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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt No. 327]

Food Stamp Program: Good Cause Relief From Quality Control Error Rate Liabilities

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the current provisions for good cause relief from potential quality control liabilities against State agencies. These changes were required by section 604 of title VI of the Hunger Prevention Act of 1988, enacted September 19, 1988.

Proposed regulations were published in the **Federal Register** of January 16, 1991 at 56 FR 1578. Comments on the proposal were accepted through March 18, 1991. This final action takes the comments received into account. Readers are referred to the proposed regulation for a more complete understanding of the proposed rule and this final action.

DATES: The provision in § 275.23(e)(6)(v) regarding the finality of good cause determinations of the Secretary was effective October 1, 1985. The remaining provisions of the rule are effective October 28, 1992.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Quality Control Branch, Program Accountability Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 905, Alexandria, Virginia 22302, (703) 305-2474.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291/Secretary's Memorandum 1512-1

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has classified this rule as non-major. The rule's effect on the economy will be less than $100 million. The rule will have no effect on costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule at 7 CFR part 3015, subpart V and related Notice (48 FR 29,115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "**EFFECTIVE DATE**" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—state administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq*). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. The requirements will affect State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

This final rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The title, description, and respondent description of the information collections are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Waiver Requests for Relief From Quality Control Error Rate Liabilities

Description: The burden associated with a State agency's food cause request, contained in 7 CFR 275.23(e)(6), is in the submission of information and documentation of the uncontrollable events and their effect on a State's payment error rate which provides the Secretary with the basis for determining whether to grant relief. Over the past three years an average of 10 letters annually were sent to State agencies notifying them of potential quality control liabilities. It is expected that all of those State agencies will submit waivers requesting that they be excused from the liabilities. The Department estimates that it would take 160 hours to collect, assemble and submit one good cause waiver request.

Description of Respondents: State welfare agencies which administer the Food Stamp Program.

Estimated Annual Reporting Burden

No. of respondents	No. of annual responses	No. of man-hours per response	Estimated total man-hours
10	1	160	1600

Estimated Recordkeeping Burden

There is no separate recordkeeping associated with this submission. Information is collected, assembled and submitted to the Department from existing Federal or normal State operation records. Recordkeeping burden associated with maintaining the Federal records involved is approved by OMB Nos. 0584–0081 and 0584–0299.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background

On January 16, 1991, the Department issued a proposed rule at 56 FR 1578 to implement Section 604 of the Hunger Prevention Act of 1988 (Pub. L. 100–435 enacted September 19, 1988), regarding good cause determinations. A total of 29 comment letters were received on the proposed rule—the majority from State agencies. The major concerns raised by the commenters are discussed below. For a full understanding of this discussion and the provisions of this final rule, the reader should also refer to the proposed rule.

The Authority To Grant Good Cause Relief

The preamble to the proposed rule explained that the Secretary could not find good cause to waive liability for excessive quality control (QC) error rates unless a State agency specifically requested relief and provided justification. If a State agency failed to request and justify such relief under the provisions of this rule, the Secretary would have to conclude that the State agency did not have good cause.

One commenter questioned the Department's authority to arbitrarily make a decision that there was not good cause for an excessive error rate, if a State for whatever reason does not include a criterion in its request for good cause relief. In response to the comment, the Department wishes to clarify that it is the responsibility of the State to ensure that its good cause request is submitted in a timely fashion and that any and all good cause arguments are completely addressed and supported in that request. If a State fails to request good cause relative to a particular criterion or event within the required time frames, the Department must determine that there is no basis for good cause relief in relation to that criterion or event.

In addition, the Department wishes to establish that if a State agency fails to submit its request for a good cause waiver for a particular fiscal year within the required time period, the Department will make a determination that there was no basis for such relief. The Department will communicate this determination to the State. If the State then submits a fully documented good cause request within 30 days of receipt of the Department's determination, and provides reasonable justification for failure to submit its good cause request within the required time frame, the Department will review the State's good cause request. Any State that fails, for any reason, to submit a good cause request or provide reasonable justification for that failure within the above time frames will be determined not to have a basis for good cause relief for its excessive error rate.

Good cause relief may only be granted by the Secretary of Agriculture or his designee. The Secretary's determination with respect to a request for good cause relief or a determination that no basis for good cause exists because the State failed to request a good cause waiver within the required period, as well as whether there exist circumstances which would justify the failure to submit a timely request are final and not subject to administrative or judicial review.

Events and Conditions FNS Does Not Intend to Consider as Basis for Good Cause Relief

The preamble to the proposed rule listed the following four situations as inappropriate bases for good cause relief: (1) Lack of resources; (2) normal administrative difficulties; (3) technical features of the error rate measurement and the liability system that have been properly implemented by regulation; and (4) successful or unsuccessful efforts to lower the error rate after the review period. The preamble to the proposed rule also stated that the good cause process was not a proper vehicle for challenging features of the Quality Control System which Congress has explicitly adopted in the Hunger Prevention Act of 1988. Twenty-two commenters disagreed and felt that the above factors were appropriate circumstances for good cause relief from quality control liabilities and presented arguments to support their beliefs. States were particularly concerned about resource issues; for example, one commenter stated that it is unrealistic to expect States to be able to rapidly adjust resources targeted specifically at the Food Stamp Program given the complexity and inter-dependence of State revenue processes. The Department has carefully considered this and other comments as well as the legislative history of Public Law 100–435. Key guidance also comes from the 1980 legislative history of good cause: "Good cause would not encompass any State failure to act upon necessary legislative changes or to obtain budget authorization for needed staff or other resources, since those failures are clearly within State control" (Food Stamp Act Amendments of 1980, House Report 96–788, page 74.) Although the Department understands that many States face severe budget restraints from time to time, the Department concludes that Congress intended overall relief to come from higher tolerance levels but did not intend to make changes in the basic structure of good cause.

Seven commenters argued for retention of "Incorrect Federal Policy" as a basis for good cause relief. They felt that while Congress properly acted to exclude errors attributable to incorrect Federal guidance from error rates, there may be instances where FNS and State agencies disagree as to whether this occurred and that when differences regarding the Federal instructions cannot be satisfactorily resolved at the regional level, there must be some recourse through the good cause process. The commenters also expressed concern that it may not be discovered that incorrect Federal

guidance had been given until a later date or during preparation of a good cause waiver request. The Department agrees that there may be differences of opinion as to whether or not incorrect Federal policy was given and that it is possible that this may not be discovered until later in the quality control liability process. Therefore, based upon State agency documentation, the Department will adjust its Federal findings, error rates, and liabilities whenever it determines that a State agency was provided with incorrect Federal guidelines and that the resulting errors remain as part of the State agency's payment error rate. The process of adjusting the State agency's error rates will be separate from the good cause process.

Content of State Requests for Good Cause Relief

The proposed rule stated that State agencies should explain what portion of the observed error rates are due to the uncontrollable negative effects of unusual events when such events may mask the effects of successful efforts to decrease error rates.

Two commenters suggested that it should be sufficient to demonstrate that an increase in the error rate occurred and that the error rate increased during the period subsequent to the event in order to qualify for a food cause waiver. Another commenter stated that the factors that determine error rates are numerous and changing and that no method has ever been developed (either by FNS or anyone else) to determine whether one particular factor (uncontrollable or otherwise) produced a given increase in the error rate. The Department wishes to clarify that it was not the intent of the proposed rule that State agencies provide an individual error analysis on a case-by-case basis. While the Department understands that it may sometimes be difficult for States to document the uncontrollable impact of an unusual event on the error rate when the impact is minimal, States that experience a large impact should have less difficulty. If a State agency is unable to successfully demonstrate the relationship between an unusual event and an uncontrollable impact upon its error rate, the Secretary will apply the alternate method of evaluation discussed below to determine if good cause relief is appropriate. States may also seek to demonstrate the uncontrollable impact of an unusual event upon the error rate where the error rate remains unchanged or decreases but was expected to decrease substantially due to a State program designed to reduce errors.

FNS Review of Good Cause Waiver Requests

The preamble to the proposed rule stated that FNS would evaluate each State agency's good cause waiver request based on the information provided by the State agency and any other sources FNS finds useful to the review process. Seven comments were received which expressed strong oppositions to FNS' use of information which the State agency did not submit because the State agency should be given an opportunity to examine and refute the information. One commenter also pointed out that the inconsistency of not wanting the States to submit voluminous documentation and then penalizing them if they do not provide enough documentation denigrates the entire good cause process and provides USDA with the opportunity for reducing the amount of relief if a request is poorly documented. Based on the comments received, the Department has reconsidered its position regarding the evaluation of a State agency's request based on information not submitted by the State agency. In those instances in which FNS uses information other than that submitted by the State agency or corrects information submitted by the State agency, FNS will issue a preliminary determination on the good cause waiver request. The preliminary determination will identify information used in the evaluation process which was not submitted by the State or information FNS has corrected, and allow the State agency 30 days to comment on the supplemental and/or corrected information before a final decision is rendered. FNS will limit its examination of States' responses to comments regarding the additional or corrected information used by FNS. Since the State agency has been provided an opportunity to raise any and all issues relevant to good cause in its initial request, no new issues for good cause relief will be accepted following expiration of the time period for filing the State agency's request for good cause relief.

