construction in various ways. The NTSB Bar and EAA ask us to add a requirement to subparagraph (a) that the FAA justify the emergency, and the NTSB Bar urges that the issue of whether a case is an emergency be subject to our review separately from the merits of the case. Mr. McDermott recommends that the statute be strictly construed in favor of respondents and that the Board streamline its process to shorten its timetable in these cases.

We believe that use of emergency authority should be extraordinary, for example when there is an immediate and exceptional aviation safety risk. Nevertheless, nothing raised by the parties here has convinced us we have erred, as a legal matter, in our long-established precedent [9] holding that we do not have jurisdiction to review the Administrator's use of his emergency power. Parties may seek review of those decisions in the courts.

[9] See, *e.g.*, *Administrator* v. *Anderson*, 5 NTSB 564, 565 (1985).

We also agree, not only with emergency cases but with all cases on our docket, that affected individuals deserve timely and prompt decisionmaking. Toward that end, we have made clearing our case backlog a priority.

24. We proposed to add a new subparagraph (f) to § 821.55 to leave no doubt that discovery was available in emergency proceedings. In response to EAA's and NAAP's concern that authority to sanction noncompliance with discovery be clear, we note that our proposal makes § 821.19 applicable to emergency cases. As the FAA suggests, we have added references to "immediately effective orders," and we have deleted references to § 821.56 and § 821.57, replacing them with a general reference to "this subpart."

Despite the FAA's concern that subparagraph (e) is confusing, we have not had that experience. We note that this rule is intended to preclude separate filings that would complicate or prevent compliance with the statutory deadline. The substance of objections (such as jurisdictional ones that would otherwise be raised in a motion to dismiss) is to be raised in the answer, or in otherwise permitted pleadings.

On further review, we are amending subparagraph (b) on our own motion to require either that the appeal attach a copy of the Administrator's order or that it indicate whether it is an emergency. This will greatly assist us in efficiently processing emergency cases.

25. In response to the comments, we will modify § 821.56(a), Notice of hearing, to clarify its applicability to immediately effective orders. We are not convinced that NAAP's change, to retain the current timetable that the hearing be set no later than 25 days after the Board's receipt of the complaint should be made, as our change to refer to the service date is intended to help avoid processing delays and to allow parties to calculate key dates.

26. In response to concerns raised by commentors regarding our proposal changing the time periods for filing appeal briefs and replies, we will amend the rule to allow 7 days for reply briefs, thus providing both sides equal time. We have also added, in response to the concern of the FAA that in a particular case there may be no overnight or facsimile service available, an amendment allowing use of other transmission services if approved by the Board.

27. EAA and Mark McDermott object to our proposal at § 821.63, extending sanctions for ex parte communications to include sanctioning counsel. On the

other hand, NAAP supports sanctioning counsel rather than the existing rule that would sanction the client. We will adopt the rule as proposed. Contrary to the concerns expressed, the Board is well able to distinguish between vigorous advocacy and unlawful attempts to influence the decisionmaker. Counsel must be aware of and respect the difference, and it may not be appropriate in a particular case that the penalty for breach of the ex parte rules be assessed against the client.

28. We proposed to amend § 821.64 to require that petitions for stay pending judicial review be filed before the effective date of the order. AOPA is concerned that this change was proposed for the Board's convenience, and argues that there may be reasons for seeking a stay after the order is effective, such as late retention of counsel. Our proposal stemmed from our concern that we might be without authority to stay an order when a respondent is already in default or that, as a matter of policy, we should not stay an order under such circumstances (*e.g.*, in default by not surrendering the certificate by the ordered date). We continue to believe that 30 days (the effective date of our order on appeal) is sufficient time to file a petition for stay. In response to AOPA's concern about time to hire counsel, we note that the petition may be *pro se*, and need not be extensive. Our precedent regarding the granting or denying of stays pending judicial review is clear. See *Administrator* v. *Reinhold*, NTSB Order EA–4224 (1994).

In light of our experience under the FAA Civil Penalty Administrative Assessment Act of 1992, we will add a new sentence to subparagraph (a) of § 821.64 explaining procedures applicable where the FAA appeals our order.

29. Finally, we will amend the authority references at the start of the rules and statutory references throughout the rules to reflect the new codification enacted in Pub.L. 103–272.

As required by the Regulatory Flexibility Act, we certify that the amended rules will not have a substantial impact on a significant number of small entities. The rules are not major rules for the purposes of Executive Order 12291. We also conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources, nor will this action impose any information collection requirements requiring approval under the Paperwork Reduction Act.

List of Subjects in 49 CFR Part 821

Administrative practice and procedure, Airmen, Aviation safety.

Accordingly, 49 CFR Part 821 is amended as set forth below.

PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

1. The authority citation for Part 821 is revised to read as follows:

Authority: Title VI, Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 *et seq.*); Independent Safety Board Act of 1974, Pub.L. 93–633, 88 Stat. 2166 (49 U.S.C. 1101 *et seq.*), and FAA Civil Penalty Administrative Assessment Act of 1992, Pub.L. 102–345 (49 U.S.C. 46301), unless otherwise noted.

2. Section 821.1 is amended by revising the definition of "initial decision" to read as follows:

§ 821.1 Definitions.

* * * * *

Initial decision means the law judge's decision on the issue remaining for disposition at the close of a hearing before him and/or an order that has the effect of terminating the proceeding, such as one granting a motion to dismiss in lieu of an answer, as provided in § 821.17, and one granting a motion for summary judgment. *Initial decision* does not include cases where the record is certified to the Board, with or without a recommended decision, orders partly granting a motion to dismiss and requiring an answer to any remaining allegations, or rulings by the law judge on interlocutory matters appealed to the Board under § 821.16;

* * * * *

3. A new § 821.3 is added to subpart A to read as follows:

§ 821.3 Description of docket numbering system.

In addition to sequential numbering of cases as received, each case formally handled by the Board receives a letter prefix. These letter prefixes reflect the case type: "SE" for the safety enforcement (suspension/revocation) docket; "SM" (safety medical) for an enforcement case involving a medical application; "SR" for a case involving safety registration issues under 49 U.S.C. 44101 *et seq.*; "CD" for certificate denial (see 49 U.S.C. 44703); a new "CP" for cases in which the Administrator seeks a civil penalty; and "EAJA" for applications seeking Equal Access to Justice Act awards.

4. Section 821.6 is amended by revising paragraph (d) to read as follows:

§ 821.6 Appearances and rights of witnesses.

* * * * *

(d) Any party to a proceeding who is represented by an attorney or party representative shall notify the Board of the name and address of that attorney or representative. In the event of a change in attorney or representative of record, a party shall notify the Board, in the manner provided in § 821.7(a), and the other parties to the proceeding, prior to the attorney or representative participating in any way, including the filing of documents, in any proceeding.

5. Section 821.7 is amended by revising paragraphs (a) and (b) to read as follows:

§ 821.7 Filing of documents with the Board.

(a) *Filing address, date and method of filing.* Generally, documents are to be filed with the Office of Administrative Law Judges, National Transportation Safety Board, 490 L'Enfant Plaza East, S.W., Washington, DC 20594–2000, and addressed to the assigned law judge, if any. Subsequent to the filing of a notice of appeal from a law judge's initial decision or order terminating the proceeding (written or oral), or a decision permitting an interlocutory appeal, all documents should be directed to the Office of General Counsel, also at the above address. Filing of any document shall be by personal delivery, by U.S. Postal Service first class mail, or by overnight mail delivery service. Except as provided in § 821.57, facsimile filing is permitted as a convenience to the parties only. It does not substitute for filing requirements in this part, and any fax transmission to the Board must be followed, no later than the following busniess day, by a confirmation copy, clearly marked as such, sent by a method of service authorized in this paragraph. Unless otherwise shown to be inaccurate, documents shall be deemed filed on the date of personal delivery, on the send date shown on the facsimile (provided a confirmation copy is properly served), and, for mail delivery service, on the mailing date shown on the certificate of service, on the date shown on the postmark if there is no certificate of service, or on the mailing date shown by other evidence if there is no certificate of service and no postmark.

(b) *Number of copies.* An executed original and 3 copies of each document shall be filed with the Board. Copies need not be signed, but the name of the person signing the original shall be shown.

* * * * *

6. Section 821.8 is revised to read as follows:

§ 821.8 Service of documents.

(a) *Who must be served.* (1) Copies of all documents filed with the Board must be served on all parties to the proceeding by the person filing them. A certificate of service shall accompany all documents when they are tendered for filing and shall certify concurrent service on the Board and the parties. Certificates of service shall be in substantially the following form:

I hereby certify that I have this day served the foregoing document(s) on the following parties' counsel or designated representatives [or on the party, if without counsel or representative] at the address indicated by [specify the method of service: first class mail, personal service, etc.] [indicate names and addresses here]

Dated at _____, this _____ day of _____, 19_____.

(Signature)_____

For (on behalf of)_____"

(2) Service shall be made on the person designated in accordance with § 821.7(f) to receive service. If no such person has been designated, service shall be made on the party.

(b) *Method of service.* Except as set forth in paragraph (c) and (d) of this section and as required by § 821.57(b), the method of service is the same as that set forth in § 821.7(a) for filing of documents. The Board will serve orders, notices of hearing, and written initial decisions on attorneys or representatives designated under § 821.7(f) or, if no attorney or representative, on the party itself, and will do so by certified mail, except that service on the Administrator will be by first-class mail.

(c) *Where service shall be made.* Except for personal service, addresses for service of documents shall be those in the official record or, if none in the case of the Federal Aviation Administration, the Office of the Chief Counsel, Washington, DC 20591. In the case of an agent designated by an air carrier under section 1005(b) of the Act, service of any sort may be accomplished only at the agent's office or usual place of residence.

(d) *Presumption of service.* There shall be a presumption of lawful service:

(1) When acknowledgement of receipt is by a person who customarily or in the ordinary course of business receives mail at the residence or principal place of business of the party or of the person designated under § 821.7(f); or

(2) When a properly addressed envelope, sent to the most current address in the official record by regular, registered, or certified mail, has been returned as undelivered, unclaimed, or refused.

(e) *Date of service.* The date of service shall be determined in the same manner as the filing date is determined under § 821.7(a).

7. Section 821.9 is revised to read as follows:

§ 821.9 Intervention and amicus appearance.

(a) *Intervention.* Any person may move for leave to intervene in a proceeding and may become a party thereto, if it is found that such person may be bound by any order to be entered in the proceeding, or that such person has a property, financial, or other legitimate interest that will not be adequately represented by existing parties, and that such intervention will not unduly broaden the issues or delay the proceedings. Except for good cause shown, no motion for leave to intervene will be entertained if filed less than 10 days prior to hearing. The extent to which an intervenor may participate in the proceedings is within the law judge's discretion, and depends on the above criteria.

(b) *Amicus curiae briefs.* A brief of *amicus curiae* in matters on appeal from initial decisions may be filed if accompanied by written consent of all the parties, or if, in the opinion of the Board's General Counsel, the brief will not unduly broaden the matters at issue or unduly prejudice any party to the litigation. A brief may be conditionally filed with motion for leave. The motion shall identify the interest of the movant and shall state the reasons why a brief of *amicus curiae* is desirable. Such brief and motion shall be filed within the time allowed the party whose position as to affirmance or reversal the brief would support, unless cause for late filing is shown, in which event the General Counsel may provide an opportunity for response as a condition of acceptance.

8. Section 821.11 is revised to read as follows:

§ 821.11 Extension of time.

(a) Upon written request filed with the Board and served on all parties, or by oral request with any extension granted confirmed in writing and served on all parties, and for good cause shown, the chief judge, the law judge, or the Board may grant an extension of time to file any document except a petition for reconsideration.

(b) The Board's General Counsel is authorized to grant unopposed extensions on timely oral request without a showing of good cause in cases appealed to the Board from a decision of a law judge. Written confirmation of such a grant must promptly be sent by the requesting party to the Board and served on other parties.

(c) Extensions of time to file petitions for reconsideration will be granted only in extraordinary circumstances.

9. Section 821.12 is revised to read as follows:

§ 821.12 Amendment and withdrawal of pleadings.

(a) *Amendment.* At any time more than 15 days prior to the hearing, a party may amend his pleadings by filing the amended pleading with the Board and serving copies on the other parties. After that time, amendment shall be allowed only at the discretion of the law judge. In the case of amendment to an answerable pleading, the law judge shall allow the adverse party a reasonable time to object or answer. Amendments to complaints shall be consistent with the requirements of 49 U.S.C. 44709(c) and 44710(c).

(b) *Withdrawal.* Except in the case of withdrawal of an appeal to the Board, withdrawal of a petition for review, withdrawal of a complaint, or withdrawal of an appeal from an initial decision, a party may withdraw pleadings only on approval of a law judge or the Board.

9. Section 821.14 is amended by revising paragraph (a) to read as follows:

§ 821.14 Motions.

(a) *General.* An application to the Board or to a law judge for an order or ruling not otherwise provided for in this part shall be by motion. Prior to the assignment of a law judge, all motions shall be addressed to the chief law judge. Thereafter, and prior to the expiration of the period within which an appeal from the law judge's initial decision may be filed, or the certification of the record to the Board, all motions shall be addressed to the law judge. At all other times, motions shall be addressed to the Board, Office of General Counsel. All motions not specifically provided for in any other section of this part shall be made at an appropriate time, depending on the nature thereof and the relief requested.

* * * * *

10. Section 821.19 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

§ 821.19 Depositions and other discovery.

* * * * *

(b) *Exchange of information by parties.* At any time before hearing, at the instance of either party, the parties or their representatives may exchange information, such as witness lists, exhibit lists, curricula vitae and bibliographies of expert witnesses, and

other data. In the event of a dispute, either the assigned law judge or another law judge delegated this responsibility (if a law judge has not yet been assigned) may issue an order directing compliance with any ruling made with respect to discovery. Any party may also use written interrogatories, requests to admit, or other discovery tools. Copies of discovery requests and responses shall be served on the law judge assigned to the proceeding.

* * * * *

(d) *Failure to provide or preserve evidence.* The failure of any party to comply with an order of an administrative law judge compelling discovery or to cooperate in a timely request for the preservation of evidence may result in a negative inference against that party with respect to the matter sought and not provided or preserved, a preclusion order, or dismissal.

11. Section 821.20 is amended by revising paragraphs (b) and (c) to read as follows:

§ 821.20 Subpoenas, witness fees, and appearances of Board Members, officers, or employees.

* * * * *

(b) *Witness fees.* Witnesses shall be entitled to the same fees and mileage as are paid to witnesses in the courts of the United States. The fees shall be paid by the party at whose instance the witness is subpoenaed or appears. The Board may decline to process a proceeding further should a party fail to compensate a witness pursuant to this paragraph.

(c) *Board Members, officers, or employees.* In order to encourage a free flow of information to the Board's accident investigators, the Board disfavors the use of its personnel in enforcement proceedings. Therefore, the provisions of paragraph (a) of this section are not applicable to Board Members, officers, or employees, or the production of documents in their custody. Applications for the attendance of such persons or the production of such documents at hearing shall be addressed to the chief law judge or the assigned law judge, as the case may be, in writing, and shall set forth the need of the moving party for such testimony, and a showing that such testimony is not now, or was not otherwise, reasonably available from other sources. The law judge shall not permit such testimony or documentary evidence to include any opinion testimony, or any account of statements of a respondent, made during the Board's investigation of any accident.

12. Section 821.24 is amended by revising paragraphs (a), (d) and (e) to read as follows:

§ 821.24 Initiation of proceedings.

(a) *Petition for review.* Where the Administrator has denied an application for the issuance or renewal of an airman certificate, the applicant may file with the Board a petition for review of the Administrator's action within 60 days from the time the Administrator's action was served on petitioner. The petition shall contain a short statement of the facts on which petitioner's case depends and a statement of the requested action, and may be in letter form.

* * * * *

(d) *Stay of proceeding pending request for special issuance (restricted certificate).* The Board lacks authority to review special issuances, or to direct that they be issued. Where a request for special issuance (restricted certificate) has been filed with the Administrator pursuant to the Federal Aviation Regulations, the Board will hold a petition for review in abeyance pending final action by the Administrator or for 180 days from the date of the Administrator's initial certificate denial, whichever occurs first.

(e) *New evidence.* If petitioner has undergone medical testing or evaluation in addition to that already submitted or known to the Administrator, and wishes to introduce the results into the record, the new medical evidence must be served on the Administrator at least 30 days before the hearing. Absent good cause, failure timely to serve any new evidence will result in its exclusion from the record. The Administrator may amend his answer within 10 days from the date the new evidence is served to respond to such new evidence.

13. Section 821.30 is amended by revising paragraph (a) to read as follows:

§ 821.30 Initiation of proceedings.

(a) *Appeal.* A certificate holder may file with the Board an appeal from an order of the Administrator amending, modifying, suspending, or revoking a certificate. The appeal shall be filed with the Board within 20 days from the time of service of the order and be accompanied with proof of service on the Administrator.

* * * * *

14. Section 821.31 is amended by revising paragraph (a) to read as follows:

§ 821.31 Complaint procedure.

(a) *Filing, time of filing, and service on respondent.* The order of the Administrator from which an appeal has been taken shall serve as the complaint. The complaint shall be filed by the Administrator with the Board within 10 days after the service date of the notice of appeal.

* * * * *

15. Section 821.35 is amended by revising paragraph (a) to read as follows:

§ 821.35 Assignment, duties, and powers.

(a) *Assignment of law judge and duration of assignment.* The chief law judge shall assign a law judge to preside over the proceeding. Until such assignment, motions, requests, and documents shall be addressed to the Docket Section, Office of Administrative Law Judges, for handling by the chief law judge, who may handle these matters personally or who may delegate all or any of them to other law judges for decision. After assignment, all motions, requests, and documents shall be addressed to that law judge. The authority of the assigned law judge shall terminate upon certification of the record to the Board, or upon expiration of the period within which appeals from initial decisions may be filed, or upon the law judge's withdrawal from the proceeding.

* * * * *

16. Section 821.37 is amended by revising paragraph (a) to read as follows:

§ 821.37 Notice of hearing.

(a) *Notice.* The chief law judge (or his law judge delegate) or the law judge to whom the case is assigned shall set a reasonable date, time and place for the hearing. The notice of the hearing shall be served at least 30 days in advance thereof, and shall include notice of the nature of the hearing. The law judge may set the hearing fewer than 30 days after the notice of hearing is served if the parties agree to an earlier hearing date. In setting the hearing date, due regard shall be given to any need for discovery. In setting the place of the hearing, due regard shall be given to the convenience of the parties and to conservation of Board funds. The location of the witnesses and the suitability of a site served by a scheduled air carrier are added factors to be considered in setting the hearing location, as is Board policy that foreign-held hearings are appropriate only in the most extraordinary circumstances.

* * * * *

17. Section 821.38 is revised to read as follows:

§ 821.38 Evidence.

(a) Every party shall have the right to present a case-in-chief or defense by oral or documentary evidence, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a full and true disclosure of

the facts. Hearsay evidence (including hearsay within hearsay where there are acceptable circumstantial indicia of trustworthiness) is admissible.

(b) All material and relevant evidence should be admitted, but a law judge may exclude unduly repetitious evidence pursuant to § 556(d) of the Administrative Procedure Act. Any evidence that is offered and excluded may be described (via an "offer of proof"), and that description should be made a part of the record.

18. Section 821.42 is amended by removing paragraph (c) and redesignating paragraph (d) as (c).

19. Section 821.43 is revised to read as follows:

§ 821.43 Effect of law judge's initial decision and filing of an appeal therefrom.

If an appeal from the initial decision is not timely filed with the Board by a party, the initial decision shall become final but shall not be precedent binding on the Board. The filing of a timely appeal shall stay the initial decision.

20. Section 821.47 is revised to read as follows:

§ 821.47 Notice of appeal.

(a) A party may appeal from a law judge's order or from the initial decision by filing with the Board and serving on the other parties (pursuant to § 821.8) a notice of appeal within 10 days after an oral initial decision has been rendered or a written decision or a final or appealable (see § 821.16) order has been served. At any time before the date for filing an appeal from an initial decision or order has passed, the law judge or the Board may, for good cause shown, extend the time within which to file an appeal, and the law judge may also reopen the case for good cause on notice to the parties.

(b) A law judge may not reconsider his initial decision once the time for appealing to the Board from the initial decision has expired or once an appeal with the Board has been filed. However, a timely request for reconsideration by the law judge of his decision, filed before an appeal to the Board has been taken, will stay the deadline for appealing to the Board until 10 days after the date the law judge serves his decision on the request. For the purpose of this section, a request for reconsideration submitted on the same date as a notice of appeal will be deemed to have been filed first.