Comparison to Past Methods of Evaluating Good Cause Requests

The proposed rule stated that if State agencies did not provide the type or amount of information required for a complete factual analysis and such information was not otherwise available in the Department, the Secretary would have to exercise some judgment in reaching a determination on good cause relief from QC liabilities. The Department proposed the same formula it used in the past to determine waiver amounts. That methodology consisted of evaluating the uncontrollable effects of a natural disaster, strikes or unusual caseload growth that occurred during an eighteen-month period. That period covered the twelve months of the review period and the six months prior to the beginning of the review period. The State agency received a one-eighteenth waiver for each month during that period that the unusual event took place. State agencies commenting on the methodology noted that since the liability is based on a twelve-month period, the methodology for determining the waiver amount should be one-twelfth to make the methodology comparable to the length of the review period subject to the liability. The Department accepts the commenters' rationale and has modified the proposed methodology. Under the modifications, States which experience an unusual event during the subject fiscal year may qualify for a one-twelfth waiver for each month that the State experienced the unusual event. States which experience an unusual event both prior to and during the fiscal year may qualify for a one-eighteenth waiver for each month for that portion of the unusual event which occurred during the prior fiscal year and a one-twelfth waiver for each month for that portion of the unusual event which occurred during the fiscal year which is the subject of the potential liability. The modified methodology enables the Department to fulfill its objective stated in the proposed rule that relief based upon good cause be more closely related to the uncontrollable effects of the unusual event on error rates. Under the formula, the Secretary shall determine a preliminary waiver amount by: (1) Determining, from the State agency's request, the number of months during the eighteen month period that begins six months before the subject review period that an unusual event uncontrollably impaired Food Stamp Program certification operations; (2) calculating an amount equal to one-eighteenth of the liability for each month that such an event uncontrollably impaired operations during the period six months prior to the fiscal year; (3) calculating an amount equal to one-twelfth of the liability for each month that such an event uncontrollably impaired operations during the fiscal year; and (4) adjusting the preliminary amount, as necessary, to take into account the State agency's otherwise effective administration of the program based upon recent error rate history. For example, a reduction in the formula derived amount would be made when a

State agency's recent error rate history indicates that even absent the unusual event the State agency would have exceeded the payment error tolerance in the review period.

One commenter suggested that FNS consider the State's error rate history for at least five years prior to the subject review period and any available information on a State's error rate experienced after the penalty period. Another commenter suggested that FNS examine the factors that affected the error rates of more recent years before making a blanket determination that unusual events had no effect just because the error rate did not decrease. As pointed out in the preamble to the proposed rule, the legislative history states that "[T]he purpose of good cause under the new system is to allow the Secretary the discretion to provide relief when a State with otherwise effective administration has faced an unusual event with a large uncontrollable impact on errors." A good point for measuring a State agency's administration of the program is a State's error rate immediately prior to the unusual event. Therefore, each State agency requesting good cause is asked to provide information on what its reported combined payment error rate was in the twelve-month period immediately prior to the event and its reported payment error rate during the remainder of the subject Fiscal Year. FNS will examine the State's error rate before and after the unusual event together with any other available error rate data to determine whether the State was administering the program effectively prior to the event and examine the impact of the unusual event on that administration. While the Department recognizes that the formula could now mathematically result in a waiver of more than 100 percent liability, clearly no more than 100 percent of a State's liability can be waived for any one fiscal year.

Relationship to Warning Process and Disallowance of Funds

One commenter noted that the good cause regulations should provide for QC error rate adjustments due to recovery of improperly issued coupons. In response to this comment, the Department wishes to clarify that if a State agency is billed for negligence as a result of improperly issued coupons and is held liable for exceeding the QC error rate tolerance for the same time period, FNS shall adjust either the negligence billing or the QC liability billing to ensure that two claims are not made against the State for the same dollar loss. The final rule has been revised to reflect this change.

Events that May Serve as the Basis of Good Cause Relief

1. Natural Disasters or Civil Disorders

One commenter suggested that the regulations be modified to clarify that a Presidential declaration is not a prerequisite for good cause relief. Another commenter stated that although natural disasters are defined as those under the authority of the Stafford Act of 1988 (Pub. L. 1020–707), the proposed regulations cited a "fire in a certification office" as a type of natural disaster. The commenter suggested that this situation may not warrant a Presidential disaster declaration request but may be serious enough to have an uncontrollable effect on error rates.

While good cause relief will be evaluated under the disaster criterion based only on Federally-declared disasters, the final regulations provide for consideration of non-Federally-declared disasters, such as a fire in a certification office, under the "Other Unusual Circumstances" criterion. A fire in a certification office is being addressed in this fashion because the Disaster Relief Act implies that an event would have a greater geographic impact than on just one office. A fire in a certification office would only affect the cases and error rates of that particular office.

One commenter remarked that assigning an eighteen month period for granting approval of a waiver is not the best or fairest method of calculation and that to apply the standard across the board could work to a State agency's disadvantage depending on the timeframe of a disaster. It is the Department's position that States are responsible for reacting to events and dealing with them within a reasonable period of time. Generally, an unusual event which occurred and ended during the first six months of the prior fiscal year should not have an uncontrollable impact on the State's error rate during the subsequent fiscal year because the State should have had time to control the situation. Therefore, when State agencies do not provide a sufficient explanation on the uncontrollable effect of an unusual event on the error rate, the Department will maintain eighteen months as the appropriate length of time for determining whether the State agency had good cause for an excessive error rate. However, in those unusual cases where the Secretary determines that a State agency has provided information sufficient to document the continuing uncontrollable impact of the event beyond eighteen months, good cause relief will be granted from the point in time when the unusual event occurred.

2. Strikes by State Agency Staff Necessary to Determine Food Stamp Program Eligibility and Process Case Changes

The Department wishes to clarify that under this provision, the Department would consider good cause requests from those States whose employees are prohibited by law from striking but which might experience various kinds of work stoppages including work slowdowns. This clarification will insure that all States may benefit from this good cause basis.

As described above, the Department has modified the proposed methodology that will be used when the Secretary determines that insufficient information has been provided or that needed information is otherwise not available from existing Department records to determine a request for waiver using factual analysis. Therefore, if the Secretary determines that a State agency has provided insufficient information to determine a waiver amount for the uncontrollable effects of a strike or similar work stoppage using factual analysis, the Secretary shall determine a waiver amount based on the revised formula.

3. Caseload Growth

One commenter suggested that the regulations should specify that caseload growth in a single project area may be sufficient to warrant good cause relief since one project area can drive up the Statewide error rate. State agencies which submit documentation that clearly demonstrates an uncontrollable impact due to increases in applications and caseload growth on error rates could qualify for good cause relief regardless of the size of the State or the geographic area experiencing the growth. The Department will consider State agencies' arguments concerning increases in applications as well as participation or other workload increases. State agencies which submit documentation that clearly demonstrates the uncontrollable impact of workload increases and caseload growth on their error rates could qualify for good cause relief. However, in those instances in which the State agency submits insufficient information, the formula described earlier will be used.

One commenter suggested that the Secretary look at the circumstances in each individual State as presented in the good cause waiver to determine whether

or not events such as seasonal changes in caseload growth had a large, uncontrollable impact on the State's error rate. The proposed rule addressed unusual events and the Department maintains its position that seasonal increases/changes will not be considered unusual events since State agencies should anticipate these fluctuations and develop a plan to deal with such situations.

Another commenter stated that when events such as substantial layoffs at a major employer or the closing of a military base occur, there is a single one-time increase in participation which persists. The State felt that if events like these occur with little advance notice, State agencies may not be staffed to handle the increase in workload. Based on this comment, the Department has reconsidered the proposed provision dealing with caseload sizes that fluctuate widely and a single increase in participation that persists. These situations of unusual caseload growth will be given consideration on a case-by-case basis.

Ten commenters expressed concern over the Department's use of a threshold of 15 percent growth in caseload as a basis for good cause relief. The Department wishes to clarify that if a State agency can document that unusual caseload growth had an uncontrollable impact on its cumulative payment error rate, it does not necessarily have to experience a 15 percent growth in its caseload before a waiver can be granted. However, when the Department finds that a State agency has submitted documentation insufficient to support a finding of uncontrollable impact on payment error, the State agency shall be restricted to the definition of 15 percent growth used in the formula described. State agencies are being held to this definition because absent sufficient information, there is no better way to prove that unusual caseload growth of less than 15 percent had an uncontrollable impact on error rates.

As described above, the Department modified the proposed methodology that will be used to determine a waiver amount when the Secretary determines that insufficient information has been provided or that needed information is otherwise not available from existing Department records.

4. Changes in the Food Stamp Program or other Federal or State Programs

The proposed rule stated that the Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of unusual changes in the Food Stamp Program or other Federal and State programs. One commenter felt that the word "substantial" should be removed from this provision because size or extent has no bearing in an appeal based on good cause. The Department wishes to clarify that, as a general matter, in accordance with the legislative history good cause relief will be provided when a State agency with otherwise effective administration has faced an unusual event with a "large" uncontrollable impact on errors. (House Report 100-828, part 1, page 34.) Due to the fact that the word "substantial" may be unclear, it has been removed from the final rule; however, the legislative history will be given weight as to the intent of Congress when reviewing arguments provided by State agencies in support of requests for good cause waivers. Accordingly, the word "large" has been inserted in § 275.23(e)(6)(i) and is applicable to all bases for good cause relief. The Department also wishes to clarify that it will look at the demonstrated impact on the food stamp error rate on a case-by-case basis taking into account any uncontrollable impact for which the State agency is able to provide documentation. The Secretary will make a case-by-case determination as to what constitutes a "large" uncontrollable impact on errors.

5. Other Circumstances Beyond the Control of the Sate Agency

One commenter suggested that the regulations should include examples of other circumstances beyond the control of the State agency that would warrant good cause. The Department will take into consideration any unusual events submitted by State agencies as part of their good cause request which have a demonstrated uncontrollable impact on the food stamp error rate. In recognition of comments received on the disaster criterion and as mentioned above, the Department has changed the provision from the proposed regulations in the final regulations to provide for consideration of non-Federally declared disasters, such as a fire in a certification office, under this criterion.

Timeframes

State agencies have 60 days from the date of notification by FNS (certified mail, return receipt requested) of its final error rate and potential liability to submit requests for good cause waivers. Therefore, requests for good cause or requests for extension shall be post-marked no later than 60 days from the date of receipt of FNS' letter of notification. The date of receipt shall be the date indicated on the certified mail return receipt. In the event the Department does not receive the return receipt, the date of receipt will be the date seven calendar days from the date on the letter of notification. Requests for extension will be evaluated on a case-by-case basis and only in the most unusual situations shall such requests be granted. For example, an occurrence that precludes a State agency from conducting normal business during the 60-day period shall be considered an unusual situation.

Implementation

The Department is requiring implementation of this rulemaking effective 30 days after publication in the Federal Register. For Fiscal Years 1986 through 1990, State Agencies must submit good cause waiver requests no later than 120 days (60 days as allowed in the regulations plus an automatic 60-day extension) from the date of receipt of notification of the official payment error rate and liability. For Fiscal Year 1991 and thereafter, State agencies shall submit good cause waiver requests no later than 60 days from the date of receipt of notification of the official payment error rate and liability. Therefore, requests shall be post-marked no later than 120 days or 60 days from the date of receipt of notification based on the year for which good cause is being requested.

Interim rules regarding the variance exclusion provisions were published November 2, 1986 (53 FR 44171) and were effective with Fiscal Year 1989. These rules contain a provision which excludes from the quality control payment error rate any variance resulting from incorrect written policy that a State agency acts on that is provided by a Departmental employee authorized to issue Food Stamp Program policy and that the State agency correctly applies.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administative practice and procedure, Food stamps, Reporting, and Recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR parts 272 and 275 are amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. The authority citation for part 272 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

2. In § 272.1, a new paragraph (g)(126) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(126) *Amendment No. 327.* (i) The statutory provision reflected in § 275.23(e)(6)(v) of Amendment No. 327 was effective October 1, 1985 pursuant to Pub. L. 100–435.

(ii) The remaining provisions are effective October 28, 1992.

PART 275—PERFORMANCE REPORTING SYSTEM

3. The authority citation for part 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2031.

4. In § 275.23:

a. Paragraph (e)(5) is revised in its entirety.

b. Paragraph (e)(6) is revised in its entirety.

The revision and additions read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) *State agencies' liabilities for payment error rates.* * * *

(5) *Relationship to warning process and negligence.*

(i) States' liability for payment error rates as determined above are not subject to the warning process of § 276.4(d). However, State agencies shall be notified by certified mail, return receipt requested, at least sixty days before any billing and shall have sixty days following such notice to request a good cause waiver of part or all of their potential liability. The billing will not occur until after the expiration of the sixty days and the Secretary's determination of good cause when it is timely requested. If a determination is made that good cause did not exist, FNS shall promptly issue the billing. While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c), FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability.

(ii) FNS shall not determine negligence (as described in § 276.3) based on the overall payment error rate for issuances to ineligible households and overissuances to eligible households in a State or political subdivision thereof. FNS may only establish a claim under § 276.3 for dollar losses from failure to comply, due to negligence on the part of the State agency (as defined under § 276.3), with specific certification requirements. Thus, FNS will not use the results of States' QC reviews to determine negligence.

(iii) While FNS may determine a State to be liable for dollar loss under the provisions of this section and the negligence provisions of § 276.3 for the same period of time, FNS shall not bill a State for the same dollar loss under both provisions. If FNS finds a State liable under both the QC liability system and the negligence provisions, FNS shall adjust the billings to ensure that two claims are not made against the State for the same dollar loss.

(6) *Good cause*—(i) *Events.* When a State agency with otherwise effective administration exceeds the allowable level for payment errors as described in this section, FNS may determine that the State agency had good cause for not achieving the payment error rate tolerance if the State agency documents that an unusual event or events had a large uncontrollable effect upon error rates, and grant relief from quality control liabilities that would otherwise be levied under this section of the regulations. States desiring such relief must submit a request in writing within 60 days from the date of receipt of notification of the official payment error rate and potential liability. If no request for a good cause waiver is received by the Secretary within the required time, the Secretary shall make a determination that there was no basis for good cause relief. Within 30 days from the date of receipt of this determination, the State may submit a fully documented good cause request and provide reasonable justification for failure to submit the good cause request within the required time frame. If the State can demonstrate good reason why the request for a good cause waiver was not timely made, the Secretary will review the State's good cause request. If a State fails to demonstrate good reason for failure to timely request a good cause waiver, the initial determination will stand. The following are unusual events which State agencies may use as a basis for requesting good cause relief and specific information that FNS expects State agencies to submit to justify such requests for relief:

(A) Natural disasters such as those under the authority of the Stafford Act of 1988 (Pub. L. 1020–707), which amended the Disaster Relief Act of 1974 (Pub. L. 93–288) or civil disorders that adversely affect program operations. For disasters prior to November 23, 1988 see the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288). When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*1*) The nature of the disaster(s) (e.g. a tornado, hurricane, earthquake, flood, etc.) or civil disorder(s)) and evidence that the President has declared a disaster;

(*2*) The date(s) of the occurrence;

(*3*) The date(s) after the occurrence when program operations were affected;

(*4*) The geographic extent of the occurrence (i.e. the county or counties where the disaster occurred);

(*5*) The proportion of the food stamp caseload whose management was affected;

(*6*) The reason(s) why the State agency was unable to control the effects of the disaster on program administration and errors;

(*7*) The Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*8*) The percentage of the reported payment error rate that resulted from the occurrence and how this figure was derived; and

(*9*) The reported payment error rate in the twelve-month period immediately prior to the event and reported payment error rate during the remainder of the subject fiscal year.

The Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of a disaster or civil disorder. In this evaluation, the Secretary will consider the following factors: Geographical impact of the disaster; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the disaster and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. If the Secretary determines that a State agency has provided insufficient information or that sufficient information is not otherwise available from existing Department records to determine a waiver amount for the uncontrollable effects of a natural disaster or civil disorder using factual analysis, the Secretary shall determine a

formula derived waiver amount by: Determining the number of months during the eighteen months that begins six months before the subject review period during which a civil disorder of Federally-declared disaster impaired Food Stamp Program operations; determining an amount equal to one-eighteenth of the liability for each month for the portion of the unusual event which occurred during the period six months prior to the fiscal year; determining an amount equal to one-twelfth of the liability for each month for the portion of the unusual event which occurred during the fiscal year; and as appropriate, adjust the waiver amount to reflect States' otherwise effective administration of the program based upon recent error rate history. For example, a reduction in the amount may be made when a State agency's recent error rate history indicates that even absent the events described, the State agency would have exceeded error rate tolerances in the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, FNS will not grant relief for the effects of disasters or civil disorders that ended prior to the second half of the prior fiscal year.