21. Section 821.48 is amended by revising paragraph (e) to read as follows and by removing paragraph (f), and redesignating paragraph (g) as (f):

§ 821.48 Briefs and oral argument.

* * * * *

(e) *Other briefs.* Subsequent to brief filing, parties may file citations to supplemental authorities. This procedure may be used only for identifying new, relevant decisions, not to correct omissions in briefing or to respond to a reply. No argument may be included in such filings. Parties shall submit, with any decision, a reference to the page of the brief to which the decision pertains. Any response shall be filed within 10 days and shall be similarly limited.

* * * * *

22. Section 821.49 is revised to read as follows:

§ 821.49 Issues on appeal.

(a) On appeal, the Board will consider only the following issues:

(1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence?

(2) Are conclusions made in accordance with law, precedent, and policy?

(3) Are the questions on appeal substantial?

(4) Have any prejudicial errors occurred?

(b) If the Board determines that the law judge erred in any respect or that his order in his initial decision should be changed, the Board may make any necessary findings and may issue an order in lieu of the law judge's order or may remand the case for such purposes as the Board may deem necessary. The Board on its own initiative may raise any issue, the resolution of which it deems important to a proper disposition of the proceedings. If necessary or appropriate, a reasonable opportunity shall be afforded the parties to comment.

23. Section 821.50 is amended by revising paragraphs (a) and (b) to read as follows:

§ 821.50 Petitions for rehearing, reargument, reconsideration, or modification of an order of the Board.

(a) *General.* Any party to a proceeding may petition for rehearing, reargument, reconsideration, or modification of a Board order on appeal from an initial decision. Any such petitions shall be served on all other parties to the proceeding within 30 days after service of the Board's order on appeal from the initial decision. Initial decisions that have become final because they were not appealed may not be the subject of petitions under this section.

(b) *Timing and service.* The petition shall be filed with the Board and served on the parties within 30 days after service of the Board's order on appeal from the initial decision.

* * * * *

24. The heading of Subpart I is revised to read:

Subpart I—Rules Applicable to Emergency Proceedings and Other Immediately Effective Orders

25. Section 821.54 is amended by revising paragraph (a) to read as follows:

§ 821.54 General.

(a) *Applicability.* This subpart shall apply to any order issued by the Administrator under section 609 of the Act: as an emergency order; as an order not designated as an emergency order, but later amended to be an emergency order; and any order designated as immediately effective or effective immediately.

* * * * *

26. Section 821.55 is amended by revising paragraphs (a), (b), and (c) and adding a new paragraph (f) to read as follows:

§ 821.55 Appeal, complaint, answer to the complaint, and motions.

(a) *Time within which to appeal.* The certificate holder may appeal within 10 days after the service of the Administrator's emergency or other immediately effective order. The certificate holder shall serve a copy of his appeal on the Administrator.

(b) *Form and content of appeal.* The appeal may be in letter form. It shall identify the Administrator's order and the certificate affected, shall recite the Administrator's action, and shall identify the issues of fact or law on which the appeal is based, and the relief sought. The appeal shall either attach a copy of the Administrator's order or shall clearly indicate that an emergency or other immediately effective order is being appealed.

(c) *Complaint.* Within 3 days after receipt of the appeal, the Administrator shall file with the Board an original and 3 copies of his emergency or other immediately effective order as his complaint, and serve a copy on the respondent.

* * * * *

(f) *Discovery.* Discovery is authorized in emergency or other immediately effective proceedings and, given the short time available, parties are directed to cooperate to ensure timely completion prior to the hearing. Discovery requests shall be served as soon as possible after initiation of the proceeding. Motions to compel production shall be expeditiously filed, and will be promptly decided. Time

limits for compliance with discovery requests shall accommodate and not conflict with the schedule set forth in this subpart. The provisions at § 821.19 shall apply, modified as necessary to reflect applicable deadlines.

27. Section 821.56 is amended by revising paragraph (a) to read as follows:

§ 821.56 Hearing and initial decision.

(a) *Notice of hearing.* Immediately upon notification by the Administrator to the Board, and in no case later than 5 days after receiving notice from the Administrator that an emergency exists or that safety in air commerce or air transportation requires the immediate effectiveness of an order, the Board shall set, and notify the parties of, the date and place for hearing. The hearing shall be set for a date no later than 25 days after service of the complaint. To the extent not inconsistent with this section, the provisions of § 821.37(a) also apply.

* * * * *

28. Section 821.57 is amended by revising paragraphs (b) and (c) to read as follows:

§ 821.57 Procedure on appeal.

* * * * *

(b) *Briefs and oral argument.* Unless otherwise authorized by the Board, all briefs in emergency cases shall be served via overnight delivery or facsimile confirmed by first class mail. Within 5 days after the filing of the notice of appeal, the appellant shall file a brief with the Board and serve a copy on the other parties. Within 7 days after service of the appeal brief, a reply brief may be filed, with copies served (as provided above) on other parties. The briefs shall comply with the requirements of § 821.48 (b) through (g). Appeals may be dismissed by the Board on its own initiative or on motion of a party, notably in cases where a party fails to perfect the notice of appeal by filing a timely brief. When a request for oral argument is granted, the Board will give notice of such argument.

(c) *Issues on appeal.* The provisions of § 821.49 shall apply to issues on appeal. However, the Board may upon its own initiative raise any issue, the resolution of which it deems important to a proper disposition of the proceeding. If necessary or appropriate, the parties shall be afforded a reasonable opportunity to comment.

* * * * *

29. Section 821.63 is amended by revising paragraph (b) to read as follows:

§ 821.63 Requirements to show cause and imposition of sanction.

* * * * *

(b) The Board may, to the extent consistent with the interests of justice and the policy of the underlying statutes it administers, consider a violation of this subpart sufficient grounds for a decision adverse to a party who has knowingly committed or knowingly caused a violation to occur. Alternatively, the Board may impose sanction, including suspension of the privilege of practice before the Board, on the party's attorney or representative, where an infraction has been committed by that attorney or representative and penalizing the party represented is not in the interest of justice.

30. Section 821.64 is revised to read as follows:

§ 821.64 Judicial review.

(a) *General.* Judicial review of a final order of the Board may be sought as provided in section 1006 of the Act (49 U.S.C. 46110) and section 304(d) of the Independent Safety Board Act of 1974 (49 U.S.C. 1153) by filing a petition for review with the appropriate United States court of appeals within 60 days of the date of entry (service date) of the Board's order. Under the Federal Aviation Act, as amended, any party may appeal the Board's decision. The Board itself does not typically participate in the judicial review of its action. In matters appealed by the FAA, respondents should anticipate the need to make their own defense.

(b) *Stay pending judicial review.* No petition for stay pending judicial review will be entertained if it is received by the Board after the effective date of the Board's order. If a stay action is to be timely, any petition must be filed sufficiently in advance of the effective date of the Board's order to allow for the possibility of a reply and to allow for Board review.

Issued in Washington, DC on this 8th day of November, 1994.

John K. Lauber,

Member.

Member VOGT Filed the Following Concurring Statement

I continue to believe, for the reasons expressed in my concurrence in *Administrator v. Heimerl & Forrest,* NTSB Order EA–4134 (April 12, 1994), that the Board's service rule at § 821.8(e) should be amended to eliminate reliance on the date of the certificate of service when calculating the date of service.

[FR Doc. 94–28074 Filed 11–14–94; 8:45 am]

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NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Parts 821 and 826

Rules of Practice in Civil Penalty Proceedings

AGENCY: National Transportation Safety Board.

ACTION: Final rules.

SUMMARY: The NTSB is adopting final rules to implement the FAA Civil Penalty Administrative Assessment Act of 1992, signed into law on August 26, 1992. This law transferred adjudication of appeals of civil penalties assessed by the Federal Aviation Administrator against pilots, flight engineers, mechanics, and repairmen from the FAA to the NTSB. The Board is adopting, with only minor changes, rules it has already adopted as an interim measure (58 FR 11379 (February 25, 1993)).

EFFECTIVE DATE: The final rules are effective on December 15, 1994.

FOR FURTHER INFORMATION CONTACT: Daniel D. Campbell, General Counsel, (202) 382–6540.

SUPPLEMENTARY INFORMATION: Public Law No. 102–345 (here, the CP Act) has expanded the Board's jurisdiction to review actions of the Administrator. Section 901(a)(3) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(3))[1] has been amended to provide that any person acting in the capacity of a pilot, flight engineer, mechanic, or repairman against whom an order assessing a civil penalty is issued by the Administrator under this paragraph may appeal the order to the National Transportation Safety Board, and the Board shall, after notice and a hearing on the record in accordance with section 554 of title 5, United States Code, affirm, modify, or reverse the order of the Administrator. Thus, in addition to a docket of appeals involving suspension, revocation, and medical qualification matters, we now also hear appeals from the Administrator's orders imposing civil penalties against individuals in the listed categories.

We stated in our notice our belief that current rules of practice in Parts 821 and 826 required few changes to accommodate this new authority, and the changes we proposed simply reflected its scope. Thus, we then proposed and now adopt the rules of practice in Parts 821 and 826 for usage in all civil penalty proceedings. Although we did not offer specific rule changes relating to (1) the codification

[1] Newly recodified at 49 U.S.C. 46301(d)(5).

of new rules of deference and (2) the provisions of Pub.L. No. 102–345 that pertain to the modification of proposed sanctions, we invited comment or proposals about them. We suggested that the changes regarding deference seemed to require little departure from current practice. We noted that the new provision regarding the modification of sanction resulted in some tension with existing practice,[2] but that it might be difficult to anticipate by rule the types of questions that could arise under these provisions. We also invited comment on extending application of our stale complaint rule, 49 CFR 821.33, to the civil penalty docket.

In response to our notice, comments were filed by the Aircraft Owners and Pilots Association, the Air Line Pilots Association, the Experimental Aircraft Association, the National Transportation Safety Board Bar Association, the Regional Airline Association, as well as the Federal Aviation Administration (FAA) and five individuals. Two replies were filed in opposition to portions of the FAA comment. For the reasons that follow, we adopt the proposed rule, with one editorial correction. We first address applicability of the stale complaint rule.

Stale Complaints

FAA's comments were principally aimed at the Board's noticed intention to extend its stale complaint rule to the processing of civil penalties. The NTSB and before it the Civil Aeronautics Board have long required that aviation enforcement cases be initiated within 6 months of the alleged violation by notice to the airman of the nature of the charges contemplated.[3] This provision is found at § 821.33 of the NTSB rules and includes exceptions where good cause is shown for delay beyond 6 months,[4] where notwithstanding delay there are overriding public interest considerations,[5] and a further exception for the most serious cases where a complaint indicates that the airman does not possess the qualifications required of licensed pilots confirm.[6] But exceptions aside, if an airman is not advised of the reasons for a proposed enforcement action within 6 months of the alleged violation, the FAA's complaint against the airman will be dismissed. One statement of the traditional and still commanding justification for the rule is found in Burdick et al., 34 C.A.B. 856, a 1961 case that considered matters strikingly similar to the issues here:

> We do not believe it is in the public interest to permit an airman who has violated the regulations to continue to enjoy all the rights and privileges of his certificate for an extended period of time without remedial action. On the other hand, we consider it unfair to an airman to have the threat of enforcement action held over his head for a protracted period, or to have to defend himself when, because of the passage of time, it is difficult to assemble witnesses or where recollections of the incident have become hazy, (34 C.A.B. 860.)[7]

All parties except the Administrator support the extension of the stale complaint rule. The FAA is opposed from an institutional perspective and on what it believes are practical grounds. Institutionally, it argues that the establishment of a standard time limit is a legislative function, pointing to the standard 5-year limit for civil penalty actions established by statute in 28 USC 2462, and also citing a separate provision of the CP Act which imposes a 2-year statute of limitations for those civil penalty proceedings entrusted to FAA for adjudication. FAA believes that the establishment of a limitation period shorter than 5 years is the responsibility of the regulating and prosecuting agency. In offering this argument, FAA appears to make, without any elaboration, a distinction between the quasi-legislative functions of a regulatory agency and the quasi-judicial functions of the Safety Board acting as an appeals board in aviation enforcement. On the practical level, FAA argues that its own 2-year rule was a balancing of its needs for sufficient time to investigate, review and initiate a case, the interests of respondents in timely notice, and the public interest in regulatory compliance.[8] FAA concedes that the NTSB, as adjudicator, has inherent power to dismiss individual proceedings where delay has been shown to prejudice an airman's defense; its objection is lodged to the legislative nature of § 821.33 and the presumption of prejudice it incorporates.

Among the private sector commentors there is unanimous support for the continuation of the 6-month stale complaint rule. Most commentors argue that the 6-month rule has worked well, in part because it contains several exceptions permitting the processing of those cases that might pose serious threat to public safety or where FAA could not have acted faster. AOPA notes that failure to adopt a 6-month rule will result in an incongruous problem in which the selection of sanction would dictate the allowable time for notice of action—the fear apparently being that when FAA failed to act on a matter normally reserved for suspension or revocation of a certificate, it would instead substitute a money fine so that the case would not be time-barred before the NTSB. Another commentor notes a related incongruity: That since the Civil Penalty Assessment Act gave the NTSB the power to conclude that a civil penalty assessment should instead be levied as a certificate suspension or revocation, there might arise a case in which an action brought as a civil penalty would result in a certificate action, although suspension or revocation would have been time-barred if initiated as such.

We remain persuaded that the Safety Board has the authority to establish the § 821.33 stale complaint rule and that its application to our civil penalty docket is appropriate. As to FAA's arguments regarding the respective institutional relationships of our agencies and the consequent inappropriateness of "legislation" (rulemaking) to govern timeliness, we think that these arguments which, if accepted as correct, would apply with near equal force to the remainder of the Board's enforcement docket, are not supported by a fair appraisal of the institutional histories of our agencies. Indeed, very much the same arguments were made and rejected by the Civil Aeronautics Board shortly after the division between the enforcement and adjudication functions that resulted from the enactment of the Federal Aviation Act

[2] See discussion, *infra*.

[3] The stale complaint rule for suspension and revocation cases dates back to 1942.

[4] Thus, for example, an apparently stale proceeding will survive a motion to dismiss where the Administrator did not have contemporaneous knowledge of the alleged violation (see, e.g., Administrator v. Slotten, 2 NTSB 2503 (1976)), so long as the matter was given appropriate priority after finally coming to light (see Administrator v. Zanlunghi, 3 NTSB 3696 (1981)).

[5] See Administrator v. Elston, NTSB Order No. EA–4151 (1994) for types of cases to which the public interest exception might apply. To date, however, the cases in which the public interest exception has been discussed are quite rare, as it appears in practice that an allegation of lack of qualification is typically available and relied upon where serious misconduct is involved.

[6] See, e.g., Administrator v. Wingo, 4 NTSB 1304, 1305 (1984) ("In order to avoid dismissal under the stale complaint rule, the allegations in the complaint need only present an issue of lack of qualifications." (Emphasis in original.)). As examples, lack of qualification has been presumed for matters of deliberate falsification of record requirements (see, e.g., Administrator v. Walters, NTSB Order No. EA–3835 (1993)); and for proceedings based on drug convictions (see, e.g., Administrator v. Kragness, NTSB Order No. EA–3682 (1992)).

[7] See also Administrator v. Dill et al., NTSB Order No. EA–4099 (1994) (due diligence is necessary to protect individual airman and to enhance aviation safety).

[8] While the 2-year limit is now a matter of statute law, FAA refers to its balancing of these several factors in apparent reference to a self-imposed, 2-year limitation that had been adopted by the agency during the temporary civil penalty demonstration program.

of 1958.[9] Thus, in the *Burdick* case, *supra*, FAA argued that:

* * * under the Federal Aviation Act of 1958, the Board has no power to adopt a stale-complaint provision and to require the Administrator to show good cause for delay in initiating enforcement action. [The Administrator] states that the 1958 Act gave him the function of deciding whether, and when, to institute enforcement action and that the authority to commence such actions is no longer delegated to him by the Board. Further he points out that the 1958 Act places no time limitation on the institution of a safety action by the Administrator, that the Board has no jurisdiction prior to the issuance of the Administrator's order * * * *Burdick, supra*, 857–8.

To which the answer was given:

Even if the 1958 Act were viewed as creating a changed relationship, it would not follow that the stale-complaint rule is invalid. As indicated earlier, under section 609 it is the Board which makes the ultimate determination as to the sanction in each case which comes before it. Thus if in the Board's judgement the sanction preliminarily imposed by the Administrator is not required by safety and the public interest, the Board is free to impose such sanction, if any, as it believes to be justified by its own appraisal of the safety and other public interest considerations involved. In this light, the stale complaint provision may be regarded as a general announcement by the Board of its view of the overall public interest to be applied in those cases in which it is called upon to exercise its statutory powers. To this extent the announcement as set forth in the Rules of Practice under the 1938 Act has represented a standard for decision by the Board and there is no indication in the 1958 Act or its legislative history that Congress intended to change that standard. *Id.*, 858–9.

NTSB, as the successor agency to C.A.B. for enforcement cases, finds itself in precisely the same institutional relationship with FAA as did the 1961 Civil Aeronautics Board that decided *Burdick*, and we think that their reasoning is persuasive. We do not believe the enactment of the Civil Penalty Act effectuated any significant change in the relationship between FAA and NTSB, and such changes that were accomplished were done so explicitly. FAA had argued for a right of appeal of NTSB cases, and one was enacted. Likewise, an explicit statement of deference to FAA interpretations was adopted. We think that such careful attention to detail by Congress undermines any suggestion that *sub silentio* Congress also intended a limitation of the Board's authority as exercised in Rule 821.33.

We note that on August 5, 1994, FAA published a notice of proposed rulemaking detailing its own proposed rules for the processing of those civil penalty proceedings which were retained for in-house adjudication under the CP Act. (59 FR 40196.) In this notice, FAA makes the argument that, because Congress specified a 2-year limitation for FAA adjudications but refrained from any similar new legislative directive for NTSB-adjudicated penalties, NTSB proceedings are governed by the 5-year limitation of 28 USC 2462. Given the context in which the CP Act arose, we think the suggestion that Congress intended to reinvigorate a 5-year limitation at the NTSB is quite implausible. For our part, we view the statute of limitation provision in the Civil Penalty Assessment Act as best understood as part of the basic compromise that is at the heart of the 1992 legislation. As AOPA points out, Congress was well aware of NTSB's stale complaint rule, in part because of the complaints over the adoption of a longer, 2-year limitation by FAA for its in-house civil penalty adjudication under the temporary demonstration program. Due to widespread opposition to the FAA's administration of this program, the 1992 enactment split the adjudication of civil penalties between the NTSB and FAA. FAA was given legislative authority to retain a 2-year limitation for the cases it would handle—an implicit limitation against the agency's right to move outward toward the 5-year limit of 28 USC 2462. And the transfer of cases involving individual airmen and others to the NTSB is arguably an equally clear, if still implicit, statement that these airmen were to receive the perceived advantages of NTSB adjudication, including the stale complaint rule.

As to the practical implications of the stale complaint rule, FAA has offered no evidence or demonstration of harm having resulted from the long-standing application of Rule 821.33 to certificate cases. Given the availability of exceptions for good cause etc., perhaps this is not surprising. We would also note that the nature of the caseload reserved for civil penalties, if the FAA Sanction Guidelines Table is thought to be instructive, will be, if anything, less complicated and less critical than those certificate cases already subject to § 821.33 and for which no harm has been shown. Consequently, in the absence of any factual showing of impracticability, we believe that the stale complaint rule will function well for the civil penalty docket and we will continue its use. Doing so avoids the need to address the potential, pointed to by AOPA, for the selection of sanction type to become a device for the avoidance of the stale complaint rule in certificate action cases.