(B) Strikes by state agency staff necessary to determine Food Stamp Program eligibility and process case changes. When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*1*) Which workers (i.e. eligibility workers, clerks data input staff, etc.) and how many (number and percentage of total staff) were on strike or refused to cross picket lines;

(*2*) The date(s) and nature of the strike (i.e. the issues surrounding the strike);

(*3*) The date(s) after the occurrence when program operations were affected;

(*4*) The geographic extent of the strike (i.e. the county or counties where the strike occurred);

(*5*) The proportion of the food stamp caseload whose management was affected;

(*6*) The reason(s) why the State agency was unable to control the effects of the strike on program administration and errors;

(*7*) Identification and explanation of the uncontrollable nature of errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*8*) The percentage of the reported payment error rate that resulted from the strike and how this figure was derived; and

(*9*) The reported payment error rate in the twelve-month period immediately prior to the event and the payment error rate during the remainder of the subject fiscal year.

The Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of the strike. In this evaluation, the Secretary will consider the following factors: Geographical impact of the strike; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the strike and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. If the Secretary determines that a State agency has provided insufficient information or that sufficient information is not otherwise available from existing Department records to determine a waiver amount for the uncontrollable effects of a strike using factual analysis, the Secretary shall determine a waiver amount by using the formula described in paragraph (e)(6)(i)(A) of this section. The amount of the waiver might be reduced for a strike that was limited to a small area of the State.

(C) Unusual Food Stamp Program caseload growth (for example 15 percent increase may constitute unusual caseload growth). Caseload growth which historically increases during certain periods of the year will not be considered unusual or beyond the State agency's control. When submitting a request for good cause relief based on this example, the State agency shall provide the following information:

(*1*) The amount of growth (both actual and percentage);

(*2*) The time the growth occurred (what month(s)/year);

(*3*) The date(s) after the occurrence when program operations were affected;

(*4*) The geographic extent of the caseload growth (i.e. Statewide or in which particular counties);

(*5*) The impact of caseload growth;

(*6*) The reason(s) why the State agency was unable to control the effects of caseload growth on program administration and errors;

(*7*) The percentage of the reported payment error rate that resulted from the caseload growth and how this figure was derived; and

(*8*) The reported payment error rate in the twelve-month period immediately prior to the event and the payment error rate during the remainder of the subject fiscal year.

The Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of unusual caseload growth. In this evaluation, the Secretary will consider the following factors: Geographical impact of the caseload growth; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the caseload growth and its impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period. If the Secretary determines that the State agency has provided insufficient information or that needed information is otherwise not available from existing Department records to determine a waiver amount for the uncontrollable effects of caseload growth using factual analysis, the Secretary shall determine a formula derived waiver amount by: Counting the number of months out of the six months beginning in April immediately prior to the subject review period in which the State agency's Food Stamp Program caseloads were 15 percent or more above caseloads in March immediately prior to the review period; counting the number of months during the twelve months of the review period in which the State agency's Food Stamp Program caseloads were 15 percent or more above caseloads in September prior to the review period; determining a waiver amount equal to one eighteenth of the liability for each month for the portion of the caseload growth which occurred during the six months prior to the fiscal year and one twelfth of the liability for each month for the portion of the caseload growth which occurred during the fiscal year; and as appropriate, adjust the preliminary waiver amount to reflect States' otherwise effective administration of the program based upon recent error rate history. For example, a reduction in the amount may be made when a State agency's recent error rate history indicates that even absent the uncontrollable events described, the State agency would have exceeded the error rate tolerance for the review period. Under this approach, unless the State agency can demonstrate a direct uncontrollable impact on the error rate, FNS will not grant relief for the effects of caseload growth that ended prior to the second half of the prior fiscal year.

(D) Unusual changes in the Food Stamp or other Federal or State programs that have an uncontrollable effect on the QC payment error rate.

Requests for relief from errors caused by the uncontrollable effects of unusual program changes other than those variances already excluded by § 275.12(d)(2)(vii) will be considered. When submitting a request for good cause relief based on unusual changes in the Food Stamp or other Federal or State programs, the State agency shall provide the following information:

(*1*) The type of change(s) that occurred;

(*2*) When the change(s) occurred;

(*3*) The nature of the adverse effect of the changes on program operations and the State agency's efforts to mitigate these effects;

(*4*) Reason(s) the State agency was unable to adequately handle the change(s);

(*5*) Identification and explanation of the uncontrollable errors caused by the changes (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*6*) The percentage of the reported payment error rate that resulted from the adverse impact of the change(s) and how this figure was derived; and

(*7*) The reported payment error rate in the twelve-month period immediately prior to the event and reported payment error rate during the remainder of the subject fiscal year.

The Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of unusual changes in the Food Stamp Program or other Federal and State programs. In this evaluation, the Secretary will consider the following factors: Geographical impact of the unusual changes in the Food Stamp Program or other Federal and State programs; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the unusual changes in the Food Stamp Program or other Federal and State programs and the impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period.

(E) Other unusual circumstances. When submitting a request for good cause relief based on unusual circumstances other than those specifically set forth in this paragraph (e)(6)(i)(E), such as a fire in a certification office, the State agency shall provide the following information:

(*1*) The unusual circumstances that the State agency believes uncontrollably and adversely affected the payment error rate for the fiscal year in question;

(*2*) Why the State agency had no control over the unusual circumstances;

(*3*) How the unusual circumstances had an uncontrollable and adverse impact on the State agency's error rate;

(*4*) Where the unusual circumstances existed (i.e. Statewide or in particular counties);

(*5*) When the unusual circumstances existed (give as nearly exact dates as possible);

(*6*) The proportion of the food stamp caseload whose management was affected;

(*7*) Identification and explanation of the uncontrollable errors caused by the event (types of errors, geographic location of the errors, time period during which the errors occurred, etc.);

(*8*) The percentage of the reported payment error rate that was caused by the unusual circumstances and how this figure was derived; and

(*9*) The reported payment error rate in the twelve-month period immediately prior to the event and reported payment error rate during the remainder of the subject fiscal year.

The Secretary shall evaluate the State agency's request and waive any portion of the liability which the Secretary attributes to the uncontrollable effects of unusual circumstances other than those set forth earlier in this paragraph (e)(6)(i)(E). In this evaluation, the Secretary will consider the following factors: Geographical impact of the unusual circumstances; State efforts to control impact on program operations; the proportion of food stamp caseload affected; and/or the duration of the unusual circumstances and the impact on program operations. Adjustments for these factors may result in a waiver of all, part, or none of the error rate liabilities for the applicable period.

(ii) *Adjustments.* When good cause is found under the criteria in paragraphs (e)(6)(i)(A) through (E) of this section, the Secretary may adjust the waiver amount to reflect States' otherwise effective administration of the program based upon recent error rate history.

(iii) *Timeframes.* State agencies have 60 days from the date of receipt of notification by FNS (certified mail, return receipt requested) of its final error rate and potential liability to submit requests for good cause. In those instances in which FNS uses information not submitted by the State agency to make a waiver determination or corrects information submitted by the State agency, the State agency shall be provided a copy of such information or corrected information as set forth in paragraph (e)(6)(iv) of this section and shall have 30 days to comment on the supplemental information and/or the corrected information before a final decision is rendered. Requests for extensions shall be evaluated on a case-by-case basis and only in the most unusual situations shall such requests be granted. In computing any period of time prescribed or allowed under these procedures, the day of delivery of any notice of action, acknowledgment, or reply shall not be included unless it is a Saturday, Sunday or Federal or State holiday. In that case, the period runs until the end of the next day which is not a Saturday, Sunday or Federal or State holiday. Requests for good cause or an extension of time shall be post-marked prior to the expiration of the original due date.

(iv) *Evidence.* When submitting a request for good cause relief, the State agency shall include such data and documentation as is necessary to support and verify the information submitted in accordance with the requirements of paragraph (e)(6) of this section so as to fully explain how a particular unusual circumstance(s) uncontrollably affected its payment error rate.

(v) *Determination.* When the Secretary determines that good cause exists for a State agency's failure to meet the payment error rate tolerance for the fiscal year, the Secretary shall reduce or eliminate the State agency's liability as the Secretary deems is appropriate under the circumstances. When a determination is based on information not submitted by a State agency, FNS shall issue a preliminary determination (certified mail, return receipt requested) on the good cause waiver request. The preliminary determination shall identify information used in the evaluation process which was not submitted by the State agency or information corrected by FNS. State agencies are allowed 30 days from the date of receipt of the preliminary determination in which to comment on the supplemental information and/or the corrected information. The State agency's response shall be limited to the additional information or the corrected information used by FNS.

(vi) *Finality.* The determinations of the Secretary concerning good cause are

final and not subject to further administrative or judicial review.

* * * * *

Dated: September 22, 1992.

Betty Jo Nelsen,

Administrator.

[FR Doc. 92-23315 Filed 9-25-92; 8:45 am]

BILLING CODE 3410-30-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052-AB13

Loan Policies and Operations; Definitions; Lending Authorities and Purchase and Sale of Interests in Loans; Correction

AGENCY: Farm Credit Administration.

ACTION: Final rule; correction.

SUMMARY: The Farm Credit Administration (FCA) published a final rule (57 FR 38237, August 24, 1992) that amended the regulations governing the lending, loan sale and purchase, and loan participation authorities of Farm Credit System institutions. This document corrects a typographical error in the final rule.

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Paralegal Specialist, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: In preparing the final rule for publication in the **Federal Register**, a typographical error was inadvertently made in the second sentence of § 614.4336(a)(2)(ii). Accordingly, FR Doc. 92-20153, published August 24, 1992, is amended as follows.

§ 614.4336 [Corrected]

1. On page 38249, third column, thirteenth line from the bottom, paragraph (a)(2)(ii) of § 614.4336 is corrected by removing the words "in effect" and adding in their place, the word "ineffective."

Dated: September 22, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92-23465 Filed 9-25-92; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-09-AD; Amendment 39-8366; AD 92-19-08]

Airworthiness Directives; Fairchild Aircraft (Formerly Swearingen Aviation Corporation) SA226 and SA227 Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This action makes a correction to Airworthiness Directive (AD) 92-19-08 concerning certain Fairchild Aircraft (Fairchild) SA226 and SA227 series airplanes, which was published in the **Federal Register** on Thursday, August 27, 1992 (57 FR 38760). That document incorrectly references Fairchild Service Bulletin (SB) 227-27-029 as Fairchild SB 27-09. This action incorporates the correct reference to the applicable service information into the AD.

EFFECTIVE DATE: October 16, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Bob D. May, Aerospace Engineer, Airplane Certification Office, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193-0150; Telephone (817) 624-5156.

SUPPLEMENTARY INFORMATION: On August 20, 1992, the Federal Aviation Administration (FAA) issued AD 92-19-08, Amendment 39-8366 (57 FR 38760, August 27, 1992), which was applicable to certain Fairchild SA226 and SA227 airplanes. The AD supersedes AD 81-02-01, Amendment 39-4009 (46 FR 867, January 5, 1981), with a new AD that (1) retains the inspection and modification of the rudder cable to rudder pedal link attachments, which was required by AD 81-02-01 on Fairchild SA226 series airplanes; and (2) extends the effectivity of to include certain Fairchild SA227 series airplanes. The required actions are accomplished in accordance with the instructions in either Swearingen Aviation Corporation Service Bulletin (SB) 27-027, issued: July 17, 1980; or Fairchild SB 227-27-029, issued: June 6, 1991, whichever is applicable.

That document incorrectly references Fairchild SB 227-27-029 as Fairchild SB 27-09.

Need for Correction

As published, the final regulations contain an incorrect service bulletin reference for the Fairchild SA227 series airplanes, which could prevent operators from complying with the actions of AD 92-19-08.

Correction of Publication

Accordingly, the publication of Friday, August 27, 1992 (57 FR 38760) of Amendment 39-8366; AD 92-19-08, which was the subject of FR Doc. 92-20525, is corrected as follows:

§ 39.13 [Corrected]

On page 38761, in the second column, in section 39.13, in line 8 of paragraph (a) of AD 92-19-08, replace "27-09," with "227-27-029,".

On page 38761, in the second column, in section 39.13, in lines 5 and 6 of paragraph (d) of AD 92-19-08, replace "27-09," with "227-27-029,".

Issued in Kansas City, Missouri, on September 21, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-23466 Filed 9-25-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 95

[Docket No. 26979; Amdt. No. 372]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: October 15, 1992.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as

prescribed in part 95. The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Aircraft, Airspace.

Issued in Washington, DC on September 18, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 g.m.t.:

PART 95—[AMENDED]

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

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

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM EN ROUTE IFR ALTITUDES and CHANGEOVER POINTS

[Amendment 372 Effective Date, October 15, 1992]

From	To	MEA
§ 95.6017 VOR Federal Airway 17 is Amended to Read in Part		
Acton, TX VORTAC	Bridgeport, TX VORTAC.	3000
§ 95.6036 VOR Federal Airway 36 is Amended to Read in Part		
Hawly, PA Fix	Betty, NJ Fix	15500
Betty, NJ Fix	Neion, NJ Fix	13500
§ 95.6056 VOR Federal Airway 56 is Amended to Read in Part		
Colliers, SC VORTAC	Columbia, SC VORTAC.	3000
§ 95.6059 VOR Federal Airway 59 is Amended to Read in Part		
Parkersburg, WV VORTAC (2500—MOCA).	Newcomerstown, OH VORTAC.	3000
§ 95.6115 VOR Federal Airway 115 is Amended to Read in Part		
Parkersburg, WV VORTAC (2500—MOCA).	Newcomerstown, OH VORTAC.	3000
§ 95.6159 VOR Federal Airway 159 is Amended to Read in Part		
Mitchell, SD VOR/DME.	Huron, SD VORTAC.	3300
§ 95.6235 VOR Federal Airway 235 is Amended to Read in Part		
Rock Springs, WY VORTAC.	Borgg, WY Fix	9500
Borgg, WY Fix	Oilly, WY Fix	11200
§ 95.6349 VOR Federal Airway 349 is Deleted		
Seattle, WA VORTAC (6000—MRA, 1800—MOCA).	Lofal, WA Fix	4000
Lofal, WA Fix (4300—MOCA).	Jawbn, WA Fix	5400
Jawbn, VA Fix (4300—MOCA).	Islnd, WA Fix	5400
Islnd, WA Fix	Bellingham, WA VORTAC.	5000
Bellingham, WA VORTAC (2600—MOCA).	U.S.-Canadian Border.	3000
§ 95.6358 VOR Federal Airway 358 is Amended to Read in Part		
Guada, TX Fix (3200—MOCA).	Stonewall, TX VORTAC.	4000
§ 95.6439 VOR Federal Airway 439 is Amended to Read in Part		
Dickinson, ND VORTAC.	Williston, ND VORTAC.	4500
§ 95.6506 VOR Federal Airway 506 is Amended to Read in Part		
Baily, AK Fix (7000—MCA Bremi Fix, E Bnd, 9700—MOCA).	Bremi, AK Fix	12000
King Salmon, AK VORTAC (2400—MOCA).	Kowok, AK Fix	3000
Kowok, AK Fix (7000—MOCA).	Cayon, AK Fix	8000
§ 95.6524 VOR Federal Airway 524 is amended by adding		
Hayden, Co VOR/DME.	Laramie, WY VORTAC.	14200

[FR Doc. 92–23432 Filed 9–25–92; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 150

Exemption From Speculative Position Limits for Positions Which Have a Common Owner, But Which Are Independently Controlled

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is adopting rule amendments to eliminate the application requirement for the exemption from speculative position limits for positions which have a common owner but which are independently controlled. This change will significantly reduce paperwork associated with filing for these exemptions. Under the amended rule, the standards for eligibility remain the same, but the exemption will now be self-executing. As proposed and adopted, the amendments include a provision requiring entities exempt from speculative position limits under Commission Rule 150.3 to provide specified information related to that exemption upon a call by the Commission.

EFFECTIVE DATE: October 28, 1992.

FOR FURTHER INFORMATION CONTACT: John F. Fenton, Industry Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–3310.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Framework

Speculative position limits have been a tool for the regulation of futures markets for over half a century. *See,* Section 4a(1) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6a(1) (1988). Generally, there are three elements to the Commission's regulatory framework of speculative position limits. They are the levels of the limits, the exemptions from them (in particular, for hedgers), and the policy on aggregating accounts. Since its creation, the Commission periodically has reviewed each of these policies pertaining to speculative position limits. The **Federal Register** notice announcing the proposal of these amendments to § 150.3 details the statutory and regulatory background of this rulemaking (57 FR 31674 (July 17, 1992)).