Deference and Sanction Modification

The CP Act provides that the Board, while not bound by any findings of fact made by the Administrator, is bound by all "validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration (including written agency policy guidance available to the public relating to sanctions to be imposed under this subsection) unless the Board finds that any such interpretation is arbitrary, capricious, or otherwise not in accordance with law." Pub. L. No. 102–345, § 2(a), amending 49 U.S.C. 1471(a)(3), newly recodified at 49 U.S.C. 46301(d)(5). The new law also provides that the Board may, consistent with the foregoing, modify the type of sanctions to be imposed by the Administrator. Thus, the Board may, in an appropriate case, change a civil penalty to a suspension or change a suspension or revocation to a civil penalty. For the purposes of this rulemaking, these new provisions have been referred to as the deference and sanction modification provisions. We noted in the NPR that comment on these provisions was desirable, even though the possibility of the adoption of specific rules was not great. For a number of reasons, we continue to believe that rules are not feasible at this point. However, the experience with these provisions through adjudication has already addressed some of the issues raised in this docket.[10]

Certain commentors argue that, to be a validly adopted interpretation to which we must defer, an FAA position must have been adopted through notice and comment rulemaking. Such a view requires the belief that Congress intended a dramatic change in the administrative process as normally understood, and we decline to infer any such intention without the support of clear evidence. Traditional administrative practice has permitted the development of agency policy through a range of devices that fall short of formal rulemaking, and the Board is given no specific authority to limit the Administrator's discretion in this

[9] Enforcement and adjudication had been unified in a single agency at times prior to 1958.

[10] As we are in accord with the view expressed in the comments that, if law in this area is developed through adjudication rather than rulemaking, the interests of the aviation community as a whole might not always be fully represented, we have broadened our policy regarding *amicus* participation (see, e.g., *Administrator* v. *Oklahoma Executive Jet Charter, Inc. & Curtis*, NTSB Order EA–3928 (1993)), and have proposed a general change in our rules of practice to authorize *amicus* briefs in appropriate situations.

regard. On the other hand, the Board may, in the exercise of its own statutory discretion, sculpt its decisions to reflect the basic due process requirements of the public interest standard under which our decisions are rendered.[11]

Perhaps the biggest concern that commentors expressed with less formal means of interpretive development of enforcement policy is that, under an expansive construction of the new language ("validly adopted interpretations of laws and regulations administered by the Federal Aviation Administration"), the Board would lose the very impartiality, objectivity and independence the CP Act was enacted to provide to the airmen covered by it. We think these fears overstate the nature of the change, if any, imposed on the Board by the deference provisions. As we noted to Congress during the considerations of these amendments, we do not believe the amended language brings about any significant change in the relationship between FAA and NTSB or to the kind and quality of deference to the Administrator's interpretations that has been traditionally accorded. The Board has long paid close heed to the FAA's valid interpretations of its regulatory language,[12] just as we continue to reserve the right to discount those interpretations which are arbitrary, unsupported, or which are the novel inventions of trial counsel.[13] We believe that this is, generally speaking, the role intended for us by Congress, and our decisions continue to reflect this approach.

AOPA suggests that only interpretations made at the highest levels within the FAA should be entitled to deference. While we cannot agree with so broad a statement, we think the quality of the process through which an interpretation is reached and the manner of its announcement are considerations that will affect both the public interest and aviation safety dimensions of our review. We did, consequently, invite amicus comment in one case as to whether an interpretation that is based only on expert testimony offered by the Administrator during the hearing on his order of suspension is "validly adopted" in the sense that it compels deference to the Administrator's view.[14] We have also noted that there are interpretive conclusions that approach the sometimes illusive borderline between "fact" and "law," and that we are not bound by the former.[15] Still, there are many methods for the development of administrative policy that have not yet surfaced in litigation, and it would be premature to speculate on the Board's reaction to each, other than to reiterate that the Board is bound by those interpretations reached through valid process, unless arbitrary, capricious, or unsupported by law.

As to deference specifically regarding choice of sanction, we stated in the notice that the CP Act suggested some tension between the Board's traditionally conservative approach and the new invitation to modify sanction as appropriate, within such FAA guidelines as are shown applicable. We noted that *Administrator* v. *Muzquiz*, 2 NTSB 1474 (1975), which has long required clear and compelling evidence to amend the Administrator's proposed sanction if all violations are affirmed, might well be outdated. Such comment as was received on this issue offered no usable suggestion for the adoption of a rule at this point, and we will attempt none. Experience to date through adjudication has confirmed that the aforementioned Muzquiz doctrine is of diminished importance, and that NTSB administrative law judges (and the Board itself) may in proper circumstances modify sanctions,[16] and that in doing so reliance on precedent will be typical,[17] but not always possible or required.[18] The Board will continue its development of these issues through adjudication, and consider the publication of formal guidance at such time as firm and suitable principles emerge.

Supplementary Matters

We have made only three changes in the interim rules. First, we have removed the improper reference to section 602 of the Federal Aviation Act in interim § 826.3. Second, we have revised § 821.2 to enlarge coverage, consistent with the FAA's proposal (see 59 FR 40196), by including a reference to persons acting in the capacity of flight engineers, pilots, mechanics, or repairmen.[19] Third, the authority section updates statutory citations to reflect the recent recodification in Pub. L. 103–272, as already modified in *Aviation Rules of Practice—General Revision.*

Two errors that the parties cited were errors of **Federal Register** publication only. The word "are" was left out of the second sentence of 826.3(a). It should have read "These are adjudications * * *." The **Federal Register** also mistakenly repeated two lines in the third sentence of that same rule. The phrase "suspend, or revoke * * * proceedings to modify," improperly appears twice.[20]

As required by the Regulatory Flexibility Act, we certify that the amended rules will not have a substantial impact on a significant number of small entities. The rules are not major rules for the purposes of Executive Order 12291. We also conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources, nor will this action impose any information

[11] See, *e.g.*, *Administrator* v. *Miller*, NTSB Order EA–3581 (1992), holding that a "validly adopted" interpretation may be announced by adjudication as well as rulemaking, but that sanction may be denied due to insufficient notice to airmen. ALPA suggests that we incorporate by rule *Miller's* declination of sanction. We think this would be too mechanical, but we believe the approach taken in *Miller* was correct and reaffirm it in principle.

[12] See *Administrator* v. *Miller, supra.*

[13] In *Administrator* v. *Krachun*, NTSB Order No. EA–4002 (1993), the Safety Board concluded that it was not bound to defer to a hastily developed interpretation sustained only by argument of counsel, particularly where the interpretation advanced was unsupported by citation of practice, precedent, or documentation, and where it entailed consequences for the aviation community generally. See also *Administrator* v. *Smith and Wright*, NTSB Order No. EA–4169 (1994); *Administrator* v. *Nyren*, NTSB Order No. EA–3930 (1993). These decisions, which decline to give deference to thinly developed regulatory interpretations announced at trial, are consistent with Congressional understanding of the deference standard being imposed. See H.R. Rep. No. 671, 102d Cong. 2d Sess. 10 (1992) (NTSB is not simply to defer to litigation positions of the FAA prosecutor).

[14] *Administrator* v. *Nyren*, NTSB Order EA–3930 (1993). After we sought additional briefing and suggested the possibility of oral argument on the deference issue, the Administrator withdrew the underlying order of suspension and hence no further argument was heard.

[15] See, *e.g.*, *Administrator* v. *Kapton*, NTSB Order No. EA–4046 (1993), at note 9, p.7, stating that the Board is not bound by conclusions of the Administrator that given behavior is careless within the meaning of the provision prohibiting careless operation.

[16] *Administrator* v. *Glassburn*, NTSB Order No. EA–4211 (1994) (where FAA Sanction Table permits a range of sanctions, ALJ may rationally choose among them based on observation of the case).

[17] See, *e.g.*, *Administrator* v. *Franck*, NTSB Order No. EA–4166 (1994); *Administrator* v. *Tweto*, NTSB Order No. EA–4164 (1994).

[18] *Administrator* v. *Oklahoma Executive Jet Charter, Inc. & Curtis*, NTSB Order No. EA–3928 (1993). This is the first case in which a certificate action (revocation) was modified to the imposition of a civil penalty.

[19] We note that the FAA's CP rulemaking proposals contain other matters that could affect our jurisdiction. Should we need to address them we will do so via adjudication or rulemaking, as most appropriate.

[20] One commentor urges us to extend the scope of our new review authority to dispatchers, noticing that they also are certificated airmen. We decline to do so. The statute identifies the categories of airmen that are covered and does not include dispatchers. See H.R. Rep. 102–671, *supra*, at 20, where nine Congressmen indicated their preference for extending coverage not only to dispatchers but to air carriers, parachute riggers, and air traffic control tower operators. *Cf.* FAA rulemaking proposal to include flight instructors. 59 FR 40193.

collection requirements requiring approval under the Paperwork Reduction Act.

List of Subjects

49 CFR Part 821

Administrative practice and procedure, Airmen, Aviation safety.

49 CFR Part 826

Claims, Equal access to justice, Lawyers.

Accordingly, the interim rule published on February 25, 1993 is adopted as final, with the following changes:

PART 821—RULES OF PRACTICE IN AIR SAFETY PROCEEDINGS

1. The authority citation for Part 821 continues to read as follows:

Authority: Title VI, Federal Aviation Act of 1958, as amended (49 U.S.C. 40101 et seq.); Independent Safety Board Act of 1974, Pub.L. 93–633, 88 Stat. 2166 (49 U.S.C. 1101, et seq.), and FAA Civil Penalty Administrative Assessment Act of 1992, Pub.L. 102–345 (49 U.S.C. 46301), unless otherwise noted.

2. Section 821.2 is revised to read as follows:

§ 821.2 Applicability and description of part.

The provisions of this part govern all air safety proceedings, including proceedings involving airman medical certification, before a law judge on petition for review of the denial of any airman certificate or on appeal from any order of the Administrator amending, modifying, suspending or revoking any certificate. The provisions of this part also govern all proceedings on appeal from an order of the Administrator imposing a civil penalty on a flight engineer, mechanic, pilot, or repairman, or a person acting in that capacity, where the underlying violation occurred on or after August 26, 1992, and all proceedings on appeal to the Board from any order or decision of a law judge.

PART 826—[AMENDED]

3. The authority citation for Part 826 continues to read as follows:

Authority: Section 203(a)(1) Pub.L. 99–80, 99 Stat. 186 (5 U.S.C. 504).

4. Section 826.3(a) is revised to read as follows:

§ 826.3 Proceedings covered.

(a) The Act applies to certain adversary adjudications conducted by the Board. These are adjudications under 5 U.S.C. 554 in which the position of the FAA is presented by an attorney or other representative who enters an appearance and participates in the proceedings. Proceedings to grant or renew certificates or documents, hereafter referred to as "licenses," are excluded, but proceedings to modify, suspend, or revoke licenses or to impose a civil penalty on a flight engineer, mechanic, pilot, or repairman (or person acting in that capacity) are covered if they are otherwise "adversary adjudications." For the Board, the type of proceeding covered includes (but may not be limited to) aviation enforcement cases appealed to the Board under sections 501, 609, 611 and 901 of the Federal Aviation Act (49 U.S.C. 44101 et seq., 44720–44711, 44715, 46301).

* * * * *

Issued in Washington, DC on this 8th day of November, 1994.

James Hall,

Acting Chairman.

[FR Doc. 94–28075 Filed 11–14–94; 8:45 am]

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Tuesday
November 15, 1994

Part VIII

Department of Health and Human Services

Administration on Aging

45 CFR Parts 1321 and 1327
Grants for State and Community Programs on Aging; Grants for Vulnerable Elder Rights Protection Activities; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

45 CFR Parts 1321 and 1327

RIN 0985–ZA01

Grants for State and Community Programs on Aging; Grants for Vulnerable Elder Rights Protection Activities

AGENCY: Administration on Aging (AoA), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) requests comments from the public on proposed changes to regulations on Grants for State and Community Programs on Aging, deleting certain references to the Long-Term Care Ombudsman Program and amending one provision regarding this program, and to a proposed new rule to implement the new Title VII for Vulnerable Elder Rights Protection Activities enacted in the 1992 Amendments to the Older Americans Act (Act). The references to the Ombudsman Program being deleted have either been superseded in the law or are superseded by provisions in the proposed new rule. One provision pertaining to ombudsman confidentiality requirements is retained in the regulations for State and Community Programs on Aging and amended based on changes made in the 1992 amendments to the Act. By clarifying the statutory requirements, the regulations will eliminate any confusion about the requirements of the Act and enable the States to carry out advocacy programs on behalf of vulnerable older people, in accordance with the intent of Congress.

DATES: In order to be considered, comments on this proposed rule must be received on or before January 17, 1995.

Public hearings on the proposed regulations will be held from 9 a.m. until 12 noon on the dates listed at the beginning of **SUPPLEMENTARY INFORMATION.**

ADDRESSES: All comments concerning these proposed regulations should be addressed to: John F. McCarthy, Deputy Assistant Secretary on Aging, Administration on Aging, 330 Independence Ave., SW., Washington, DC 20201.

A copy of any comments that concern information collection requirements should also be sent to Allison Herron Eydt, AoA Desk Officer, Office of Management and Budget, 1725 17th Street, N.W., Room 10235, Washington, D.C. 20503.

Public hearings on the proposed regulations will be held on the dates and in the cities and locations listed at the beginning of **SUPPLEMENTARY INFORMATION.** Requests to present oral testimony should be transmitted to the Regional Administrator, AoA Regional Office, by mail, telephone or fax, as provided in **SUPPLEMENTARY INFORMATION.** Written comments may be presented to AoA at the hearings or mailed to the Deputy Assistant Secretary for Aging at the address provided above.

Beginning 14 days after the close of the comment period, comments will be available for public inspection in room 4278, 330 Independence Ave., SW., Washington, DC 20201, Monday through Friday between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Sue Wheaton, Telephone (202) 619–7585.

SUPPLEMENTARY INFORMATION:

Hearings: Dates, Locations and Procedures

As stated above under **DATES** and **ADDRESSES**, AoA is holding public hearings on the proposed regulations on the dates and at the locations provided below. Oral presentations will be limited to three minutes per person. Individuals will be scheduled to speak in the order in which their request is received in the AoA Regional Office. Comments by those making oral presentations must also be received by AoA in writing by the close of the comment period in order to be accepted as part of the official record.

November 18, 1994; Boston, MA: Boston Park Plaza Hotel and Towers, 64 Arlington Street. AoA Regional Office, John F. Kennedy Building, Room 2075, Boston, MA 02203; Tel. (617) 565–1158; Fax (617) 565–4511.

December 2, 1994; Atlanta, GA: Atlanta Sheraton Gateway Hotel, 1900 Sullivan Road, College Park, GA. AoA Regional Office: 101 Marietta Tower, Suite 1702, Atlanta, GA. 30323; Tel. (404) 331–5900; Fax (404) 331–2017.

December 9, 1994; Chicago, IL: Contact AoA Regional Office after November 28 for location of hearing. AoA Regional Office: 105 West Adams Street, 10th Floor, Chicago, IL 60603; Tel. (312) 353–3141; Fax (312) 886–8533.

December 15, 1994; Denver, CO: Contact AoA Regional Office after November 28 for location of hearing. AoA Regional Office: 1961 Stout Street, Room 908, Federal Office Bldg., Denver, CO 80294; Tel. (303) 844–2951; Fax (303) 844–2943.

January 13 1995; San Francisco, CA: Contact AoA Regional Office after November 28 for location of hearing. AoA Regional Office: 50 United Nations Plaza, Room 480, San Francisco, CA 94102; Tel. (415) 556–6003; Fax (425) 556–7393.

I. Program Background and Purpose

Title VII of the Older Americans Act (Act), enacted in the 1992 Amendments to the Older Americans Act, brings together into one title advocacy programs which were previously in Title III. The purpose of Title VII is to foster activities to assist vulnerable older people to exercise their rights; to secure the benefits to which they are entitled; and to be protected from abuse, neglect and exploitation. Subtitle A encompasses programs for which the State Agency on aging has leadership responsibility; Subtitle B provides a means to assist Native American organizations to prioritize the needs of their service population relating to elder rights and make grants (when this Subtitle is funded) to carry out vulnerable elder rights protection activities.

Title VII emphasizes the leadership role of the State agency in planning, implementing and coordinating statewide programs and activities designed to help older people understand their rights, know their benefits and make informed choices. Title VII provides a framework upon which States, without abrogating the particular mission and legislative and regulatory requirements of each Title VII program, can build a coordinated, integrated statewide system of advocacy and assistance for vulnerable older people.

The State leadership role for Title VII is underscored by the fact that States may use funds available under Title VII to directly carry out vulnerable elder rights protection activities. The Congressional Committees of Jurisdiction for the Act made clear that Title III requirements governing the allocation of funds within States are not applicable to funds made available under any part of Title VII and that, unlike Title III, area agencies are not the only entities eligible to receive grants from States under any part of Title VII. (138 CONG.REC., S125, 13503 (daily ed. September 15, 1992) (Joint Explanatory Statement of the Committees of Jurisdiction, Older Americans Act Amendments of 1992))

The Four Programs Under Title VII

Title VII authorizes funding for four advocacy programs previously included in Title III. Establishing each program in a separate chapter of Title VII underscores the distinct mission and strengthens the definition and function of each program; and combining them under a single title fosters increased collaboration among advocates within a State—and between States—to assist individual older people and their families and representatives.

The Long-Term Care Ombudsman Program (Chapter 2, Sections 711, 712 and 713 of the Act) requires States to establish and operate an Office of the State Long-Term Care Ombudsman, headed by the State Long-Term Care Ombudsman. The Ombudsman Program identifies, investigates and resolves complaints made by or on behalf of residents of nursing, board and care and similar adult care homes; addresses major issues which affect residents; works to educate residents, nursing home personnel and the public about residents rights and other matters affecting residents; and performs other functions specified in the Act to protect the health, safety, welfare and rights of residents.

Building upon established law, the 1992 Amendments to the Act clarified and strengthened State ombudsman programs in the following areas: The functions of the State Ombudsman; criteria for the designation and duties of local ombudsman entities designated by the State Ombudsman; procedures for ombudsman access to residents and records, disclosure of ombudsman records, and ensuring against conflicts of interest; legal assistance for ombudsmen; reporting on ombudsman activities and providing recommendations; training of ombudsman representatives; and non-interference with the performance of ombudsman responsibilities. The 1992 Amendments emphasized the role of local ombudsman programs and the State Ombudsman's leadership of the statewide program; established detailed requirements for identifying and resolving real and potential conflicts of interest; and reinforced the role of the Ombudsman as an advocate for change to improve the quality of care and quality of life for residents of long-term care facilities.

The 1992 Amendments also added important Title II provisions to the Ombudsman Program, including requirements for: The establishment in AoA of an Office of Long-Term Care Ombudsman Programs headed by an Associate Commissioner for Ombudsman Programs, with specific criteria for appointment and detailed definition of duties; funding of a National Ombudsman Resource Center at no less than the level at which it was funded in 1990, to establish a national program to recruit ombudsman volunteers, conduct research and assist State ombudsmen; establishment of model ombudsman training standards; a study on the effectiveness of the State long-term care ombudsman programs; and expansion of the requirements for the annual ombudsman report to Congress.

New provisions in Title III require State and area agencies to fund their ombudsman programs at not less than the level at which the programs were funded in Fiscal Year 1991.

The Chapter entitled Programs for Prevention of Elder Abuse, Neglect, and Exploitation (Chapter 3, Section 721) requires States to develop and enhance programs for the prevention of elder abuse, neglect and exploitation. The section enumerates activities which States may undertake, including but not limited to providing funding for public education, ensuring the coordination of services provided by area agencies on aging and adult protective services programs, promoting the development of information and data systems, and training of individuals and professionals in the identification, prevention and treatment of abuse, neglect and exploitation.

This chapter does not require the State agency on aging to establish a State protective services system. Rather, the State agency is expected to work to enhance and improve the State's overall system for the prevention and treatment of elder abuse, neglect and exploitation, including protection of individual elders' dignity and rights in the delivery of protective services. In this way, the State agency on aging should be an ally of the State protective services agency in working for more and better services for vulnerable older people through enlisting the support and participation of other agencies and networks in preventing elder abuse.

The State Elder Rights and Legal Assistance Development Program (Chapter 4, Section 731) builds upon State legal and elder rights development programs which were initiated through AoA Title IV discretionary funds and addressed in Title III, Section 307(a)(18). Section 731 requires the State agency to establish a program to provide leadership for improving the quality and quantity of legal and advocacy assistance as a means for ensuring a comprehensive elder rights system. The State is to establish a focal point for conducting policy review, analysis and advocacy on such issues as guardianship, age discrimination, pension and health benefits, insurance, consumer protection, surrogate decision-making, protective services, public benefits and dispute resolution. In addition, the State is to provide a legal assistance developer and other personnel sufficient to ensure State leadership in securing and maintaining legal rights of older individuals; State capacity for coordinating the provision of legal assistance; State capacity to provide technical assistance, training and other supportive functions to area agencies on aging, legal assistance providers, ombudsmen and other persons as appropriate; and State capacity to promote financial management services for older individuals at risk of conservatorship.