II. The Proposed Rule

After observing the application process for exemptive relief from speculative position limits for eligible entities for more than three years, and the operation of the revised filing requirements for approximately one year, the Commission concluded that it was appropriate to amend Commission Rule 150.3(a)(4) to make this exemption self-executing by placing the responsibility for assuring that an entity meets the standards to be eligible for this exemption on the entity itself. Under the proposed rule, the treatment of entities eligible for exemption from speculative position limits is closely analogous to that afforded to commodity trading advisors of futures commission merchants under the 1979 Aggregation Policy.[1]

Specifically, the Commission proposed to amend § 150.3(a)(4) to eliminate the requirements that entities eligible for the exemption file an application with the Commission and receive prior Commission approval before being permitted to exceed speculative position limits. Under this proposal, the entities eligible for, and the standards for, relief would remain the same, but the eligible entities would themselves be responsible for ascertaining whether or not they qualify for the exemption and for monitoring continued compliance. No filing, other than a standard CFTC Form 40 which accurately reflected the control relationship, would be required with the Commission.

The effect of the proposed rule would be to apply the speculative limit only to each independent account controller trading for the eligible entity and to permit the eligible entity to exceed the speculative position limit in an amount proportional to the number of independent account controllers trading on its behalf. Currently, the Commission, in granting the exemption on a case-by-case basis, has determined maximum exemption levels for eligible entities, as a whole, which were sometimes less than the multiple of the speculative position limit based on the total number of independent account controllers. These overall levels were determined based on market conditions in each particular futures contract market. It appears, however, that the positions of eligible entities have been well below their overall maximum levels. The overall maximum limits, therefore, in practice have not been a constraining factor. In addition, as the Commission pointed out in the **Federal Register** notice of its proposed rulemaking eligible entities must be registrants and the exemption applies only to positions outside the spot month. Therefore, the Commission believed that the proposed change with regard to the maximum permissible position levels would not be detrimental to the market.

In addition, the Commission also proposed to add Section 150.3(b) which provides that, upon call by the Commission, the Director of the Division of Economic Analysis, or the Director's delegee, any entity exempt from speculative position limits under Commission Rule 150.3(a) must provide to the Commission such information as specified in the call, relating to the positions owned or controlled by that person, trading done pursuant to the claimed exemption, the futures, options, or cash market position which support the claim of exemption, and the relevant business relationships, supporting a claim of exemption.

B. Comments Received

The Commission received four comments in response to its proposed rulemaking to eliminate the application and approval requirements for the exemption. The four commenters included a futures exchange, an industry association, a commodity trading advisor, and an introducing broker on behalf of a commodity trading advisor.

The commenters uniformly supported the proposal to eliminate the application and approval procedure and agreed that this would reduce the costs of qualifying for the exemption. Several commenters suggested, however, that for the exemption to be truly self-executing, and to significantly reduce the costs associated with the exemption, exchanges need to conform their requirements for the exemption with that of the Commission.

One commenter noted that the costs savings of not having to monitor an overall exemption level for the eligible entity as a whole would, in fact, be greater than the savings for the elimination of the application procedure. Another commenter noted, however, that by retaining the spot month aggregation requirement, the daily compliance burden for the eligible entity would be virtually unchanged, since the eligible entity would still be required to monitor the positions of independent account controllers on a daily basis.

III. The Final Rules

In light of the generally favorable comments, the Commission has decided to adopt as final the proposed rule eliminating the application and approval requirements for the exemption. The Commission believes that this will significantly reduce the costs on those qualifying for this exemption.

The Commission has carefully considered the views expressed by the commenters with regard to additional ways to lower the burden on those qualifying for this exemption. Several commenters noted that the potential cost savings cannot be fully realized unless the exchanges harmonize their rules with regard to this exemption with that of the Commission. The Commission understands the potential benefits of harmonized rules in this regard, and Commission staff are currently involved in discussions with the staffs of the various exchanges in an effort to have the most feasible coordinated approach, within the regulatory framework each exchange believes necessary to administer trading.

One commenter expressed concern that unless the exemption applied to positions in the spot month of futures contracts the daily compliance burden on eligible entities would be virtually unchanged. The Commission has historically been concerned about position concentration in futures contracts during the spot month, and has, therefore, been cautious in allowing exemptions to position limits in the spot month. For example, exemptions for spread or arbitrage positions between futures and option contracts and between single months of a futures contract, permitted under Commission Rules 150.3(a)(2) and 150.3(a)(3), respectively, apply only outside of the spot month. The Commission continues to believe a cautious approach is warranted with regard to positions in the spot month. In any event, the Commission has observed that entities eligible for this exemption rarely hold significant positions in the spot month, and therefore the exclusion of the spot month from the exemption should place no undue burden on these entities.

The Commission stresses that under the amended rule entities must assume responsibility for assuring themselves that the appropriate documentary and other factual evidence supports their

[1] The 1979 Aggregation Policy, in effect, disaggregated, for reporting and speculative limit purposes, positions of independent account controllers of futures commission merchants in any futures contract month. The current rule provides an exemption to speculative position limits, for independent account controllers of eligible entities, but not in the spot futures month if there is a position limit which applies to individual trading months during their expiration. Therefore, while generally in harmony, the 1979 Aggregation policy and proposed § 150.3(a)(4) would result in differing treatment with regard to positions in the spot month if there is a position limit which applies to individual trading months during their expiration.

eligibility for this exemption. These standards are not being changed by these rule amendments.[2] In particular, both the eligible entities and affiliated account controllers must continue to have in place procedures to assure the independence of the account controllers in order to meet the requirements of the exemption.

Although, under the amended rule, the exemption will be self-executing, the Commission cautions that, to the extent market surveillance uncovers trading patterns between such independent account controllers which suggest actual trading together or otherwise lack of independence on the part of various account controllers, the Commission will take those regulatory or enforcement actions which are appropriate and warranted.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 et seq. requires that agencies, in proposing rules, consider the impact of these rules on small entities. The Commission has previously determined that "large traders" are not "small entities" for purposes of the RFA. 47 FR 18618 (April 30, 1982). These rules contain exemptions from limits on the size of speculative positions which typically may be held by the largest traders in these markets. Accordingly, these rules will have no significant impact on a substantial number of small entities. Moreover, the Commission invited comments from any firms or other persons which believed that the promulgation of these rules might have significant impact upon their activities. No such comments were received. For the above reason, and pursuant to Section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman, on behalf of the Commission, hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission previously submitted these rules in proposed firm and their associated information collection requirements to the Office of Management and Budget ("OMB"). OMB approved the collection of information associated with the rule on July 9, 1992 and assigned OMB control No. 3038–0013 to the rule. The burden associated with this entire collection including this proposed rule is as follows:

Average Burden Hours Per Response.	3.00
Number of Respondents	12
Frequency of Response	Annually

The burden associated with this specific final rule is as follows:

Average Burden Hours Per Response.	3.00
Number of Respondents	2
Frequency of Response	Annually

Copies of the OMB approved information collection package associated with this rule may be obtained from Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects in 17 CFR Part 150

Agricultural commodities, Commodity futures, Cotton, Grains.

In consideration of the foregoing and pursuant to the authority contained in the Act and, in particular, sections 2(a)(11), 4a, and 8a(5) of the Act, 7 U.S.C. 4a(j), 6a, and 12a(5), the Commodity Futures Trading Commission hereby amends part 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 150—LIMITS ON POSITIONS

1. The authority citation for part 150 is revised to read as follows:

Authority: 7 U.S.C. 6a and 12a(5).

2. Section 150.1 is amended by revising paragraph (e)(3), by redesignating current paragraph (e)(4) as paragraph (e)(5), and by adding a new paragraph (e)(4) to read as follows:

§ 150.1 Definitions.

* * * * *

(e) *Independent account controller* means a person—

* * * * *

(3) Who trades independently of the eligible entity and of any other independent account controller trading for the eligible entity;

(4) Who has no knowledge of trading decisions by any other independent account controller; and

* * * * *

3. Section 150.3 is amended by revising paragraphs (a)(4) introductory text, (a)(4)(i) and (b) to read as follows:

§ 150.3 Exemptions.

(a) * * *

(4) Carried for an eligible entity as defined in § 150.1(d), in the separate account or accounts of an independent account controller, as defined in § 150.1(e), and not in the spot month if there is a position limit which applies to individual trading months during their expiration; *Provided, however,* That the overall positions held or controlled by each such independent account controller may not exceed the limits specified in § 150.2.

(i) Additional Requirements for Exemption of Affiliated Entities. If the independent account controller is affiliated with the eligible entity or another independent account controller, each of the affiliated entities must:

(A) Have, and enforce, written procedures to preclude the affiliated entities from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities; *provided, however,* That such procedures may provide for the disclosure of information which is reasonably necessary for an eligible entity to maintain the level of control consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf;

(B) Trade such accounts pursuant to separately-developed and independent trading systems;

(C) Market such trading systems separately; and

(D) Solicit funds for such trading by separate Disclosure Documents that meet the standards of § 4.21 or § 4.31 of this chapter, as applicable, where such Disclosure Documents are required under part 4 of this chapter.