The Outreach, Counseling, and Assistance Program for Insurance and Public Benefits (Chapter 5, Section 741) requires the States to establish programs of outreach, counseling and assistance to older individuals related to obtaining insurance benefits and public benefits to which they may be entitled. This chapter envisions a statewide network of informed staff, including volunteers, who are informed about insurance and public benefits and can assist older people and their advocates—including the advocates working under the other Title VII programs—to obtain needed benefits and make informed decisions on insurance and pension matters.

II. Purpose of the NPRM

Prior to the 1992 amendments, the Long-Term Care Ombudsman Program and parts of the other three programs in the new Title VII were in Title III of the Older Americans Act. However, in most States, only the Ombudsman Program was established and operating according to the basic design provided in Title VII. In most States, the other three program areas are still in a developmental stage. For this reason, the proposed rule for part 45 CFR Part 1327 addresses only the Title VII mission of the State and area agencies, general Title VII State plan and funding requirements, consultation requirements, the Long-Term Care Ombudsman Program (Title VII, Chapter 2), specific requirements for the Elder Abuse, Neglect and Exploitation Prevention section of the Elder Rights part of the State plan, and the requirement that States employ a Legal Assistance Developer. AoA will develop more comprehensive regulations for the programs under Title VII, Chapters 3, 4 and 5 at a later date, based upon the regulatory needs identified as the activities under these

programs are implemented by the States.

Due to the transfer of the Ombudsman Program to Title VII and in order to conform current regulations to the 1992 Amendments to the Act, the proposed regulations would make the following changes in the Title III regulations, 45 CFR Part 1321, Grants to State and Community Programs: deletion of reference to the Ombudsman Program in three sections, amendment of one section pertaining to confidentiality, and deletion of another entire section which has been superseded by the 1992 Amendments pertaining to award of Title III funds to the area agencies on aging.

The Ombudsman Program regulations (Subpart C, §§ 1327.21 through 1327.29) address areas where the States' experience in administering the program indicates the need for amplification of the statutory requirements and/or the 1992 amendments to the Act require further clarification.

III. Summary of the Provisions of the NPRM

Part 1321—Grants to State and Community Programs on Aging

Due to the transfer of the program requirements for the Long-Term Care Ombudsman Program from Title III of the Act to the new Title VII, references to the Ombudsman Program are deleted from 45 CFR Part 1321, Grants to State and Community Programs on Aging, §§ 1321.9, 1321.11 and 1321.17. In the event that an amended version of § 1321.17(f) proposed by the Administration on Aging in a Notice of Proposed Rulemaking published in the **Federal Register** on March 17, 1994 (59 FR 12728–12738) becomes final before this NPRM goes into effect as a final rule, § 1321.17(f)(5) in that regulation will be amended to delete reference to the Ombudsman Program.

The definition of "official duties" pertaining to the Ombudsman Program is removed from § 1321.3 and not transferred to the Title VII regulation, as the statute sufficiently defines the duties of the Ombudsman.

Section 1321.51, Confidentiality and disclosure of information—is amended to prohibit a State or area agency on aging from requiring information related to reports of neglect, abuse and exploitation of individuals to be divulged except as provided under Sections 705(a)(6)(C) and 721(e)(2) of the Act or an ombudsman or ombudsman representative to disclose the identity of a complainant or resident except as permitted under the Act and under § 1327.24 of these regulations.

Section 1321.63, Purpose of service allotments under Title III—subsection (b) pertaining to award of Title III funds to area agencies on aging is deleted in its entirety because it is superseded by Sections 304(d) and 308 of the Act, as amended in 1992.

Part 1327—Vulnerable Elder Rights Protection Activities Under Title VII of the Older Americans Act, as Amended

Subpart A—General Provisions

1327.1 Basis and purpose—This section emphasizes the Title VII mandate that States develop a conceptual framework for, and provide leadership in implementing, comprehensive and coordinated statewide elder rights systems to assist vulnerable older people to understand their rights, know and secure their benefits and make informed choices. It lists the types of programs and agencies that State agencies on aging are expected to work with and through to develop statewide elder rights systems.

Title VII is a new addition to the Act. Prior to the 1992 amendments, the Ombudsman Program and parts of the other three programs now included under Title VII were in Title III. However, in most States, only the Ombudsman Program was established and operating according to the basic design provided in the new Title VII. In most States, the other three program areas are still in a developmental stage. For this reason, the proposed rule for this part addresses only the Title VII mission of the State and area agencies, general Title VII State plan and funding requirements, consultation requirements, the Long-Term Care Ombudsman Program, specific requirements for the Elder Abuse, Neglect and Exploitation Prevention section of the Elder Rights part of the State plan, and the requirement that States employ a Legal Assistance Developer. AoA will develop more comprehensive regulations for Chapters 3, 4 and 5 at a later date, based upon the regulatory needs identified as the activities under these programs are implemented by the States.

Section 1327.3 Definitions—the definitions apply to the Ombudsman Program. They explain the meaning of the statutory requirement that the Ombudsman serve on a "full-time basis," stipulate that the Ombudsman Program is to be statewide in scope and define "statewide ombudsman coverage." They also amplify the meaning of "immediate family" related to conflict of interest requirements, "other similar adult long-term care facility" related to ombudsman coverage, "regular and timely access" to the Ombudsman Program, "timely response" to complaints and "willful interference" with the representatives of the Office of the Ombudsman in the performance of the representatives' official duties.

Section 1327.5 Applicability of other regulations—this section requires compliance with the statutory and regulatory requirements of the Medicare and Medicaid programs, including the Omnibus Nursing Home Requirements; the Developmental Disabilities Assistance and Bill of Rights Act; the Civil Rights Act; the Americans With Disabilities Act; and other relevant Federal requirements.

Section 1327.7 Mission of the State agency—this section underscores the leadership role of the State agency to develop and carry out throughout the State a system of programs, services and protections to assist individual older persons and to advocate for policy, regulatory and legislative changes to protect the rights, dignity and benefits of vulnerable older individuals as a group.

Section 1327.9 Mission of the area agency—this section emphasizes the mission of the area agency to assure that viable, effective systems of both individual and collective advocacy are established and operating within their planning and services areas to protect the rights and address the needs of vulnerable older individuals.

Subpart B—General Title VII Requirements

1327.11 Title VII State Plan Requirements—this section requires States, by March 31, 1995, to describe, in an addendum to their State plan, the manner in which they will carry out Title VII and stipulates the content for the description, including: a conceptual framework for a comprehensive, coordinated statewide system; the process by which Title VII activities were identified and prioritized in consultation with parties specified in the Act and in accordance with these regulations; a description of the roles, processes and activities for elder abuse, neglect and exploitation prevention activities specified in Subpart D, Section 1327.31; a brief description of the activities carried out for the other Title VII programs; and outcomes expected and methods by which the State will periodically assess the status of elder rights in the State. In accordance with Section 705(a)(4) of the Act, States are also required to provide

assurances and documentation that Title VII funding has not been used to supplant funds from other sources.

1327.13 Consultation—this section stipulates that the State agency on aging shall develop policies governing the programs contained in Title VII in consultation with specified individuals, agencies and interested parties within the State.

1327.15 Funding requirements—this section specifies rules for State and area agencies (where applicable) regarding utilization of Title III funding, minimum required ombudsman funding levels, and allowable uses of funding provided for programs under Title VII. It also clarifies that the Title III provisions related to funding for State and area plan administration and intrastate distribution of Title III funding are not applicable to Title VII funds. That is, States may not include any Title VII funds in their calculation of Federal funds available for State plan administration, and Title VII funds allotted to the States may not be included in the base amount used to calculate the ten percent limitation on the use of funds for area plan administration under the provisions of Section 304(d)(1)(A) of the Act. However, the regulation clarifies that Title VII funds may be used to support any activity directly related to implementing the chapter for which they are appropriated.

Section 1327.15(a) (1), (2) and (4)(iv) clarify that ombudsman funding provided under Title III, Section 304(d)(1)(B), the ombudsman minimum required funding level comprised of funds from all sources and States' Title VII ombudsman allotments are to be used only for the Ombudsman Program as it is defined in the Act. We are aware of a few ombudsman programs which conduct activities not directly related to the Ombudsman Program as it is defined in Section 712 of the Act. For example, some statewide ombudsman programs respond to complaints about in-home care and hospital services.

However, it should be emphasized that there is no basis in the law, nor does the legislative history support, States use of the funding provided to conduct ombudsman services, as defined in Section 712 of the Act, to fund ombudsman or advocacy services for individuals living in their own homes (including homes in public housing units) or receiving acute medical care in facilities not covered under the definition of long-term care facilities in the Older Americans Act.

AoA recognizes that there are abuses which occur in these other settings. However, the law is clear about the scope of the Ombudsman Program and the use of Ombudsman Program funding. Further, AoA is concerned that when ombudsmen are required to provide coverage in private homes, hospitals, public housing complexes or other non-long-term care facility settings without sufficient staff resources, coverage of long-term care facilities may be lessened and the entire State ombudsman program may be weakened.

Both institutional long-term care and these other residential or care settings involve complicated and usually different sets of rules and regulations and different benefit and oversight systems. It is unlikely that the State Long-Term Care Ombudsman, and local ombudsman representatives in areas where there are numerous-long term care facilities, could be involved in areas other than institutional long-term care without compromising services to residents of long-term care facilities and diverting the limited resources available to the program designed to serve residents of nursing, board and care and similar adult care facilities. An additional concern is that conflicts of interest could arise if ombudsman programs investigate complaints about in-home services which are provided by the same agency which funds the Ombudsman Program.

If a State wishes to establish advocacy or ombudsman programs for recipients of home or acute care services, or for older people living in public housing units, the State should ensure that there are sufficient, additional resources to provide these services. Additional staff should be provided to carry out these expanded responsibilities. The State should also ensure that any regional or local components of ombudsman programs which investigate home-care complaints are located outside of the organizational entities which provide the services the ombudsmen are expected to monitor.

Subpart C—Long-Term Care Ombudsman Program

The sections on the Ombudsman Program are listed in the same order and with the same headings as the ombudsman sections in Title VII of the Act. Not all sections in the Act are covered in the regulation, as the regulation addresses only those areas where the provision in the Act requires clarification or amplification.

Section 1327.21 Establishment—

1327.21(a) Ombudsman Access to Decision-Making Officials—In order to increase the ability of the State Ombudsman Program to effectively represent the interests of residents of long-term care facilities in policy-making at the State level, the rule requires that the Ombudsman have direct access to directors of governmental entities with responsibilities which impact on residents of long-term care facilities. Without such access, the Ombudsman's ability to "represent the interests of the residents before governmental agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the residents" as required under Section 712(a)(3)(E) of the Act would be diminished. The statutory organization of the program into an *office* indicates that Congress intended it to have a high level of visibility and an effective voice in policy deliberations affecting residents.

1327.21(b) Local Ombudsman Entities and Ombudsman Representatives—The rule outlines five areas in which the State agency must establish criteria and develop policy for participation in the statewide Ombudsman Program by local ombudsman entities and representatives. The overall objective of the criteria and policies is to strengthen, through the designation process, the working relationship between the State ombudsman and local ombudsman entities and the effectiveness of the local entities as part of the statewide Ombudsman Program.

1327.21(c) Representation of Residents' Interests—The Act requires ombudsmen to represent the interests of residents before governmental agencies, but administrative law judges in some States have barred ombudsmen from carrying out this duty because the ombudsman's involvement was interpreted as representing the client, a function reserved for attorneys. The rule clarifies that the Ombudsman and ombudsman representatives have the right and authority to advocate on behalf of residents in transfer, discharge and other administrative hearings by serving as a witness and presenting information and testimony.

1327.21(d) Additional Ombudsman Duties—The rule specifies that, in addition to the ombudsman functions outlined in the Act, the Assistant Secretary determines it appropriate for Ombudsmen to work to ensure that board and care and similar adult care facilities are licensed and that licensing standards are enforced.

1327.22 Procedures for Access—the rule requires the State agency to ensure, through administrative policy, regulation or securing legislation, if needed, that ombudsmen have the right and an established procedure for access to: Facilities; residents, including

residents with guardians; residents' records; facility records and death certificates and records, when these are necessary in the investigation of complaints.

1327.24 Disclosure/Confidentiality—this section replaces the current rules at 45 CFR 1321.11 and 1321.51 promulgated in the 1988 regulation, which permit the director of the State agency on aging and one senior manager to have access to ombudsman files, minus the identity of any complainant or resident of a long-term care facility, for program monitoring purposes. The new rule stipulates that the director *or* a senior manager of the agency or organization in which the Ombudsman Program is administratively located may have access to ombudsman files for program monitoring purposes; that the individual who performs the program monitoring must have no conflict of interest; and that confidentiality requirements concerning any complainant or resident must be strictly followed. This rule applies to ombudsman files at the State and local level. As previously stated at the beginning of this preamble, this NPRM proposes to delete the current reference to the Ombudsman Program in 45 CFR 1321.11 and to amend 45 CFR 1321.51 to conform with confidentiality provisions in Sections 705, 712 and 721 of the Act and section 1327.24 of this proposed regulation.

This section also clarifies that Section 705(a)(6)(C) of the Act pertains to information provided to the agencies and programs specified in this statutory provision and does not require the Ombudsman Program to abridge the confidentiality requirements specified in Section 712(d) of the Act. The rule stipulates that representatives of the Ombudsman Program may not be required to disclose the identity of a complainant or resident except under conditions outlined in section 712(d) of the Act.

Some State abuse reporting laws mandate the reporting of all incidents of abuse. These State laws may conflict with the Section 712(d) requirement that ombudsmen not reveal the identity of complainants or residents unless the complainant, resident or the resident's legal representative consents to the disclosure or the disclosure is required by court order. The rule clarifies that Federal law supersedes State law in such instances and that ombudsmen must follow the disclosure procedure outlined in Section 712(d). Section 1327.27(b)(3) of these regulations requires the State Ombudsman, in coordination with the State Adult Protective Services agency, to establish a protocol for reporting complaints involving alleged abuse and exploitation which ensures prompt response to those in need while protecting confidentiality, in accordance with statutory and regulatory requirements.

1327.25 Conflict of Interest—Subparagraph (a), Designation of the Ombudsman and ombudsman entities and representatives—The organizational location of State and local ombudsman programs is crucial to those programs' independence and access to decision-makers. Most State ombudsman programs are located in State agencies on aging, and more local programs are located in Area agencies on aging than in any other organizations. While the Act prohibits contracting the Ombudsman Program to agencies or organizations which regulate, own or operate long-term care facilities, in the past AoA has permitted State agencies on aging which regulate, own or administer long-term care facilities to also operate the Ombudsman Program. This previous policy, stated in the preamble to the 1988 regulations, was based on the construction of the law.

In this rule, we are modifying this policy to comply with Section 712(f)(1) of the Act, which states that no individual, or member of the individual's immediate family, involved in the designation of the Ombudsman * * * or the designation of an entity designated under subsection (a)(5) (local ombudsman entity) may be subject to a conflict of interest. We believe that officials and employees in any office which directly licenses or certifies long-term care facilities, administers facilities or provides long-term care services are subject to an inherent conflict of interest disqualifying them from designating the Ombudsman or ombudsman representatives. Accordingly, in order to comply with Section 712(f)(1), this regulation requires that the individual who designates, whether by appointment or otherwise, the Ombudsman and ombudsman representatives may not be an official or employee of an agency, including a State or area agency on aging, which directly licenses or certifies long-term care facilities, administers facilities or provides long-term care services. The rule also requires that where State and area agencies contract the Ombudsman Program to another agency or organization, the employees who oversee the contract must have no conflict of interest.

Since the Ombudsman Program is responsible for investigating complaints which are sometimes made against the licensing agency and recommending changes in policies and procedures which frequently involve the licensing agency, this rule is designed to prevent a situation in which an individual directly involved in the licensing and certification of a facility, or one who is involved in administering a facility or providing long-term care services, is also in a position of authority or responsibility concerning the designation of the Ombudsman or ombudsman representatives.

1327.25(b) Requires that where the State or area agency on aging contracts with another agency to operate the Ombudsman Program, the State or area agency staff persons who oversee the contract must not be involved in licensing, certifying or administering long-term care facilities or services.

1327.25(c) Prohibits the State Ombudsman and ombudsman representatives from also serving as adult protective services (APS) workers in APS programs with responsibilities which might conflict with the Ombudsman's role as advocate for the residents' right to self-determination and/or which might result in the representatives becoming case workers for victims of abuse, neglect and exploitation and not fulfilling the many other roles and responsibilities of the Office of the Long-Term Care Ombudsman. This section also prohibits the Ombudsman and ombudsman representatives from serving as a resident's agent, medical decision-maker or surrogate and from assuming other, related roles which might place them in conflict with their primary role as advocate for the rights of residents and/or consume their time to the exclusion of other important duties.

1327.26 Legal Counsel—This section requires the State agency to develop and implement written policies and procedures which stipulate how the State will fulfill its obligation to provide adequate legal counsel to the Ombudsman and ombudsman representatives to assist them in protecting the health, safety, welfare, and rights of residents and in the performance of their official duties and to provide legal representation to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of official duties. It requires the State to disseminate the policies and procedures to all representatives of the Office and regularly include the information in training provided to ombudsman representatives.

1327.27 Administration—Subparagraph (a) clarifies that the

Ombudsman Program may serve disabled individuals under the age of 60 who are living in long-term care facilities, a majority of whose residents are older adults, if such service does not weaken or decrease service to older individuals covered under the Older Americans Act. The Administration on Aging takes the view that by giving the Ombudsman and ombudsman representatives discretion to serve those under age 60 and thus address the needs of all residents in a facility, the Ombudsman Program will better serve everyone living in the facility.

1327.27(b) Requires State ombudsmen to establish written agreements with the State Adult Protective Services program and the State Protection and Advocacy programs for individuals with developmental disability and mental illnesses. The agreements are to stipulate how resources shall be utilized to serve vulnerable people for which the programs are responsible and policies and procedures to be followed in referrals and investigation of complaints. The policies and procedures regarding complaint referral and investigation must include a protocol for reporting complaints involving alleged abuse or exploitation which ensures prompt response to those in need while protecting confidentiality, in accordance with statutory and regulatory requirements.

1327.27(c) Requires State ombudsmen to establish written agreements with the State agencies responsible for licensing and/or certifying for participation in Titles XVIII and XIX of the Social Security Act long-term care facilities covered by the statewide Ombudsman Program. The agreements must include procedures for complaint investigation, verification and resolution by both agencies; transmittal of information about facilities; ombudsman participation in facility surveys; and shared training of staff.

1327.28 Liability—This section requires the State agency to arrange for liability protection for representatives of the statewide Ombudsman Program so that any representative of the program against whom legal action is brought or threatened to be brought in connection with that individual's performance of her/his official duties will be fully indemnified for legal and other costs arising from the dispute. The State may not transfer this responsibility to provide full liability protection to the area agency or other local agency or leave the individual ombudsman representative financially vulnerable or personally responsible in case of a law suit.

1327.29(a) Noninterference—This section augments the principle enunciated in section 712(j) of the Act which requires States to ensure that willful interference with ombudsman representatives in the performance of official duties shall be unlawful. Subparagraph (a) states, as a general principle, that in the conduct of all aspects of the statewide Long-Term Care Ombudsman Program, the integrity of the work of the Ombudsman and ombudsman representatives must be maintained; and there must be no inappropriate or improper influence from any individual or entity, regardless of the source, which will in any way compromise, decrease or negatively impact on the objectivity of the investigation or outcome of complaints; the Ombudsman's primary role as advocate for the rights and interests of the resident; the Ombudsman's work to resolve issues related to the rights, quality of care and quality of life of the residents of long-term care facilities; or the Ombudsman's statutory responsibility to provide such information as the Office of the Ombudsman determines to be necessary to public and private agencies, legislators and other persons regarding the problems and concerns of residents and recommendations related to residents' problems and concerns.

1327.29(b) Makes it clear that any interference with the work of the Ombudsman, as outlined in paragraph (a) of this section, by an individual who is an official or employee of the State agency on aging or of an organization or agency which operates the Ombudsman Program under grant or contract with the State agency shall be deemed to be a failure to comply with Section 705 and with the noninterference requirements of Section 712 of the Act.

Subpart D—Programs for Prevention of Elder Abuse, Neglect and Exploitation

Section 1327.31 Elder Abuse, Neglect and Exploitation Section of Elder Rights Plan—This section specifies that States shall provide, in the description of the Elder Rights plan, required in Section 1327.11 of these regulations, a detailed description of the involvement of other agencies, use of funds and evaluation of activities conducted with funds provided for implementing Chapter 3, Section 721 of the Act.

Subpart E—State Elder Rights and Legal Assistance Development Program

1327.41 Functions—This section requires States to provide, either directly or through contract, an individual to be identified as the State Legal Assistance Developer, in compliance with Sections 307(a)(18) and 731(b)(2) of the Act. It stipulates that the Developer shall not serve the employing agency as house counsel. The rationale for this requirement is that serving as house counsel prevents the Legal Assistance Developer from carrying out the legal and elder rights development duties specified under Section 731 of the Act.

Subpart F—State Outreach, Counseling, and Assistance Program for Insurance and Public Benefits

1327.51 Coordination—This section amplifies the requirement in Section 741(f) of the Act that outreach and counseling activities authorized under Chapter 5, Section 741 of the Act be coordinated with activities carried out by the State with funds received under the Health Insurance Information, Counseling and Assistance Grants authorized under Section 4360 of the Omnibus Budget Reconciliation Act of 1990.

Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department of Health and Human Services has determined that this rule is consistent with these priorities and principles. An assessment of the costs and benefits of available regulatory alternatives (including not regulating) demonstrated that the approach taken in the regulation is the most cost-effective and least burdensome while still achieving the regulatory objectives.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, Public Law 96–354, requires that an agency prepare a regulatory flexibility analysis for a proposed or final rule if the rule would have significant economic impact on a substantial number of "small entities", i.e. small businesses, small non-profit organizations, or small governmental jurisdictions.

The responsibility for meeting the requirements of the regulations proposed in this NPRM is on the State

agencies and to a lesser extent on area agencies. Actual delivery of services will be provided in some circumstances by public and not-for-profit agencies or organizations under grants or contracts from State or area agencies. Although area agencies and most service delivery agencies and organizations are "small entities" within the meaning of the Act, this rule will impose no significant burdens on State agencies, area agencies or other affected parties and will provide flexibility to State and area agencies in implementing the provisions of the Act. For these reasons, the Secretary hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Section 1327.11 of this proposed rule contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments on the proposed information collection requirements in Section 1327.11 should be addressed to the AoA Desk Officer at the Office of Management and Budget as well as to Deputy Assistant Secretary for Aging. See ADDRESSES section.

Title: Vulnerable Elder Rights Protection Activities—Elder Rights Plan.

Description: Section 705(a)(8) of Older Americans Act as amended by the 1992 amendments to the Act (Public Law 102–375) requires States to include in their State plan submitted under Section 307 a description of the manner in which the State will carry out Title VII in accordance with assurances outlined in Section 705. Based upon this statutory provision, § 1327.11 of the proposed regulations requires States, by March 31, 1995, to describe, in an addendum to their State plan and to all future State plans, the manner in which they will carry out Title VII and stipulates the content of the description, including: a conceptual framework for a comprehensive, coordinated statewide system; the process by which Title VII activities were identified and prioritized in consultation with parties specified in the Act and in accordance with these regulations; a description of the roles, processes and activities for elder abuse, neglect and exploitation prevention activities specified in Subpart D, § 1327.31; a brief description of the activities carried out for the other Title VII programs; outcomes expected and methods by which the State will periodically assess the status of elder rights in the State. In accordance with Section 705(a)(4) of the Act, States are also required to provide assurances and documentation that Title VII funding has not been used to supplant funds from other sources.

Total reporting burden is 4,104 hours for FY 1995 and fewer than 4,104 for subsequent years.

Basis for Estimate:

By March 31, 1995 each State agency and the five trust territories will be required to submit to the Administration on Aging an Elder Rights Plan. Estimate of burden is determined as follows:

Activity	No. staff, per State/ entity	No. hours per staff member	Total hours
Planning	5	8	40
Writing/ Editing Plan	2	16	32

72 hours×57 States/entities = 4,104 hours for FY 1995

Development of the Elder Rights Plan in years subsequent to FY 1995 will likely require fewer planning hours than the development of the initial plan will require. The statute allows States to submit their State plans every two, three, or four years. Therefore, the total burden will be considerably fewer than 4104 hours in years after FY 1995.

Description of Respondents: State and local governments, including State and Area agencies on aging and ombudsman programs; non-profit organizations; interested individuals.

List of Subjects

45 CFR Part 1321

Administrative practices and procedure, Aged, Grant programs—Indians, Grant programs—social programs, Indians, Legal services, Nutrition, Nursing Homes, Reporting and recordkeeping requirements.

45 CFR Part 1327

Administrative practices and procedure, Aged, Grant programs—social programs, Health care, Legal services, Privacy, Reporting and recordkeeping requirements.

Fernando M. Torres-Gil,

Assistant Secretary for Aging.

Dated: October 20, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, 45 CFR Chapter XIII, subchapter C, is amended as follows:

PART 1321—GRANTS TO STATE AND COMMUNITY PROGRAMS ON AGING

1. The authority for part 1321 continues to read as follows:

Authority: 42 U.S.C. 3001 et seq.; title III of the Older Americans Act, as amended.

Subpart A—Introduction

2. 1321.3, Definitions, is amended by removing the definition of "Official duties".

Subpart B—State Agency Responsibilities

3. Section 1321.9, Organization and Staffing of the State Agency, is amended by removing paragraphs (c) and (d).

4. Section 1321.11 is revised to read as follows:

§ 1321.11 State agency policies.

(a) The State agency on aging shall develop policies governing all aspects of programs operated under this part, whether operated directly by the State agency or under contract. These policies shall be developed in consultation with other appropriate parties in the State. The State agency is responsible for enforcement of these policies.

(b) The policies developed by the State agency shall address the manner in which the State agency will monitor the performance of all programs and activities initiated under this part for quality and effectiveness.

5. 1321.17 is amended by revising paragraph (f)(7) to read as follows:

§ 1321.17 Content of State plan.

* * * * *

(f) * * *

(7) The State agency on aging shall develop policies governing all aspects of programs operated under this part.

* * * * *

6. Section 1321.51 is amended by revising paragraph (c) to read as follows:

1321.51 Confidentiality and disclosure of information.

* * * * *

(c) A State or area agency on aging may not require:

(1) A provider of legal assistance under this part to reveal any

information that is protected by attorney client privilege;

(2) Information related to reports of neglect, abuse and exploitation of individuals to be divulged except as provided under Sections 705(a)(6)(C) and 721(e)(2) of the Act; or

(3) An ombudsman or ombudsman representative providing services under Part 1327, Subpart C, of this chapter to disclose the identity of a complainant or resident except as provided under § 1327.24.

Subpart D—Service Requirements

7. Section 1321.63 is amended by removing and reserving paragraph (b).

8. Part 1327 is added to read as follows:

PART 1327—VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

Sec.

Authority: 42 U.S.C. 3001 *et seq.*

Subpart A—General Provisions

§ 1327.1 Basis and purpose of this part.

(a) This part prescribes requirements State agencies shall meet to receive grants for the establishment and development of Vulnerable Elder Rights Protection activities under Title VII of the Older Americans Act, as amended (hereinafter referred to in this part as the Act). These requirements include the responsibilities of State agencies, Area agencies, and service providers.

(b) The requirements of this part are based on Title VII and relevant sections of Titles III and VI of the Act. Title VII provides for formula grants to State agencies on aging, under approved State plans, to carry out Vulnerable Elder Rights Protection activities.

(c) Statewide Elder Rights Systems—Title VII provides an important mandate to State agencies on aging, namely the development of an Elder Rights system which coordinates and recognizes the inter-relatedness of a variety of services, programs, and activities on the part of a number of agencies and organizations to ensure the rights of vulnerable older people in a State. Such an Elder Rights system will assist vulnerable older people to understand their rights, know and secure their benefits and make informed choices. In the development of this system, it is expected that State agencies on aging will work through and with the State Long-Term Care Ombudsman Program; State Elder Rights and Legal Assistance Development Program; State Outreach, Counseling and Assistance Program for Insurance and Public Benefits; Area agencies on aging, information and referral programs; consumer protection and advocacy agencies; guardianship programs; legal providers; adult protective services; the court system; the attorney general; the State equal employment opportunity commission; and other appropriate programs and agencies.

§ 1327.3 Definitions.

Full-time basis, as used in Section 712(a)(3) of the Act with respect to the State Ombudsman position, means the State Long-Term Care Ombudsman position is full-time, and the individual who serves in the position has no duties other than those directly related to the Long-Term Care Ombudsman Program, as defined in Section 712 of the Act.

Immediate family, as used in Sections 201(d)(2)(B) and 712(f)(1) of the Act pertaining to conflict-of-interest, means spouse, parents, children and siblings.

Other similar adult long-term care facility, as used in Section 102(34)(D) of the Act with respect to the type of facilities which the Ombudsman Program is authorized to cover, means any group facility which provides room, board and personal care services to older individuals, and which the State includes within the purview of its statewide Long-Term Care Ombudsman Program.

Regular and timely access, as used in Section 712(a)(3)(D) and (5)(B)(ii) of the Act with respect to residents' access to ombudsmen, means that residents of long-term care facilities throughout the State have access to knowledge of the Ombudsman Program and how to contact it and that calls or letters to the program from residents or their representatives are responded to in a timely manner.

State Long-Term Care Ombudsman Program means a program established under Section 712(a)(1)(B) of the Act which provides statewide ombudsman coverage for residents of long-term care facilities.

Statewide ombudsman coverage, as used in the definition of "State Long-Term Care Ombudsman Program," means that: residents of long-term care facilities and their representatives have access to knowledge of the Ombudsman Program and how to contact it; and complaints received from any part of the State are investigated and documented and steps are taken to resolve problems in a timely manner, in accordance with Federal and State requirements.

Timely responses, as used in Section 712(a)(3)(D) of the Act with respect to ombudsman action on complaints, means that life-threatening complaints are responded to within 24 hours of receipt and non-life threatening complaints are responded to as promptly as can reasonably be accomplished.

Willful interference, as used in Section 712(j)(1) of the Act with respect to the work of representatives of the ombudsman office, means any action taken, or deliberate omission of action, with the intention of preventing the Ombudsman from carrying out his/her official duties, as outlined in Section 712 of the Act and pursuant to State law. Acts of retaliation, such as dismissal of the Ombudsman or ombudsman representative or the removal and transfer of such person because of conscientious performance of official ombudsman duties, are considered willful interference.

§ 1327.5 Applicability of other regulations.

Several other regulations apply to all activities under this part. These include but are not limited to:

(a) 42 CFR Parts 483 and 488—Medicare and Medicaid Programs; Omnibus Budget Reconciliation Act of 1987 (OBRA) Nursing Home Requirements;

(b) 45 CFR Part 16—Procedures of the Departmental Appeals Board;

(c) 45 CFR Part 74—Administration of Grants, except Subpart N;

(d) 45 CFR Part 80—Nondiscrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services: Effectuation of Title VI of the Civil Rights Act of 1964;

(e) 45 CFR Part 81—Practice and Procedures for Hearings Under Part 80 of this Title;

(f) 45 CFR Part 84—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Participation;

(g) 45 CFR Part 91—Nondiscrimination on the Basis of Age in HHS Programs or Activities Receiving Federal Financial Assistance;

(h) 45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;

(i) 45 CFR Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities;

(j) 5 CFR Part 900, Subpart F, Standards for a Merit System of Personnel Administration;

(k) 45 CFR Part 1386—Administration for Developmental Disabilities and Developmental Disabilities Programs;

(l) 49 CFR Parts 27, 37 and 38—Transportation for Individuals with Disabilities;

(m) 28 CFR Parts 35 and 36—Department of Justice;

(n) 29 CFR Part 1630—Equal Employment Opportunity Commission.

§ 1327.7 Mission of the State agency.

The State agency on aging is responsible for advocating for the rights of older individuals throughout the State. This responsibility is paramount with respect to those who are unable to secure and protect their own interests. The Act intends that the State agency on aging shall be the leader relative to Vulnerable Elder Rights Protection activities in the State. This means that the State agency shall:

(a) Develop and actively carry out throughout the State a system of programs, services and protections which assist older persons to:

(1) Understand and exercise their rights;

(2) Exercise choice through informed decision-making;

(3) Benefit from support and opportunities promised by law;

(4) Maintain autonomy consistent with capacity;

(5) Resolve grievances and disputes through appropriate representation and assistance; and

(b) Work to secure the policy, regulatory and legislative changes which are needed to protect the rights, dignity and benefits of vulnerable older individuals.

§ 1327.9 Mission of the Area agency.

The mission of the Area agency on aging under this part is to advocate for and work to establish a viable, effective system within the planning and service area to assist vulnerable older individuals living in both home and long-term care facility settings to secure and exercise their human and civil rights, protect their dignity, claim the benefits to which they are entitled and ensure the fulfillment of their contracts and covenants for care.

Subpart B—General Title VII Requirements

§ 1327.11 Title VII State Elder Rights Plan Requirement.

By March 31, 1995 the State agency on aging shall provide, as an addendum to its current State plan, an Elder Rights plan. The Elder Rights plan shall be included in all future State plans and shall describe the manner in which the State will develop a comprehensive Elder Rights system to carry out Title VII, in accordance with the assurances in Section 705(a)(1) through (7) of the Act.

(a) The description shall include:

(1) A conceptual framework, which includes goals and priorities, for how the State agency, without abrogating the specific mission and statutory and regulatory requirements for each Title VII program, will develop a coordinated, comprehensive system described in § 1327.1(c) which is designed to fulfill the elder rights mission of the State agency, as described in § 1327.7;

(2) The process through which the State, in consultation with the parties specified in § 1327.13, identified and prioritized statewide elder rights activities, including the process by which all interested parties were notified of public hearings held in accordance with Section 705(a)(2) of the Act and the conduct and results of such hearings; as required under Title II of the Americans with Disabilities Act, all hearings shall be accessible to the disabled;

(3) A description of the roles, processes and activities for elder abuse, neglect and exploitation prevention activities specified in Subpart D of this part, § 1327.31;

(4) A brief description of the activities carried out for the other programs under Title VII;

(5) Outcomes expected during the period covered by the plan; and

(6) Methods by which the State will periodically assess the status of elder rights in the State, in compliance with Section 731(b)(8) of the Act.

(b) The Elder Rights Plan shall also contain assurances and documentation showing that Title VII funding has not been used to supplant funds from other sources, as required in Section 705(a)(4) of the Act.

§ 1327.13 Consultation.

The State agency on aging shall develop policies governing all aspects of programs operated under this part, whether operated directly by the State agency or under contract. These policies shall be developed in consultation with the State Ombudsman, State Legal Assistance Developer and other State level agencies or staff with major responsibilities for programs related to Elder Rights, including State adult protective services staff; area agencies on aging and local agencies or staff with major responsibilities for programs related to Elder Rights; older people; organizations which advocate on behalf of vulnerable older persons; and service providers, including long-term care providers.

§ 1327.15 Funding requirements.

(a) *Requirements of State agencies.* (1) The period of availability of funding for obligation is covered by 45 CFR part 92.

(2) *Use of Title III funds for Ombudsman Program.* Title III funds utilized by States under Section 304(d)(1)(B) must be used to support activities of the Long-Term Care Ombudsman Program, as defined in Section 712 of the Act, at either the State level or at the local level. These funds are not subject to the intrastate funding formula.

(3) *Maintenance of FY 1991 ombudsman program funding level.* In carrying out the Ombudsman Program under Titles III and VII, States must, at a minimum, expend not less than the total amount expended by the State agency on aging from all sources in fiscal year 1991, with the exception of funds received in a State's allotment of the budget line item for abuse prevention (under the old Title III, Part G of the Older Americans Act, as amended November 27, 1987) in the FY 1991 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act which the State elected to expend on ombudsman activities in FY 1991. In addition, States should expend on their Ombudsman Program the full amount of the increase in funding between what they received and expended on ombudsman activities from the State's allotment of the budget line item for ombudsman services in the FY 1991

Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act and their Title VII ombudsman allotment for a current fiscal year. This funding received under Titles III and VII must be used solely for ombudsman services to residents of long-term care facilities, as defined in Sections 102 (19) and (34) of the Act and § 1327.3 and pursuant to Sections 307(a)(12) and 712 of the Act, and may not be used for any other purpose.

(4) *Use of Title VII ombudsman and abuse prevention allotments.* (i) States may use any portion of their Title VII abuse prevention allotment to fund specific, identifiable activities conducted by any public or private non-profit program or agency, including adult protective services and ombudsman programs, which directly correspond to the abuse prevention activities outlined in Section 721(b) of the Act.

(ii) States may not provide any of their Title VII abuse prevention allotment to adult protective services agencies to conduct activities or provide services not authorized in Section 721(b).

(iii) Use of Title VII funding for involuntary services to, or coerced participation in, Title VII-funded programs by alleged victims, abusers or their households, is strictly prohibited.

(iv) Use of any of the Title VII ombudsman allotment to fund activities which are not authorized under Section 712 of the Act and conducted by the Long Term Care Ombudsman Program or a grantee or contractor of the Ombudsman Program is prohibited. This includes, but is not limited to, ombudsman services in settings other than long term care facilities, as defined in Section 102(19) and (34) of the Act and § 1327.3, and activities under Title VII, Chapters 3, 4 and 5 conducted by individuals or agencies other than the Ombudsman or Ombudsman Program, or the Ombudsman's grantee or contractor.

(5) *Use of Title VII, Chapter 5 funding (Outreach, Counseling and Assistance Program).* States may use funding under Chapter 5 to conduct any of the activities outlined under Section 741(c) of the Act. If a State determines that any area agency on aging is eligible to receive funding to conduct activities under Chapter 5, the State is required by Section 705(a)(7) to apply the eligibility and priority criteria set forth in the statute.

(6) *Non-applicability of Title III funding provisions.* (i) Effective October 1, 1994, States may not include any Title VII funds in their calculation of Federal funds available for State plan administration. Title VII funds may be used to support any activity directly related to implementing the chapter for which they are appropriated.

(ii) Title VII funds allotted to the States may not be included in the base amount used to calculate the ten percent limitation on the use of funds for area plan administration under the provisions of Section 304(d)(1)(A) of the Act.

(b) *Requirements of area agencies.* (1) Area agencies may use funds allocated under Section 304(d)(1)(D) to support ombudsman program and other elder rights activities.

(2) Area agencies must expend on local or regional ombudsman program activities for residents of long term care facilities, as defined in Sections 102(19) and (34) and 712 of the Act and § 1327.3, not less than the total amount of Title III funds received under Section 304(d)(1)(D) of the Act and expended by the area agency in carrying out the Ombudsman Program under Title III in FY 1991.

Subpart C—Long-Term Care Ombudsman Program

§ 1327.21 Establishment.

(a) *Ombudsman access to decision-making officials.* The State must ensure that the State Ombudsman has direct access to the directors of State governmental entities with responsibilities which impact on residents of long-term care facilities.

(b) *Local Ombudsman entities and ombudsman representatives.* The State agency shall establish criteria and a process for participation in the statewide Ombudsman Program by local ombudsman entities and ombudsman representatives. The criteria must:

(1) Stipulate that the State Ombudsman has the authority to designate local ombudsman entities and ombudsman representatives and to revoke designation, if necessary;

(2) Ensure that local entities designated to participate in the Ombudsman Program have experience in advocating for the individual and collective rights of vulnerable people and are not primarily service providers;

(3) Establish a procedure for hiring, supervising, training, evaluating and, if necessary, dismissing ombudsman representatives and for evaluating the performance of the local ombudsman entity;

(4) Ensure that local ombudsman entities and ombudsman representatives have no conflict of interest, as described in § 1327.25;

(5) Provide for an appeal procedure for local ombudsman entities or representatives whose designation is revoked by the State Ombudsman in order to ensure that ombudsman entities or designated representatives which faithfully and effectively carry out the duties outlined in Section 712(a)(5)(B) of the Act are retained as part of the statewide Ombudsman Program, except when good cause is shown warranting their removal.

(c) *Representation of residents interests.* Representatives specifically designated by the Ombudsman for such purpose shall have the right and authority to advocate on behalf of residents in transfer, discharge and other administrative hearings by serving as witnesses and presenting information and testimony.

(d) *Additional Ombudsman duties.* In addition to the ombudsman functions specified in Section 712(a)(3) (A–H) of the Act, the Assistant Secretary on Aging determines it appropriate that the Ombudsman and ombudsman representatives work to ensure that board and care and similar adult care facilities throughout the State are licensed, as appropriate and in accordance with State and Federal laws and regulations, and that licensing standards are enforced.

§ 1327.22 Procedures for access.