* * * * *

[2] It should be noted, however, that § 150.3(a)(4)(i), as adopted, contains a technical amendment not included as part of the proposed rulemaking, in order to conform to Commission Rule 4.7. Commission Rule 4.7 provides, under certain conditions, exemptive relief to CPOs and CTAs from the requirement to provide disclosure documents to their clients. 57 FR 34853 (August 7, 1992). The intent of the technical amendment to § 150.3(a)(4)(i) is to make clear that disclosure documents are not required under this section from those who are exempt from this requirement under § 4.7.

(b) *Call for information.* Upon call by the Commission, the Director of the Division of Economic Analysis or the Director's delegee, any person claiming an exemption from speculative position limits under this section must provide to the Commission such information as specified in the call relating to the positions owned or controlled by that person; trading done pursuant to the claimed exemption; the futures, options or cash market positions which support the claim of exemption; and the relevant business relationships supporting a claim of exemption.

Issued in Washington, DC, this 19th day of September 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-23223 Filed 9-25-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 81N-0122]

RIN 0905-AA06

Corn and Callus Remover Drug Products for Over-the-Counter Human Use; Final Monograph; Updating and Technical Changes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the regulations that establish conditions under which over-the-counter (OTC) corn and callus remover drug products are generally recognized as safe and effective and not misbranded. These amendments will update the regulations, by making noncontroversial technical changes in the labeling of those products, to clarify that products contained in a collodion-like vehicle may be applied to the corn and callus with an applicator or a brush. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Effective on October 28, 1992; written comments by November 27, 1992; written comments on the agency's economic impact determination by November 27, 1992.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 14, 1990 (55 FR 33258), FDA issued a final rule for OTC corn and callus remover drug products (21 CFR part 358) that specified the following directions statement for these drug products in a collodion-like vehicle under § 358.550(d)(2) (21 CFR 358.550 (d)(2)):

For products containing salicylic acid identified in § 358.510(b). "Wash affected area and dry thoroughly. Apply one drop at a time to sufficiently cover each corn/callus. Let dry. Repeat this procedure once or twice daily as needed for up to 14 days (until corn/callus is removed)." (Optional: "May soak corn/callus in warm water for 5 minutes to assist in removal.")

This final rule revises the wording in these directions to provide for the use of an applicator or a brush, if appropriate, in applying the product. Gelled or highly viscous collodion-like formulations may be more appropriately applied by a brush than an applicator such as a dropper or glass rod. This provision allows for appropriate labeling of OTC corn and callus remover drug products based on the physical characteristics of the product. Also, clinical studies have been conducted in which a brush applicator was used to apply the salicylic acid in a collodion-like vehicle to the affected area (Refs. 1 and 2). The revised directions for using OTC corn and callus remover drug products in a collodion-like vehicle in § 358.550(d)(2) now read:

For products containing salicylic acid identified in § 358.510(b). "Wash affected area and dry thoroughly. Apply" (select one of the following, as appropriate: "one drop" or "small amount") "at a time with" (select one of the following, as appropriate: "applicator" or "brush") "to sufficiently cover each corn/callus. Let dry. Repeat this procedure once or twice daily as needed for up to 14 days (until corn/callus is removed)." (Optional: "May soak corn/callus in warm water for 5 minutes to assist in removal.")

This labeling revision represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. Therefore, the agency has determined that this labeling revision does not need to be implemented on the effective date of this final rule. Manufacturers may implement the revision at the next printing of labels for affected products.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the Federal Register of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule amending the final monograph for OTC corn and callus remover drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC corn and callus remover drug products is not expected to pose such an impact on small business. The only requirement is a minor optional labeling revision if desired, and the agency is allowing this revision to be made at the manufacturer's next printing of labels for affected products. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

As noted previously, this final rule institutes a change that is nonsubstantive in nature. Because the revision is not controversial and because, when effective, it provides clarification of a final OTC drug monograph, FDA finds that the usual notice and comment procedures are unnecessary and not in the public interest. The final rule, therefore, shall become effective on October 28, 1992. However, interested persons may, on or before November 27, 1992, submit written comments on this final rule, including the agency's economic impact determination, to the Dockets

Management Branch (address above). Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

References

(1) Comment No. RPT, Docket No. 80N-0238, Dockets Management Branch.

(2) "Supplemental Efficacy Data for Study 83-07" identified as Exhibit #21, dated February 26, 1985, included in OTC Volume 16CFM, Docket No. 80N-0238, Dockets Management Branch.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 358 is amended as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 358 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 358.550 is amended by revising paragraph (d)(2) to read as follows:

§ 358.550 Labeling of corn and callus remover drug products.

* * * * *

(d) * * *

(2) *For products containing salicylic acid identified in § 358.510(b).* "Wash affected area and dry thoroughly. Apply" (select one of the following, as appropriate: "one drop" or "small amount") "at a time with" (select one of the following, as appropriate: "applicator" or "brush") "to sufficiently cover each corn/callus. Let dry. Repeat this procedure once or twice daily as needed for up to 14 days (until corn/callus is removed)." (Optional: "May soak corn/callus in warm water for 5 minutes to assist in removal.")

* * * * *

Dated: September 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-23446 Filed 9-25-92; 8:45 am]

BILLING CODE 4160-01-F

21 CFR Part 358

[Docket No. 80N-0238]

RIN 0905-AA06

Wart Remover Drug Products for Over-the-Counter Human Use; Final Monograph; Updating and Technical Changes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the regulations that establish conditions under which over-the-counter (OTC) wart remover drug products are generally recognized as safe and effective and not misbranded. These amendments will update the regulations, by making noncontroversial technical changes in the labeling of those products, to clarify that products contained in a collodion-like vehicle may be applied to the wart with an applicator or a brush. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Effective on October 28, 1992; written comments by November 27, 1992; written comments on the agency's economic impact determination by November 27, 1992.

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

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 14, 1990 (55 FR 33246), FDA issued a final rule for OTC wart remover drug products (21 CFR part 358) that specified the following directions statement for these drug products marketed in a collodion-type vehicle under § 358.150(d)(2) (21 CFR 358.150 (d)(2)):

For products containing salicylic acid identified in § 358.110(b). "Wash affected area." (Optional: "May soak wart in warm water for 5 minutes.") "Dry area thoroughly." Apply one drop at a time to sufficiently cover each wart. Let dry. Repeat this procedure once or twice daily as needed (until wart is removed) for up to 12 weeks."

This final rule revises the wording in these directions to provide for the use of an applicator or a brush, as appropriate, in applying the product. Gelled or highly viscous collodion-like formulations may be more appropriately applied by a brush than an applicator such as a dropper or glass rod. This provision allows for appropriate labeling of OTC wart remover drug products based on the physical characteristics of the product. Also, clinical studies have been conducted in which a brush applicator was used to apply the salicylic acid in a collodion-like vehicle to the affected area (Refs. 1 and 2). The revised directions for use for OTC wart remover drug products in a collodion-like vehicle in § 358.150(d)(2) now read:

For products containing salicylic acid identified in § 358.110(b). "Wash affected area." (Optional: "May soak wart in warm water for 5 minutes.") "Dry area thoroughly Apply" (select one of the following, as appropriate: "one drop" or "small amount") "at a time with" (select one of the following, as appropriate: "applicator" or "brush") "to sufficiently cover each wart. Let dry Repeat this procedure once or twice daily as needed (until wart is removed) for up to 12 weeks."

This labeling revision represents a minor clarifying change that does not change the substance of the labeling requirements contained in the final regulations. Therefore, the agency has determined that this labeling revision does not need to be implemented on the effective date of this final rule. Manufacturers may implement the revision at the next printing of labels for affected products.

The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule amending the final monograph for OTC wart remover drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96-354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC wart remover drug products is not expected to pose such an impact on small business. The only requirement is a minor optimal labeling

revision, if desired, and the agency is allowing this revision to be made at the manufacturer's next printing of labels for affected products. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

As noted previously, this final rule institutes a change that is nonsubstantive in nature. Because the revision is not controversial and because, when effective, it provides clarification of a final OTC drug monograph, FDA finds that the usual notice and comment procedures are unnecessary and not in the public interest. The final rule, therefore, shall become effective on October 28, 1992. However, interested persons may, on or before November 27, 1992, submit written comments on this final rule, including the agency's economic impact determination, to the Dockets Management Branch (address above). Three copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

References

(1) Comment No. RPT, Docket No. 80N-0238, Dockets Management Branch.