The State agency shall ensure through administrative policy, regulation or securing the enactment of State legislation, if necessary, that the Ombudsman and all designated ombudsman representatives have the right and an established process for access to:

(a) Facilities covered by the statewide Ombudsman Program;

(b) Residents, including residents with legal representatives or guardians;

(c) Residents records, including residents with legal representatives or guardians, with strict adherence to the consent procedures outlined in Section 712(b)(1) of the Act;

(d) Long-term care facilities' records, policies and documents to which the residents or the general public have access;

(e) Copies of all licensing and certification records maintained by the State with respect to long-term care facilities; and

(f) Death certificates and related records, when these are required in the investigation of complaints.

§ 1327.24 Disclosure/confidentiality.

(a) In monitoring the Ombudsman Program, access to files, minus the identity of any complainant or resident

of a long-term care facility, shall be available only to the director or one senior manager of the organization in which the Ombudsman Program is administratively located. The individual who performs this monitoring function must have no conflict of interest, as defined in section 712(f) of the Act and § 1327.25. In the conduct of the monitoring of the Ombudsman Program, the confidentiality of complainants and residents of a long-term care facility shall be protected, in accordance with Section 712(d) of the Act. This rule applies to ombudsman files at the State and local levels.

(b) The confidentiality provisions in Section 705(a)(6)(C) of the Act pertain to information provided to the agencies and programs specified in this section, including the Ombudsman Program. This provision does not require the Ombudsman Program to abridge the confidentiality requirements specified in Section 712(d) of the Act. Neither a State or Area agency nor any other State agency may require a representative of the State Long-Term Care Ombudsman Program to disclose the identity of a complainant or resident except under conditions outlined in Section 712(d).

§ 1327.25 Conflict of interest.

(a) *Designation of the Ombudsman and ombudsman entities and representatives.* As stated in Section 712(f)(1) of the Act, any individual, or member of the immediate family of an individual involved in the designation, by appointment or otherwise, of the Ombudsman or ombudsman entities or representatives (and who correspondingly has the authority to remove the Ombudsman and ombudsman representatives from office), must be free of any conflict of interest. It would be a conflict of interest for an official or employee of any agency at either the State or local level, including State and area agencies on aging, which directly administers the licensing and certification of long-term care facilities, owns or operates such facilities, or provides long-term care services to designate or remove from office the Ombudsman or ombudsman representatives.

(b) *Oversight of Ombudsman contract.* Where the State or area agency on aging contracts with another agency to operate the Ombudsman Program, the State or area agency staff person or persons who oversee the contract must not be involved in licensing, certifying or administering long-term care facilities or services.

(c) *Prohibitions on ombudsman assignments.* (1) The State Ombudsman and ombudsman representatives may not work for or otherwise represent adult protective services programs or program units which develop and carry out care plans for; provide involuntary services to; are authorized to take temporary custody of; or serve as guardians, conservators or legal representatives for any clients.

(2) The State Ombudsman and ombudsman representatives may not serve as a resident's agent, medical decision-maker or surrogate; the sole witness for Do Not Resuscitate (DNR) orders or other medical directives; or as a member of a facility's ethics committee which makes medical decisions for residents without the capacity to evidence their preference, although ombudsmen may serve on such committees in an advisory capacity.

§ 1327.26 Legal counsel.

(a) The State agency shall develop and implement written policies and procedures which stipulate how the State will fulfill its obligation to:

(1) Provide adequate legal counsel to the Ombudsman and ombudsman representatives to assist them in protecting the health, safety, welfare, and rights of residents and in the performance of their official duties; and

(2) Provide legal representation to any representative of the Office against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such representative.

(b) The policies and procedures required in paragraph (a) of this section shall be disseminated to all representatives of the Office and regularly included in training provided to ombudsman representatives.

§ 1327.27 Administration.

(a) The Ombudsman and ombudsman representatives may serve disabled individuals under the age of 60 who are living in long-term care facilities, if such service does not weaken or decrease service to older individuals covered under the Act.

(b) Coordination with State Adult Protective Services programs and Protection and Advocacy programs. The State Ombudsman shall establish written agreements with the State Adult Protective Services Program and the State Protection and Advocacy Program for individuals with developmental disabilities and mental illnesses. The agreements shall stipulate:

(1) How the staff and financial resources of the various programs shall be utilized to meet needs of the vulnerable adults which the programs are responsible to serve;

(2) The policies and procedures which the statewide Ombudsman Program and the other programs will follow regarding referral of requests for assistance and investigation of complaints involving:

(i) Residents of long-term care facilities who have been or may have been abused or exploited; and

(ii) Developmentally disabled and/or mentally ill individuals living in long-term care facilities or in need of long-term care services;

(3) A protocol for reporting complaints involving alleged abuse and exploitation which ensures prompt response to those in need while protecting confidentiality, in accordance with statutory and regulatory requirements.

(c) Coordination with State Licensing and Certification Agencies. The State Ombudsman shall establish written agreements with the State agencies responsible for licensing and/or certifying for participation in Titles XVIII and XIX of the Social Security Act long term care facilities covered by the statewide Ombudsman Program. The agreements shall include, but not be limited to, procedures for complaint investigation, verification and resolution by both agencies; transmittal of information about facilities; ombudsman participation in facility surveys and shared training of staff.

§ 1327.28 Liability.

The State agency must ensure that no representative of the Office will be liable under State law for the good faith performance of official duties and shall indemnify and hold harmless any Ombudsman or ombudsman representative against whom suit or other legal action is brought or threatened to be brought in connection with the performance of the official duties of the Ombudsman or such representative. In no case may the State agency on aging require any substate agency or organization to fulfill this State agency responsibility.

§ 1327.29 Noninterference.

(a) General principles governing noninterference. In the conduct of all aspects of the statewide Long Term Care Ombudsman Program, the integrity of the work of the Ombudsman and ombudsman representatives must be maintained; and there must be no inappropriate or improper influence from any individual or entity, regardless of the source, which will in any way compromise, decrease or negatively impact on:

(1) The objectivity of the investigation or outcome of complaints;

(2) The Ombudsman's primary role as advocate for the rights and interests of the resident;

(3) The Ombudsman's work to resolve issues related to the rights, quality of care and quality of life of the residents of long-term care facilities; or

(4) The Ombudsman's statutory responsibility to provide such information as the Office of the Ombudsman determines to be necessary to public and private agencies, legislators and other persons regarding the problems and concerns of residents and recommendations related to residents' problems and concerns.

(b) Any interference with the work of the Ombudsman, as outlined in paragraph (a) of this section, by an individual who is an official or employee of the State agency on aging or of an organization or agency which operates the Ombudsman Program under grant or contract with the State agency shall be deemed to be a failure to comply with the State's duty under Section 705(a) of the Act to carry out the Ombudsman Program in accordance with the requirements of Chapters 1 and 2 of the Act.

Subpart D—Programs for Prevention of Elder Abuse, Neglect, and Exploitation

§ 1327.31 Elder Abuse, Neglect and Exploitation Prevention Section of Elder Rights Plan.

In the Elder Rights plan required in § 1327.11, States shall describe:

(a) The specific roles of the various agencies in the development and implementation of the abuse, neglect and exploitation prevention part of the Title VII plan;

(b) The process used to determine how the elder abuse prevention funds are to be spent and how this use complements, strengthens, or otherwise enhances the State's adult protective services activities; and

(c) How activities conducted with elder abuse prevention funds will be regularly monitored and evaluated for their effectiveness in preventing, reducing or remedying elder abuse, neglect and exploitation.

Subpart E—State Elder Rights and Legal Assistance Development Program

§ 1327.41 Functions.

The State shall provide, either directly or through contract, an individual who shall be known as the State Legal Assistance Developer to provide leadership in areas outlined in Section 731(b)(2) of the Act. This individual may not serve as house counsel to the State agency on aging or any other agency which employs the individual.

Subpart F—State Outreach, Counseling, and Assistance Program for Insurance and Public Benefits

§ 1327.51 Coordination.

The State unit implementing outreach and counseling activities authorized under Chapter 5, Section 741 of the Act shall coordinate their efforts with the State unit which is the recipient of funds for health insurance information, counseling and assistance authorized under Section 4360 of the Omnibus Reconciliation Act of 1990 (42 U.S.C. 1395 *et seq.*).

[FR Doc. 94–28163 Filed 11–14–94; 8:45 am]

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federal register

Tuesday
November 15, 1994

Part IX

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Part 319

Importation of Fresh Hass Avocado Fruit Grown in Michoacan, Mexico; Proposed Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket 94–116–1]

Importation of Fresh Hass Avocado Fruit Grown in Michoacan, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and public meetings.

SUMMARY: The Government of Mexico requested that the Animal and Plant Health Inspection Service (APHIS) allow the importation into certain areas of the United States of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico. APHIS is currently considering Mexico's request. This notice solicits public comment and advises the public that APHIS is hosting two public meetings regarding the importation of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico.

DATES: Consideration will be given only to comments received on or before December 13, 1994. The first hearing will be held from 9 a.m. until 1 p.m. on Monday, November 28, 1994. The second hearing will be held from 9 a.m. until 4 p.m. on Tuesday, November 29, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94–116–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. The public meetings will be held on Monday, November 28, 1994, at the Dade County Extension Building, 18710 SW. 288th Street, Homestead, FL, and on Tuesday, November 29, 1994, at the Holiday Inn on the Bay at Embarcadero, room Pacific D, 1355 North Harbor Drive, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Harabin, Head, Permit Unit, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–8645.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR 319.56 through 319.56–8 prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States. These regulations include provisions which allow the importation into the United States of fruits and vegetables from countries that are not free of plant pests under conditions designed to prevent the introduction of plant pests into the United States. APHIS developed these regulations based upon scientific risk assessments and extensive public participation.

Prior to July 1993, the regulations prohibited the importation into the United States of Hass avocados from Mexico because of the existence of various fruit flies and seed weevils in Mexico which can infest avocados. APHIS conducted a plant pest risk assessment which resulted in a proposed rule published in the **Federal Register** on October 19, 1992, to allow the importation of Hass avocados from Michoacan, Mexico, into the State of Alaska under prescribed conditions (57 FR 47573–47576, Docket No. 92–111–1). After careful consideration of all comments received, APHIS adopted a final rule, published in the **Federal Register** on July 27, 1993, allowing the importation of Hass avocados only into the State of Alaska (58 FR 40033–40037, Docket No. 92–111–3). The rule also requires the Mexican plant protection agency and Mexican avocado growers to undertake various pest risk mitigation measures, including pest surveys and pest risk-reducing cultural practices, packing house procedures, and prescribed inspection and shipping procedures (7 CFR 319.56–2bb).

On July 5, 1994, the Government of Mexico requested that APHIS amend its regulations to allow the importation of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, into 19 additional States.[1] The Mexican request is available by calling or writing Mr. Victor Harabin, Head, Permit Unit, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–8645. In addition, copies of the Mexican request will be available at the public meetings.

This advance notice of proposed rulemaking solicits public comment on the Mexican request through December 13, 1994. To ensure that any proposed rule will contain all the safeguards, mitigating factors, and other requirements necessary to prevent the introduction of plant pests into the United States, APHIS is also seeking comment on the need for such measures as pest surveys, pest risk-reducing cultural practices, seasonal shipment limitations based on climatological and biological data, packinghouse procedures, and prescribed inspection and shipping procedures. Also, to be certain that APHIS receives and considers all relevant scientific, technical, and operational data associated with the request from the Government of Mexico, APHIS is hosting two public meetings.

After analyzing all comments received either in writing or at the public meetings, APHIS will decide whether to publish a proposed rule in the **Federal Register** regarding the importation of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, into additional States in the United States. Any proposed rule resulting from this process will be based upon a careful, scientific plant pest risk assessment and will take into consideration all written and oral comments received in response to this advance notice. If a proposed rule is published, APHIS will accept written comments for at least 60 days and would host two additional public meetings. This comment period may be extended if necessary, or reopened to receive further information concerning points raised during the comment period.

After full analysis and review of all comments received in response to a proposed rule, a final rule may be published in the **Federal Register** which would allow the importation of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, into certain areas of the United States, subject to conditions specified in the rule. These conditions would contain all of the safeguards, mitigating factors, and other requirements APHIS believes necessary to prevent the introduction of plant pests into the United States. Conditions for importation and the areas to which fresh Hass avocados from Mexico could be shipped could differ from those proposed. Shipments of fresh Hass

[1] The 19 States identified in Mexico's request are Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.

avocado fruit grown in Michoacan, Mexico, could not begin until a final rule is published in the **Federal Register** and all prescribed conditions are met.

Although a time for the completion of a rulemaking proceeding cannot be predicted with certainty, APHIS anticipates that, no earlier than 45 days after the close of the comment period for this advance notice, it would determine whether a proposed rule should be published in the **Federal Register**. APHIS would then provide a comment period of at least 60 days for the proposed rule. To some extent, the time necessary for the review and analysis of the comments and the preparation and publication of a final rule will depend on the number and nature of comments received. APHIS estimates, however, that publication of a final rule could occur no earlier than 90 days after the close of the comment period for the proposed rule.

In connection with this notice, and to provide interested persons a full opportunity to present their views regarding this notice, APHIS will host two public meetings. The first meeting will be held on Monday, November 28, 1994, at the Dade County Extension Building, 18710 SW. 288th Street, Homestead, FL. The second meeting will be held on Tuesday, November 29, 1994, at the Holiday Inn on the Bay at Embarcadero, room Pacific D, 1355 North Harbor Drive, San Diego, CA.

A representative of APHIS will preside at the public meetings. To the extent possible, the presiding officer and other representatives of APHIS will respond to questions regarding the Government of Mexico's request and the rulemaking process to be followed by APHIS.

Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the meeting record. Persons who wish to speak at the public meetings will be asked to sign in with their name and organization.

The meeting in Homestead, FL, will begin at 9 a.m. and is scheduled to end at 1 p.m. local time. The public meeting in San Diego, CA, will begin at 9 a.m. and is scheduled to end at 4 p.m. local time. However, the meetings may be terminated at any time if all persons desiring to speak have been heard. If the number of speakers at the meetings warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

Done in Washington, DC, this 10th day of November 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–28353 Filed 11–14–94; 8:45 am]

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federal register

Tuesday
November 15, 1994

Part X

The President

Executive Order 12936—Amendments to the Manual for Courts-Martial, United States, 1984

Executive Order 12937—Declassification of Selected Records Within the National Archives of the United States

Federal Register
Vol. 59, No. 219
Tuesday, November 15, 1994

Presidential Documents

Title 3—

The President

Executive Order 12936

AMENDMENTS TO THE MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1984

By the authority vested in me as President by the Constitution and the laws of the United States of America, including chapter 47 of title 10, United States Code (Uniform Code of Military Justice, 10 U.S.C. 801-946), in order to prescribe amendments to the Manual for Courts-Martial, United States, 1984, prescribed by Executive Order No. 12473, as amended by Executive Order No. 12484, Executive Order No. 12550, Executive Order No. 12586, Executive Order No. 12708, Executive Order No. 12767, and Executive Order No. 12888, it is hereby ordered as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. R.C.M. 405(g)(1)(B) is amended to read as follows:

"(B) Evidence. Subject to Mil. R. Evid., Section V, evidence, including documents or physical evidence, which is under the control of the Government and which is relevant to the investigation and not cumulative, shall be produced if reasonably available. Such evidence includes evidence requested by the accused, if the request is timely. As soon as practicable after receipt of a request by the accused for information which may be protected under Mil. R. Evid. 505 or 506, the investigating officer shall notify the person who is authorized to issue a protective order under subsection (g)(6) of this rule, and the convening authority, if different. Evidence is reasonably available if its significance outweighs the difficulty, expense, delay, and effect on military operations of obtaining the evidence.".

b. R.C.M. 405(g) is amended by inserting the following new subparagraph (6) at the end thereof:

"(6) Protective order for release of privileged information. If, prior to referral, the Government agrees to disclose to the accused information to which the protections afforded by Mil. R. Evid. 505 or Mil. R. Evid. 506 may apply, the convening authority, or other person designated by regulations of the Secretary of the service concerned, may enter an appropriate protective order, in writing, to guard against the compromise of information disclosed to the accused. The terms of any such protective order may include prohibiting the disclosure of the information except as authorized by the authority issuing the protective order, as well as those terms specified in Mil. R. Evid. 505(g)(1)(B) through (F) or Mil R Evid. 506(g)(2) through (5).".

c. R.C.M. 905(f) is amended to read as follows:

"(f) Reconsideration. On request of any party or sua sponte, the military judge may, prior to authentication of the record of trial, reconsider any ruling, other than one amounting to a finding of not guilty, made by the military judge."

d. R.C.M. 917(f) is amended to read as follows:

"(f) Effect of ruling. A ruling granting a motion for a finding of not guilty is final when announced and may not be reconsidered. Such a ruling is a finding of not guilty of the affected specification, or affected portion thereof, and, when appropriate, of the corresponding charge. A ruling denying a motion for a finding of not guilty may be reconsidered at any time prior to authentication of the record of trial.".

e. R.C.M. 1001(b)(5) is amended to read as follows:

"(5) Evidence of rehabilitative potential. Rehabilitative potential refers to the accused's potential to be restored, through vocational, correctional, or therapeutic training or other corrective measures to a useful and constructive place in society.

(A) In general. The trial counsel may present, by testimony or oral deposition in accordance with R.C.M. 702(g)(1), evidence in the form of opinions concerning the accused's previous performance as a servicemember and potential for rehabilitation.

(B) Foundation for opinion. The witness or deponent providing opinion evidence regarding the accused's rehabilitative potential must possess sufficient information and knowledge about the accused to offer a rationally-based opinion that is helpful to the sentencing authority. Relevant information and knowledge include, but are not limited to, information and knowledge about the accused's character, performance of duty, moral fiber, determination to be rehabilitated, and nature and severity of the offense or offenses.

(C) Bases for opinion. An opinion regarding the accused's rehabilitative potential must be based upon relevant information and knowledge possessed by the witness or deponent, and must relate to the accused's personal circumstances. The opinion of the witness or deponent regarding the severity or nature of the accused's offense or offenses may not serve as the principal basis for an opinion of the accused's rehabilitative potential.

(D) Scope of opinion. An opinion offered under this rule is limited to whether the accused has rehabilitative potential and to the magnitude or quality of any such potential. A witness may not offer an opinion regarding the appropriateness of a punitive discharge or whether the accused should be returned to the accused's unit.

(E) Cross-examination. On cross-examination, inquiry is permitted into relevant and specific instances of conduct.

(F) Redirect. Notwithstanding any other provision in this rule, the scope of opinion testimony permitted on redirect may be expanded, depending upon the nature and scope of the cross-examination.".

f. R.C.M. 1003(b)(2) is amended to read as follows:

"(2) Forfeiture of pay and allowances. Unless atotal forfeiture is adjudged, a sentence to forfeiture shall state the exact amount in whole dollars to be forfeited each month and the number of months the forfeitures will last. Allowances shall be subject to forfeiture only when the sentence

includes forfeiture of all pay and allowances. The maximum authorized amount of a partial forfeiture shall be determined by using the basic pay, retired pay, or retainer pay, as applicable, or, in the case of reserve component personnel on inactive-duty, compensation for periods of inactive-duty training, authorized by the cumulative years of service of the accused, and, if no confinement is adjudged, any sea or foreign duty pay. If the sentence also includes reduction in grade, expressly or by operation of law, the maximum forfeiture shall be based on the grade to which the accused is reduced.".

g. R.C.M. 1004(c)(4) is amended to read as follows:

"(4) That the offense was committed in such a way or under circumstances that the life of one or more persons other than the victim was unlawfully and substantially endangered, except that this factor shall not apply to a violation of Articles 104, 106a, or 120.".

h. R.C.M. 1004(c)(7)(B) is amended to read as follows:

"(B) The murder was committed: while the accused was engaged in the commission or attempted commission of any robbery, rape, aggravated arson, sodomy, burglary, kidnapping, mutiny, sedition, or piracy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense.".

i. R.C.M. 1004(c)(7)(I) is amended to read as follows:

"(I) The murder was preceded by the intentional infliction of substantial physical harm or prolonged, substantial mental or physical pain and suffering to the victim. For purposes of this section, "substantial physical harm" means fractures or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs or other serious bodily injuries.

The term "substantial physical harm" does not mean minor injuries, such as a black eye or a bloody nose. The term "substantial mental or physical pain and suffering" is accorded its common meaning and includes torture.".

j. R.C.M. 1102(b)(2) is amended to read as follows:

"(2) Article 39(a) sessions. An Article 39(a) session under this rule may be called for the purpose of inquiring into, and, when appropriate, resolving any matter which arises after trial and which substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may also call an Article 39(a) session, upon motion of either party or sua sponte, to reconsider any trial ruling that substantially affects the legal sufficiency of any findings of guilty or the sentence.".

k. R.C.M. 1105(c)(1) is amended to read as follows:

"(1) General and special courts-martial. After a general or special court-martial, the accused may submit matters under this rule within the later of 10 days after a copy of the authenticated record of trial, or, if applicable, the recommendation of the staff judge advocate or legal officer, or an addendum to the recommendation containing new matter

is served on the accused. If, within the 10-day period, the accused shows that additional time is required for the accused to submit such matters, the convening authority or that authority's staff judge advocate may, for good cause, extend the 10-day period for not more than 20 additional days; however, only the convening authority may deny a request for such an extension.".

1. R.C.M. 1106(f)(7) is amended to read as follows:

"(7) New matter in addendum to recommendation. The staff judge advocate or legal officer may supplement the recommendation after the accused and counsel for the accused have been served with the recommendation and given an opportunity to comment. When new matter is introduced after the accused and counsel for the accused have examined the recommendation, however, the accused and counsel for the accused must be served with the new matter and given ten days from service of the addendum in which to submit comments. Substitute service of the accused's copy of the addendum upon counsel for the accused is permitted in accordance with the procedures outlined in subparagraph (f)(1) of this rule.".

Sec. 2. Part III of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Mil. R. Evid. 305(d)(1)(B) is amended to read as follows:

"(B) The interrogation is conducted by a person subject to the code acting in a law enforcement capacity or the agent of such a person, the interrogation is conducted subsequent to the preferral of charges, and the interrogation concerns the offenses or matters that were the subject of the preferral of charges.".

b. Mil. R. Evid. 305(e) is amended to read as follows:

"(e) Presence of counsel.

(1) Custodial interrogation. Absent a valid waiver of counsel under subdivision (g)(2)(B), when an accused or person suspected of an offense is subjected to custodial interrogation under circumstances described under subdivision (d)(1)(A) of this rule, and the accused or suspect requests counsel, counsel must be present before any subsequent custodial interrogation may proceed.

(2) Post-preferral interrogation. Absent a valid waiver of counsel under subdivision (g)(2)(C), when an accused or person suspected of an offense is subjected to interrogation under circumstances described in subdivision (d)(1)(B) of this rule, and the accused or suspect either requests counsel or has an appointed or retained counsel, counsel must be present before any subsequent interrogation concerning that offense may proceed.".

c. Mil. R. Evid. 305(f) is amended to read as follows:

"(f) Exercise of rights.

(1) The privilege against self-incrimination. If a person chooses to exercise the privilege against self-incrimination under this rule, questioning must cease immediately.

(2) The right to counsel. If a person subjected to interrogation under the circumstances described in subdivision (d)(1) of this rule chooses to exercise the right to counsel, questioning must cease until counsel is present.".

d. Mil. R. Evid. 305(g)(2) is amended to read as follows:

"(2) Counsel.

(A) If the right to counsel in subdivision (d) is applicable and the accused or suspect does not decline affirmatively the right to counsel, the prosecution must demonstrate by a preponderance of the evidence that the individual waived the right to counsel.

(B) If an accused or suspect interrogated under circumstances described in subdivision (d)(1)(A) requests counsel, any subsequent waiver of the right to counsel obtained during a custodial interrogation concerning the same or different offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that --

(i) the accused or suspect initiated the communication leading to the waiver; or

(ii) the accused or suspect has not continuously had his or her freedom restricted by confinement, or other means, during the period between the request for counsel and the subsequent waiver.

(C) If an accused or suspect interrogated under circumstances described in subdivision (d)(1)(B) requests counsel, any subsequent waiver of the right to counsel obtained during an interrogation concerning the same offenses is invalid unless the prosecution can demonstrate by a preponderance of the evidence that the accused or suspect initiated the communication leading to the waiver.".

e. Mil. R. Evid. 314(g)(3) is amended to read as follows:

"(3) Examination for other persons.

(A) Protective sweep. When an apprehension takes place at a location in which other persons might be present who might endanger those conducting the apprehension and others in the area of the apprehension, a reasonable examination may be made of the general area in which such other persons might be located. A reasonable examination under this rule is permitted if the apprehending officials have a reasonable suspicion based on specific and articulable facts that the area to be examined harbors an individual posing a danger to those in the area of the apprehension.

(B) Search of attack area. Apprehending officials may, incident to apprehension, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other spaces immediately adjoining the place of apprehension from which an attack could be immediately launched.".

f. Mil. R. Evid. 404(b) is amended to read as follows:

"(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan,

knowledge, identity, or absence of mistake or accident, provided, that upon request by the accused, the prosecution shall provide reasonable notice in advance of trial, or during trial if the military judge excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.".

Sec. 3. Part IV of the Manual for Courts-Martial, United States, 1984, is amended as follows:

a. Paragraph 44e(1) is amended to read as follows:

"(1) Voluntary manslaughter. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years."

b. Paragraph 44e(2) is amended to read as follows:

"(2) Involuntary manslaughter. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 10 years.".

c. Paragraph 45e is amended to read as follows:

"e. Maximum punishment.

(1) Rape. Death or such other punishment as a court-martial may direct.

(2) Carnal knowledge with a child who, at the time of the offense, has attained the age of 12 years. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(3) Carnal knowledge with a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life.".

d. Paragraph 51e is amended to read as follows:

"e. Maximum punishment.

(1) By force and without consent. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life.

(2) With a child who, at the time of the offense, has attained the age of 12 years, but is under the age of 16 years. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(3) With a child under the age of 12 years at the time of the offense. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for life.

(4) Other cases. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.".

e. Paragraph 85e is amended to read as follows:

"e. Maximum punishment. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.".

Sec. 4. These amendments shall take effect on December 9, 1994, subject to the following:

(a) The amendment made to Rule for Courts-Martial 1004(c)(4) shall apply only to offenses committed on or after December 9, 1994.

(b) Nothing contained in these amendments shall be construed to make punishable any act done or omitted prior to December 9, 1994, which was not punishable when done or omitted.

(c) The maximum punishment for an offense committed prior to December 9, 1994, shall not exceed the applicable maximum in effect at the time of the commission of such offense.

(d) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to December 9, 1994, and any such restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

Sec. 5. The Secretary of Defense, on behalf of the President, shall transmit a copy of this order to the Congress of the United States in accord with section 836 of title 10, United States Code.

William J. Clinton

THE WHITE HOUSE,

November 10, 1994

Billing code 3195-01-C

Changes to the Discussion Accompanying the Manual for Courts-Martial, United States, 1984

A. The Discussion accompanying R.C.M. 405(g)(1)(B) is amended by adding the following paragraph to the end thereof:

"The provision in (B), requiring the investigating officer to notify the appropriate authorities of requests by the accused for information privileged under M.R.E. 505 or M.R.E. 506, is for the purpose of placing the appropriate authority on notice that an order, as authorized under subparagraph (g)(6), may be required to protect whatever information the government may decide to release to the accused.".

B. The Discussion accompanying R.C.M. 705(b)(2)(C) is amended to read as follows:

"A convening authority may withdraw certain specifications and/or charges from a court-martial and dismiss them if the accused fulfills the accused's promises in the agreement. Except when jeopardy has attached (see R.C.M. 907(b)(2)(C)), such withdrawal and dismissal does not bar later reinstitution of the charges by the same or a different convening authority. A judicial determination that the accused breached the pretrial agreement is not required prior to reinstitution of withdrawn or dismissed specifications and/or charges. If the defense moves to dismiss the reinstituted specifications and/or charges on the grounds that the government remains bound by the terms of the pretrial agreement, the government will be required to prove, by a preponderance of the evidence, that the accused has breached the terms of the pretrial agreement. If the agreement is intended to grant immunity to an accused, see R.C.M. 704.".

C. The following Discussion is inserted after R.C.M. 905(f):

"Subsection (f) permits the military judge to reconsider any ruling that affects the legal sufficiency of any finding of guilt or the sentence. See R.C.M. 917(d) for the standard to be used to determine the legal sufficiency of evidence. See also R.C.M. 1102 concerning procedures for post-trial reconsideration. Different standards may apply depending on the nature of the ruling. See United States v. Scaff, 29 M.J. 60 (C.M.A. 1989).".

D. The last paragraph of the Discussion accompanying R.C.M. 906(b)(13) is amended to read as follows:

"Whether to rule on an evidentiary question before it arises during trial is a matter within the discretion of the military judge. But see R.C.M. 905(b)(3) and (d); and Mil. R

Evid. 304(e)(2); 311(e)(2); 321(d)(2). Reviewability of preliminary rulings will be controlled by the Supreme Court's decision in Luce v. United States, 469 U.S. 38 (1984).".

E. The Discussion accompanying R.C.M. 912(g)(1) is amended to read as follows:

"Generally, no reason is necessary for a peremptory challenge. But see Batson v. Kentucky, 476 U.S. 79 (1986); United States v. Curtis, 33 M.J. 101 (C.M.A. 1991), cert. denied, 112 S.Ct. 1177 (1992); United States v. Moore, 28 M.J. 366 (C.M.A. 1989); United States v. Santiago-Davila, 26 M.J. 380 (C.M.A. 1988).".

F. The following Discussion is inserted after R.C.M. 1001(b)(5)(B):

"See generally Mil. R. Evid. 701, Opinion testimony by lay witnesses. See also Mil. R. Evid. 703, Bases of opinion testimony by experts, if the witness or deponent is testifying as an expert. The types of information and knowledge reflected in this subparagraph are illustrative only.".

G. The following Discussion is inserted after R.C.M. 1001(b)(5)(D):

"On direct examination, a witness or deponent may respond affirmatively or negatively regarding whether the accused has rehabilitative potential. The witness or deponent may also opine succinctly regarding the magnitude or quality of the accused's rehabilitative potential; for example, the witness or deponent may opine that the accused has "great" or "little" rehabilitative potential. The witness or deponent, however, generally may not further elaborate on the accused's rehabilitative potential, such as describing the particular reasons for forming the opinion.".

H. The following Discussion is inserted after R.C.M. 1001(b)(5)(F):

"For example, on redirect a witness or deponent may testify regarding specific instances of conduct when the cross-examination of the witness or deponent concerned specific instances of conduct. Similarly, for example, on redirect a witness or deponent may offer an opinion on matters beyond the scope of the accused's rehabilitative potential if an opinion about such matters was elicited during cross-examination of the witness or deponent and is otherwise admissible.".

I. The following Discussion is inserted after R.C.M. 1004(c)(8):

"Conduct amounts to 'reckless indifference' when it evinces a wanton disregard of consequences under circumstances involving grave danger to the life of another, although no harm is necessarily intended. The accused must have had actual knowledge of the grave danger to others or knowledge of circumstances that would cause a reasonable person to realize the highly dangerous character of such conduct. In determining whether participation in the offense was major, the accused's presence at the scene and the extent to which the accused aided, abetted, assisted, encouraged, or advised the other participants should be considered." See United States v. Berg, 31 M.J. 38 (C.M.A. 1990); United States v. McMonagle, 38 M.J. 53 (C.M.A. 1993).

J. The Discussion accompanying R.C.M. 1102(b)(2) is amended to read as follows:

"For example, an Article 39(a) session may be called to permit a military judge to reconsider a trial ruling, or to examine allegations of misconduct by a counsel, a member, or a witness. See R.C.M. 917(d) for the standard to be used to determine the legal sufficiency of evidence.".

K. The Discussion accompanying R.C.M. 1106(f)(1) is amended to read as follows:

"The method of service and the form of proof of service are not prescribed and may be by any appropriate means. See R.C.M. 1103(b)(3)(G). For example, a certificate of service, attached to the record of trial, would be appropriate when the accused is served personally.".

L. The Discussion accompanying R.C.M. 1106(f)(7) is amended by adding the following paragraph to the end thereof:

"The method of service and the form of proof of service are not prescribed and may be by any appropriate means. See R.C.M. 1103(b)(3)(G). For example, a certificate of service, attached to the record of trial, would be appropriate when the accused is served personally.".

Changes to the Analysis Accompanying the Manual for Courts-Martial, United States, 1984

1. Changes to Appendix 21, the Analysis accompanying the Rules for Courts-Martial (Part II, MCM, 1984).

a. R.C.M. 405(g)(1)(B). The Analysis accompanying R.C.M. 405(g)(1) is amended by inserting the following at the end thereof:

"1994 Amendment. Subparagraph (B) was amended to require the investigating officer to notify the appropriate authority of any requests by the accused for privileged information protected under M.R.E. 505 or M.R.E. 506. This puts the convening authority and other appropriate authorities on notice that a protective order, under subsection (g)(6) of this rule, may be necessary for the protection of any such privileged information that the government agrees to release to the accused. The Discussion was amended to reflect the purpose of the notice requirement.".

b. R.C.M. 405(g)(6). The Analysis accompanying R.C.M. 405(g) is amended by inserting the following at the end thereof:

"1994 Amendment. Subsection (6) was added to allow the convening authority, or other person designated by service Secretary regulations, to attach conditions to the release of privileged information protected under M.R.E. 505 and 506 through the issuance of a protective order similar in nature to that which the military judge may issue under those rules. Though the prereferral authority to attach conditions already exists in M.R.E. 505(d)(4) and M.R.E. 506(d)(4), these rules did not specify who may take such action on behalf of the government or the manner in which the conditions may be imposed.".

c. R.C.M. 705(b)(2)(C). The Analysis accompanying R.C.M. 705(b)(2) is amended by inserting the following at the end thereof:

"1994 Amendment. The amendment to the Discussion accompanying R.C.M. 705(b)(2)(C), regarding reinstitution of offenses withdrawn or dismissed pursuant to a pretrial agreement and the standard of proof required of the government to withstand a defense motion to dismiss the reinstituted offenses, is based on United States v. Verrusio, 803 F.2d 885 (7th Cir. 1986). Alternative procedures available in Federal civilian practice, such as a motion by the government for relief from its obligation under the agreement before it proceeds to the indictment stage (see United States v. Ataya, 864 F.2d 1324, 1330 n.9 (7th Cir. 1988)), are inapposite in military practice and thus are not required. See generally R.C.M. 801(a).".

d. R.C.M. 905(f). The Analysis accompanying R.C.M. 905(f) is amended by inserting the following at the end thereof:

"1994 Amendment. The amendment to R.C.M. 905(f) clarifies that the military judge has the authority to take remedial action to correct any errors that have prejudiced the rights of an accused. United States v. Griffith, 27 M.J. 42, 47 (C.M.A. 1988). Such remedial action may be taken at a pre-trial session, during trial, or at a post-trial Article 39(a) session. Id. See also United States v. Scaff, 29 M.J. 60, 65-66 (C.M.A. 1989). The amendment, consistent with R.C.M. 1102(d), clarifies that post-trial reconsideration is permitted until the record of trial is authenticated.

The amendment to the Discussion clarifies that the amendment to subsection (f) does not change the standard to be used to determine the legal sufficiency of evidence. R.C.M. 917(d); see Griffith, supra; see also Scaff, supra.".

e. R.C.M. 906(b)(13). The Analysis accompanying R.C.M. 906(b)(13) is amended by inserting the following at the end thereof:

"1994 Amendment. The Discussion to subparagraph (13) was amended to reflect the holding in United States v. Sutton, 31 M.J. 11 (C.M.A. 1990). The Court of Military Appeals in Sutton held that its decision in United States v. Cofield, 11 M.J. 422 (C.M.A. 1981), should not be relied upon to determine reviewability of preliminary rulings in courts-martial. Instead, reviewability of preliminary rulings will be controlled by Luce v. United States, 469 U.S. 38 (1984).".

f. R.C.M. 912(g)(1). The Analysis accompanying R.C.M. 912(g) is amended by inserting the following at the end thereof:

"1994 Amendment. The Discussion for R.C.M. 912(g)(1) was amended to incorporate Batson v. Kentucky, 476 U.S. 79 (1986); United States v. Curtis, 33 M.J. 101 (C.M.A. 1991), cert. denied, 112 S.Ct. 1177 (1992); United States v. Moore, 28 M.J. 366 (C.M.A. 1989); and United States v. Santiago-Davila, 26 M.J. 380 (C.M.A. 1988).".

g. R.C.M. 917(f). The Analysis accompanying R.C.M. 917(f) is amended by inserting the following at the end thereof:

"1994 Amendment. The amendment to subsection (f) clarifies that the military judge may reconsider a ruling denying a motion for a finding of not guilty at any time prior to authentication

of the record of trial. This amendment is consistent with United States v. Griffith, 27 M.J. 42 (C.M.A. 1988). As stated by the court, the reconsideration is limited to a determination as to whether the evidence adduced is legally sufficient to establish guilt rather than a determination based on the weight of the evidence, which remains the exclusive province of the finder of fact.".

h. R.C.M. 1001(b)(5). The Analysis accompanying R.C.M. 1001(b)(5) is amended by inserting the following at the end thereof:

"1994 Amendment. The amendment is based on decisional law interpreting subsection (b)(5), including United States v. Pompey, 33 M.J. 266 (C.M.A. 1991), United States v. Claxton, 32 M.J. 159 (C.M.A. 1991), United States v. Aurich, 31 M.J. 95 (C.M.A. 1990), United States v. Ohrt, 28 M.J. 301 (C.M.A. 1989), and United States v. Horner, 22 M.J. 294 (C.M.A. 1986).".

i. R.C.M. 1003(b)(2). The Analysis accompanying R.C.M. 1003(b)(2) is amended by inserting the following at the end thereof:

"1994 Amendment. The references to "retired" and "retainer" pay were added to make clear that those forms of pay are subject to computation of forfeiture in the same way as basic pay. Articles 17, 18, and 19, U.C.M.J., do not distinguish between these types of pay. Sentences including forfeiture of these types of pay were affirmed in United States v. Hooper, 9 U.S.C.M.A. 637, 26 C.M.R. 417 (1958) (retired pay), and United States v. Overton, 24 M.J. 309 (C.M.A. 1987) (retainer pay).".

j. R.C.M. 1004(c)(4). The Analysis accompanying R.C.M. 1004(c)(4) is amended by inserting the following at the end thereof:

"1994 Amendment. R.C.M. 1004(c)(4) was amended to clarify that only one person other than the victim need be endangered by the inherently dangerous act to qualify as an aggravating factor. See United States v. Berg, 31 M.J. 38 (C.M.A. 1990), United States v. McMonagle, 38 M.J. 53 (C.M.A. 1993).".

k. R.C.M. 1004(c)(7)(B). The Analysis accompanying R.C.M. 1004(c)(7) and (8) is amended by inserting the following:

"1994 Amendment. Subsection (7)(B) was amended by adding an additional aggravating factor for premeditated murder -- the fact that the murder was drug-related. This change reflects a growing awareness of the fact that the business of trafficking

in controlled substances has become increasingly deadly in recent years. Current federal statutes provide for a maximum punishment including the death penalty for certain drug-related killings. See 21 U.S.C. § 848(e) (Pub. L. 100-690, § 7001(a)(2)).".

l. R.C.M. 1004(c)(7)(I). The Analysis accompanying R.C.M. 1004(c)(7) and (8) is amended by inserting the following at the end thereof:

"1994 Amendment. The amendment to subsection (c)(7)(I) of this rule defines "substantial physical harm" and was added to clarify the type of injury that would qualify as an aggravating factor under the subsection. The definition of "substantial physical harm" is synonymous with "great bodily harm" and "grievous bodily harm." See Part IV, paragraph 43(c). With respect to the term "substantial mental or physical pain and suffering," see United States v. Murphy, 30 M.J. 1040, 1056-58 (ACMR 1990).".

m. R.C.M. 1102(b)(2). The Analysis accompanying R.C.M. 1102(b) is amended by inserting the following at the end thereof:

"1994 Amendment. The amendment to subsection (b)(2) of this rule clarifies that Article 39(a), U.C.M.J., authorizes the military judge to take such action after trial and before authenticating the record of trial as may be required in the interest of justice. See United States v. Griffith, 27 M.J. 42, 47 (C.M.A. 1988). The amendment to the Discussion clarifies that the military judge may take remedial action on behalf of an accused without waiting for an order from an appellate court. Under this subsection, the military judge may consider, among other things, misleading instructions, legal sufficiency of the evidence, or errors involving the misconduct of members, witnesses, or counsel. Id.; see United States v. Scaff, 29 M.J. 60, 65 (C.M.A. 1989).".

n. R.C.M. 1105(c)(1). The Analysis accompanying 1105(c) is amended by inserting the following at the end thereof:

"1994 Amendment. Subsection (c)(1) was amended to clarify that the accused has 10 days to respond to an addendum to a recommendation of the staff judge advocate or legal officer when the addendum contains new matter. See United States v. Thompson, 25 M.J. 662 (A.F.C.M.R. 1987). An additional amendment permits the staff judge advocate to grant an extension of the 10-day period.".

o. R.C.M. 1106(f)(1). The Analysis accompanying R.C.M. 1106(f)(1) is amended by inserting the following at the end thereof:

"1994 Amendment. The Discussion to subsection (f)(1) was amended to correct a grammatical error and to clarify that the method of service of the recommendation on the accused and the accused's counsel should be reflected in the attachments to the record of trial. If it is impractical to serve the accused, the record should contain a statement justifying substitute service. Subsection (f)(1) recognizes that Congress sanctions substitute service on the accused's counsel. H.R. Rep. No. 549, 98th Cong., 1st Sess. 15 (1983). See also United States v. Roland, 31 M.J. 747 (A.C.M.R. 1990).".

p. R.C.M. 1106(f)(7). The Analysis accompanying R.C.M. 1106(f)(7) is amended by inserting the following at the end thereof:

"1994 Amendment. Subsection (f)(7) was amended to clarify that when new matter is addressed in an addendum to a recommendation, the addendum should be served on the accused and the accused's counsel. The change also clarifies that the accused has 10 days from the date of service in which to respond to the new matter. The provision for substituted service was also added. Finally, the Discussion was amended to reflect that service of the addendum should be established by attachments to the record of trial.".

2. Changes to Appendix 21, the Analysis accompanying the punitive articles (Part IV, MCM, 1984).

a. Paragraph 44e(1). The Analysis accompanying paragraph 44 is amended by inserting the following at the end thereof:

"1994 Amendment. The amendment to paragraph 44e(1) increased the maximum period of confinement for voluntary manslaughter to 15 years. The 10-year maximum confinement period was unnecessarily restrictive; an egregious case of voluntary manslaughter may warrant confinement in excess of ten years.".

b. Paragraph 44e(2). The Analysis accompanying paragraph 44 is amended by inserting the following at the end thereof:

"1994 Amendment. The amendment to paragraph 44e(2) eliminated the anomaly created when the maximum authorized punishment for a lesser included offense of involuntary manslaughter was greater than the maximum authorized punishment for the offense of involuntary manslaughter. For example, prior to the amendment, the maximum authorized punishment for the offense of aggravated assault with a dangerous weapon was greater than that of involuntary manslaughter. This amendment also facilitates instructions on lesser included offenses of involuntary manslaughter. See United States v. Emmons, 31 M.J. 108 (C.M.A. 1990).".

c. Paragraph 45e. The Analysis accompanying paragraph 45 is amended by inserting the following at the end thereof:

"1994 Amendment. Subparagraph e was amended by creating two distinct categories of carnal knowledge for sentencing purposes -- one involving children who had attained the age of 12 years at the time of the offense, now designated as subparagraph e(2), and the other for those who were younger than 12 years. The latter is now designated as subparagraph e(3). The punishment for the older children was increased from 16 to 20 years confinement. The maximum confinement for carnal knowledge of a child under 12 years was increased to life. The purpose for these changes is to bring the punishments more in line with those for sodomy of a child under paragraph 51e of this part and with the Sexual Abuse Act of 1986, 18 U.S.C. 2241-2245. The alignment of the maximum punishments for carnal knowledge with those of sodomy is aimed at paralleling the concept of gender-neutrality incorporated into the Sexual Abuse Act.".

d. Paragraph 51e. The Analysis accompanying subparagraph 51e is amended by inserting the following at the end thereof:

"1994 Amendment. One of the objectives of the Sexual Abuse Act of 1986, 18 U.S.C. 2241-2245 was to define sexual abuse in gender-neutral terms. Since the scope of Article 125, U.C.M.J., accommodates those forms of sexual abuse other than the rape provided for in Article 120, U.C.M.J., the maximum punishments permitted under Article 125 were amended to bring them more in line with Article 120 and the Act, thus providing sanctions that are generally equivalent regardless of the victim's gender. Subparagraph e(1) was amended by increasing the maximum period of confinement from 20 years to life. Subparagraph e(2) was amended by creating two distinct categories of sodomy involving a child, one involving children who have attained the age of 12 but are not yet 16, and the other involving children under the age of 12. The latter is now designated as subparagraph e(3). The punishment for the former category remains the same as it was for the original category of children under the age of 16. This amendment, however, increases the maximum punishment to life when the victim is under the age of 12 years.".

e. Paragraph 85e. The Analysis accompanying paragraph 85 is amended by inserting the following at the end thereof:

"1994 Amendment. Subparagraph e was amended to increase the maximum punishment from a bad conduct discharge, total forfeitures, and confinement for 1 year, to a dishonorable discharge, total forfeitures, and confinement for 3 years. This eliminated the incongruity created by having the maximum punishment for drunken driving resulting in injury that does not necessarily involve death exceed that of negligent homicide where the result must be the death of the victim.".

3. Change to Appendix 22, the Analysis accompanying the Military Rules of Evidence (Part III, MCM, 1984).

a. M.R.E. 304(b)(1). The first paragraph of the Analysis accompanying M.R.E. 304(b)(1) is amended to read as follows:

"(b) Exceptions. Rule 304(b)(1) adopts Harris v. New York, 401 U.S. 222 (1971), insofar as it would allow use for impeachment or at a later trial for perjury, false swearing, or the making of a false official statement, statements taken in violation of the counsel warnings required under M.R.E. 305(d)-(e). Under paragraphs 140a(2) and 153b, MCM, 1969 (Rev.), use of such statements was not permissible. United States v. Girard, 23 U.S.C.M.A. 263, 49 C.M.R. 438 (1975); United States v. Jordan, 20 U.S.C.M.A. 614, 44 C.M.R. 44 (1971). The Court of Military Appeals has recognized expressly the authority of the President to adopt the holding in Harris on impeachment. Jordan, 20 U.S.C.M.A. at 617, 44 C.M.R. at 47, and M.R.E. 304(b) adopts Harris in military law. Subsequently, in Michigan v. Harvey, 494 U.S. 344 (1990), the Supreme Court held that statements taken in violation of Michigan v. Jackson, 475 U.S. 625 (1986), could also be used to impeach a defendant's false and inconsistent testimony. In so doing, the Court extended the Fifth Amendment rationale of Harris to Sixth Amendment violations of the right to counsel.".

b. M.R.E. 305(d)(1)(B). The Analysis accompanying M.R.E. 305(d)(1)(B) is amended by inserting the following at the end thereof:

"1994 Amendment. Subdivision (d) was amended to conform military practice with the Supreme Court's decision in McNeil v. Wisconsin, 501 U.S. 171 (1991). In McNeil, the Court clarified the distinction between the Sixth Amendment right to counsel and the Fifth Amendment right to counsel. The Court reiterated that the Sixth Amendment right to counsel does not attach until the initiation of adversary proceedings. In the military, the initiation of adversary proceedings normally occurs at preferral of charges. See United States v. Jordan, 29 M.J. 177, 187 (C.M.A. 1989); United States v. Wattenbarger, 21 M.J. 41, 43 (C.M.A. 1985), cert. denied, 477 U.S. 904 (1986). However, it is possible that, under unusual circumstances, the courts may find that the Sixth Amendment right attaches prior to preferral. See Wattenbarger, 21 M.J. at 43-44. Since the imposition of conditions on liberty, restriction, arrest, or confinement does not trigger the Sixth Amendment right to counsel, references to these events were eliminated from the rule. These events may, however, be offered as evidence that the government has initiated adversary proceedings in a particular case.".

c. M.R.E. 305(e). The Analysis accompanying M.R.E. 305(e) is amended by inserting the following at the end thereof:

"1994 Amendment. Subdivision (e) was amended to conform military practice with the Supreme Court's decisions in Minnick v. Mississippi, 498 U.S. 146 (1990), and McNeil v. Wisconsin, 501 U.S. 171 (1991). Subdivision (e) was divided into two subparagraphs to distinguish between the right to counsel rules under the Fifth and Sixth Amendments and to make reference to the new waiver provisions of subdivision (g)(2).

Subdivision (e)(1) applies an accused's Fifth Amendment right to counsel to the military and conforms military practice with the Supreme Court's decision in Minnick. In that case, the Court determined that the Fifth Amendment right to counsel protected by Miranda v. Arizona, 384 U.S. 436 (1966), and Edwards v. Arizona, 451 U.S. 477 (1981), as interpreted in Arizona v. Roberson, 486 U.S. 675 (1988), requires that when a suspect in custody requests counsel, interrogation shall not proceed unless counsel is present. Government officials may not reinitiate custodial interrogation in the absence of counsel whether or not the accused has consulted with his attorney. Minnick, 498 U.S. at 150-52. This rule does not apply, however, when the accused or suspect initiates reinterrogation regardless of whether the accused is in custody. Minnick, 498 U.S. at 154-55; Roberson, 486 U.S. at 677. The impact of a waiver of counsel rights upon the Minnick rule is discussed in the analysis to subdivision (g)(2) of this rule.

Subdivision (e)(2) follows McNeil and applies the Sixth Amendment right to counsel to military practice. Under the Sixth Amendment, an accused is entitled to representation at critical confrontations with the government after the initiation of adversary proceedings. In accordance with McNeil, the amendment recognizes that this right is offense-specific and, in the context of military law, that it normally attaches when charges are preferred. See United States v. Jordan, 29 M.J. 177, 187 (C.M.A. 1989); United States v. Wattenbarger, 21 M.J. 41, 43 (C.M.A. 1985), cert. denied, 477 U.S. 904 (1986).

Subdivision (e)(2) supersedes the prior notice to counsel rule. The prior rule, based on United States v. McOmber, 1 M.J. 380 (C.M.A. 1976), is not consistent with Minnick and McNeil. Despite the fact that McOmber was decided on the basis of Article 27, U.C.M.J., the case involved a Sixth Amendment claim by the defense, an analysis of the Fifth Amendment decisions of Miranda v. Arizona, 384 U.S. 436 (1966), and United States v. Tempia, 16 U.S.C.M.A. 629, 37 C.M.R. 249 (1967), and the Sixth Amendment decision of Massiah v. United States, 377 U.S. 201 (1964). Moreover, the McOmber rule has been applied to claims based on violations of both the Fifth and Sixth Amendments. See e.g., United States v. Fassler, 29 M.J. 193 (C.M.A. 1989).

Minnick and McNeil reexamine the Fifth and Sixth Amendment decisions central to the McOmber decision; the amendments to subdivision (e) are the result of that reexamination.".

d. M.R.E. 305(f). The Analysis accompanying M.R.E. 305(f) is amended by inserting the following at the end thereof:

"1994 Amendment. The amendment to subdivision (f) clarifies the distinction between the rules applicable to the exercise of the privilege against self-incrimination and the right to counsel. Michigan v. Mosley, 423 U.S. 96 (1975). See also United States v. Hsu, 852 F.2d 407, 411, n.3 (9th Cir. 1988). The added language, contained in (f)(2), is based on Minnick v. Mississippi, 498 U.S. 146 (1990), and McNeil v. Wisconsin, 501 U.S. 171 (1991). Consequently, when a suspect or an accused undergoing interrogation exercises the right to counsel under circumstances provided for under subdivision (d)(1) of this rule, (f)(2) applies the rationale of Minnick and McNeil requiring that questioning must cease until counsel is present.".

e. M.R.E. 305(g)(2). The Analysis accompanying M.R.E. 305(g)(2) is amended to read as follows:

"1994 Amendment. The amendment divided subdivision (2) into three sections. Subsection (2)(A) remains unchanged from the first sentence of the previous rule. Subsection (2)(B) is new and conforms military practice with the Supreme Court's decision in Minnick v. Mississippi, 498 U.S. 146 (1990). In that case, the Court provided that an accused or suspect can validly waive his Fifth Amendment right to counsel, after having previously exercised that right at an earlier custodial interrogation, by initiating the subsequent interrogation leading to the waiver. Id. at 156. This is reflected in subsection (2)(B)(i). Subsection (2)(B)(ii) establishes a presumption that a coercive atmosphere exists that invalidates a subsequent waiver of counsel rights when the request for counsel and subsequent waiver occur while the accused or suspect is in continuous custody. See McNeil v. Wisconsin, 501 U.S. 171 (1991); Arizona v. Roberson, 486 U.S. 675 (1990). The presumption can be overcome when it is shown that there occurred a break in custody which sufficiently dissipated the coercive environment. See United States v. Schake, 30 M.J. 314 (C.M.A. 1990).

Subsection (2)(C) is also new and conforms military practice with the Supreme Court's decision in Michigan v. Jackson, 475 U.S. 625, 636 (1986). In Jackson, the Court provided that the accused or suspect can validly waive his or her Sixth Amendment right to counsel, after having previously asserted that right, by initiating the subsequent interrogation

leading to the waiver. The Court differentiated between assertions of the Fifth and Sixth Amendment right to counsel by holding that, while exercise of the former barred further interrogation concerning the same or other offenses in the absence of counsel, the Sixth Amendment protection only attaches to those offenses as to which the right was originally asserted. In addition, while continuous custody would serve to invalidate a subsequent waiver of a Fifth Amendment right to counsel, the existence or lack of continuous custody is irrelevant to Sixth Amendment rights. The latter vest once formal proceedings are instituted by the State and the accused asserts his right to counsel, and they serve to insure that the accused is afforded the right to counsel to serve as a buffer between the accused and the State.".

f. M.R.E. 314(g)(3). The Analysis accompanying M.R.E. 314(g)(3) is amended by inserting the following at the end thereof:

"1994 Amendment. The amendment to Mil. R. Evid. 314(g)(3), based on Maryland v. Buie, 494 U.S. 325 (1990), specifies the circumstances permitting the search for other persons and distinguishes between protective sweeps and searches of the attack area.

Subsection (A) permits protective sweeps in the military. The last sentence of this subsection clarifies that an examination under the rule need not be based on probable cause. Rather, this subsection adopts the standard articulated in Terry v. Ohio, 392 U.S. 1 (1968) and Michigan v. Long, 463 U.S. 1032 (1983). As such there must be articulable facts that, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing the area harbors individuals posing a danger to those at the site of apprehension. The previous language referring to those "who might interfere" was deleted to conform to the standards set forth in Buie. An examination under this rule is limited to a cursory visual inspection of those places in which a person might be hiding.

A new subsection (B) was also added as a result of Buie, supra. The amendment clarifies that apprehending officials may examine the "attack area" for persons who might pose a danger to apprehending officials. See Buie, 494 U.S. at 334. The attack area is that area immediately adjoining the place of apprehension from which an attack could be immediately launched. This amendment makes it clear that apprehending officials do not need any suspicion to examine the attack area.".

g. M.R.E. 404(b). The Analysis accompanying M.R.E. 404(b) is amended by inserting the following at the end thereof:

"1994 Amendment. The amendment to Mil. R. Evid. 404(b) was based on the 1991 amendment to Fed. R. Evid. 404(b). The previous version of Mil. R. Evid. 404(b) was based on the now superseded version of the Federal Rule. This amendment adds the requirement that the prosecution, upon request by the accused, provide reasonable notice in advance of trial, or during trial if the military judge excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial. Minor technical changes were made to the language of the Federal Rule so that it conforms to military practice.".

[FR Doc. 94-28430
Filed 11-14-94; 12:16 pm]
Billing code 5000-04-C

Presidential Documents

Executive Order 12937 of November 10, 1994

Declassification of Selected Records Within the National Archives of the United States

By the authority vested in me as President by the Constitution and the laws of the United State of America, it is hereby ordered:

Section 1. The records in the National Archives of the United States referenced in the list accompanying this order are hereby declassified.

Sec. 2. The Archivist of the United States shall take such actions as are necessary to make such records available for public research no later than 30 days from the date of this Order, except to the extent that the head of an affected agency and the Archivist have determined that specific information within such records must be protected from disclosure pursuant to an authorized exemption to the Freedom of Information Act, 5 U.S.C. 552, other than the exemption that pertains to national security information.

Sec. 3. Nothing contained in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
November 10, 1994.

Billing code 3195-01-M

Records in the following record groups ("RG") in the National Archives of the United States shall be declassified. Page numbers are approximate. A complete list of the selected records is available from the Archivist of the United States.

I. All unreviewed World War II and earlier records, including:

A.	RG 18, Army Air Forces	1,722,400 pp.
B.	RG 65, Federal Bureau of Investigation	362,500 pp.
C.	RG 127, United States Marine Corps	195,000 pp.
D.	RG 216, Office of Censorship	112,500 pp.
E.	RG 226, Office of Strategic Services	415,000 pp.
F.	RG 60, United States Occupation Headquarters	4,422,500 pp.
G.	RG 331, Allied Operational and Occupation Headquarters, World War II (including 350 reels of Allied Force Headquarters)	3,097,500 pp.
H.	RG 332, United States Theaters of War, World War II	1,182,500 pp.
I.	RG 338, Mediterranean Theater of Operations and European Command	9,500,000 pp.
	Subtotal for World War II and earlier	21.0 million pp.

II. Post-1945 Collections (Military and Civil)		
A.	RG 19, Bureau of Ships, Pre-1950 General Correspondence (selected records)	1,732,500 pp.
B.	RG 51, Bureau of the Budget, 52.12 Budget Preparation Branch, 1952–69	142,500 pp.
C.	RG 72, Bureau of Aeronautics (Navy) (selected records)	5,655,000 pp.
D.	RG 166, Foreign Agricultural Service, Narrative Reports, 1955–61	1,272,500 pp.
E.	RG 313, Naval Operating Forces (selected records)	407,500 pp.
F.	RG 319, Office of the Chief of Military History Manuscripts and Background Papers (selected records)	933,000 pp.
G.	RG 337, Headquarters, Army Ground Forces (selected records)	1,269,700 pp.
H.	RG 341, Headquarters, United States Air Force (selected records)	4,870,000 pp.
I.	RG 389, Office of the Provost Marshal General (selected records)	448,000 pp.
J.	RG 391, United States Army Regular Army Mobil Units	240,000 pp.
K.	RG 428, General Records of the Department of the Navy (selected records)	31,250 pp.
L.	RG 472, Army Vietnam Collection (selected records)	5,864,000 pp.
	Subtotal for Other	22.9 million pp.
	TOTAL	43.9 million pp.

[FR Doc. 94–28431
Filed 11–14–94; 12:17 pm]
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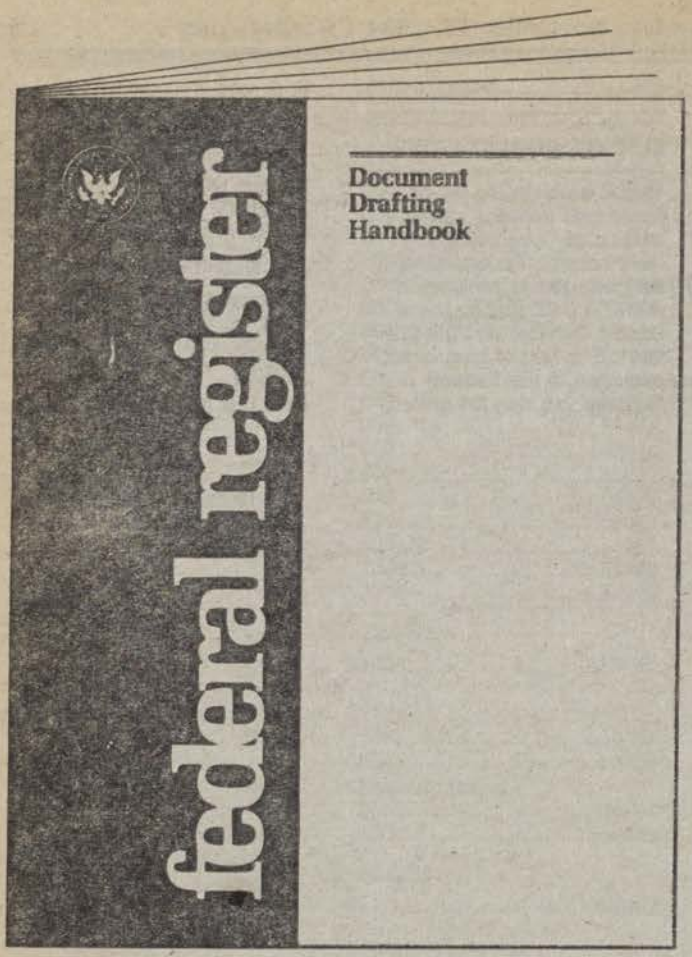

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