(2) "Supplemental Efficacy Data for Study 83-07" identified as Exhibit #21, dated February 26, 1985, included in OTC Volume 16CFM, Docket No. 80N-0238, Dockets Management Branch.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 358 is amended as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 358 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 358.150 is amended by revising paragraph (d)(2) to read as follows:

§ 358.150 Labeling of wart remover drug products.

* * * * *

(d) * * *

(2) *For products containing salicylic acid identified in § 358.110(b).* "Wash affected area." (Optional: "May soak wart in warm water for 5 minutes.") "Dry area thoroughly. Apply" (select one of the following, as appropriate: "one drop" or "small amount") "at a time with" (select one of the following, as appropriate: "applicator" or "brush") "to sufficiently cover each wart. Let dry Repeat this procedure once or twice daily as needed (until wart is removed) for up to 12 weeks."

* * * * *

Dated: September 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-23447 Filed 9-25-92; 8:45 am]

BILLING CODE 4160-01-F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[MI12-5586; FRL-4513-3]

Modification of the Ozone Monitoring Season; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Ozone (O_3) is required to be monitored at National Air Monitoring Stations (NAMS) and State and Local Air Monitoring Stations (SLAMS) only during the "ozone season" as designated in the Aerometric Information Retrieval System (AIRS) files on a state by state basis. Previously, the ozone season for Michigan had been designated as April 1 through October 31. A review of monitoring data for the past 5 years revealed that high ozone concentrations do not occur during the month of October in Michigan. Therefore, pursuant to 40 CFR 58.13(a)(3), USEPA agreed with the State's request to modify its ozone season and has determined that Michigan is now subject to an April-September monitoring timeframe. The modified ozone season will apply to 1992 ozone monitoring data and future monitoring efforts unless otherwise revised.

EFFECTIVE DATE: This action will be effective November 27, 1992 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Camille Szematowicz, Air Toxics and Radiation Branch, Regulation Development Section, U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6081.

SUPPLEMENTARY INFORMATION: The State of Michigan monitors for ozone and submits data to AIRS as required to determine the air quality and attainment status of metropolitan areas, and to recognize trends in air quality. 40 CFR 58.13(a)(3) provides that the Regional Administrator may exempt periods or seasons from consecutive hourly averages for continuous State and Local Air Monitoring Station (SLAMS) analyzers. Part 58 appendix D, lists the current ozone season on a state by state basis. The Michigan season is listed as April through October.

On February 28, 1992, the Michigan Department of Natural Resources (MDNR) requested that USEPA modify the State's current ozone season to the period April 1 through September 30. In order to support its position the State submitted 5 years of air monitoring data for the month of October. USEPA has reviewed the State's submittal in accordance with the Office of Air Quality Planning and Standards (OAQPS) document "Guideline on Modification to Monitoring Seasons for Ozone" (March 1990). Consistent with the guidelines, Michigan's air monitoring data indicates that for the five most recent years (1987-1991), there have been no recorded ozone concentrations above the 0.100 ppm guideline during the month of October. USEPA approved Michigan's request to eliminate the month of October from its official monitoring season, and as required by the above mentioned guidance document, OAQPS concurred on this approval on May 29, 1992. Valdas V. Adamkus, Regional Administrator,

Region 5, notified Robert P. Miller, Chief, Air Quality Division, MDNR, of USEPA's approval of Michigan's request on August 18, 1992.

The USEPA has determined that this change to the ozone monitoring season in Michigan complies with all applicable requirements of the Clean Air Act and USEPA policy and regulations concerning such revisions. Due to the minor nature of this revision, USEPA concluded that conducting notice and comment rulemaking prior to approving the revision would have been "unnecessary and contrary to the public interest," and hence was not required by the Administrative Procedure Act, 5 U.S.C. 553(b). This action became final and effective on August 18, 1992, the date of USEPA approval of the States's request.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1992. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 58

Air pollution control, Intergovernmental relations.

Dated: July 28, 1992.

Robert Springer,

Acting Regional Administrator.

Title 40, part 58 of the Code of Federal Regulations is being amended as follows:

PART 58—[AMENDED]

1. The authority citation for part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613, 7619.

Appendix D—[Amended]

2. In Appendix D; in the table in section 2.5, the entry for Michigan is revised to read as follows:

OZONE MONITORING SEASON BY STATE

State	Begin month	End month
* * *	* *	
Michigan	April	September.
* * *	* *	

[FR Doc. 92-23461 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[AD-FRL-3482-1]

RIN 2060-AC67

Standards of Performance for New Stationary Sources; Calciners and Dryers in Mineral Industries

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Standards of performance for calciners and dryers in mineral industries were proposed in the **Federal Register** on April 23, 1986. This action promulgates standards of performance for calciners and dryers in the mineral industries. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that calciners and dryers in the mineral industries cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, or reconstructed calciners and dryers to achieve emission levels that reflect the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

DATES: *Effective Date.* September 28, 1992.

Judicial Review. Under section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard (NSPS) is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Calciners and Dryers in Mineral Industries—Background Information for the Promulgated Standards," EPA 450/3-85-025b. The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to comments; (2) a summary of the changes made to the regulation since proposal; and (3) the final Environmental Impact Statement which summarizes the impacts of the standards.

Docket. A docket, number A-82-39, containing information considered by EPA in development of the promulgated standards is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section (LE-131), Waterside Mall, room M1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Herring, telephone (919) 541-5358, concerning regulatory decisions; Mr. Bill Neuffer, telephone (919) 541-5435, concerning technical aspects of the industry and control technologies. The address for the above contacts is Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

I. The Standards

Standards of performance for new sources established under section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

The promulgated standards apply to new, modified, and reconstructed calciners and dryers at plants that process or produce any of the following minerals or their concentrates: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite.

The affected facility for mineral processing plants in each of the industries listed above would be each

new, modified or reconstructed calciner or dryer. The types of dryers to which the standards apply include: rotary (direct), rotary (indirect), fluid bed, vibrating grate, flash, and spray dryers. The types of calciners to which the standards apply include: Rotary, flash, and kettle calciners; multiple hearth furnaces; and expansion furnaces.

The following processes and process units used at mineral processing plants would not be regulated under this NSPS: Vertical shaft kilns in the magnesium compounds industry; the chlorination-oxidation process in the titanium dioxide industry; coating kilns, mixers, and aerators in the roofing granules industry; and tunnel kilns, tunnel dryers, apron dryers, and grinding equipment that also dries the process material used in any of the 17 mineral industries. In addition, for the brick and related clay products industry, only the calcining and drying of raw materials prior to firing of the brick are covered because these are the only major sources of air pollution in that industry that fall under this generic source category.

The standards are based on emission levels achievable using well-designed and operated fabric filters, wet scrubbers or electrostatic precipitators (ESP's). All of these systems are considered BDT for controlling emissions from calciners and dryers in this source category, depending on the type of calciner and dryer and mineral industry. The promulgated standards limit stack emissions of particulate matter from affected facilities. The standards for stack emissions limit the concentration of particulate matter to 0.092 gram per dry standard cubic meter (g/dscm) [0.040 grain per dry standard cubic foot (gr/dscf)] for calciners and for calciners and dryers installed in series. For dryers, the concentration of particulate matter is limited to 0.057 g/dscm (0.025 gr/dscf).

Stack emissions would also be limited to 10 percent opacity for process units controlled with dry control devices. The visible emissions standard would not apply to affected facilities that use wet scrubbers to control emissions. Instead, monitoring and reporting of the operating parameters of wet scrubbers (pressure drop and liquid flow rate) would be required to indicate that the control device is properly operated and maintained on a routine basis.

When a dry control device (e.g., baghouse or ESP) is used to comply with the calciner or dryer mass emission standard, the owners or operators of the units are required to install a Continuous Opacity Monitoring System (COMS), except as noted below.

Owners or operators of ball clay vibrating grate dryers, bentonite rotary dryers, diatomite flash dryers, diatomite rotary calciners, feldspar rotary dryers, fire clay rotary dryers, industrial sand fluid bed dryers, kaolin rotary calciners, perlite rotary dryers, roofing granules fluid bed dryers, roofing granules rotary dryers, talc rotary calciners, titanium dioxide fluid bed dryers, titanium dioxide spray dryers, vermiculite fluid bed dryers, or vermiculite rotary dryers who use a dry control device may have a certified visible emissions observer measure and record the opacity of the visible emissions daily in lieu of using a COMS. Owners or operators of ball clay rotary dryers, diatomite rotary dryers, feldspar fluid bed dryers, fuller's earth rotary dryers, gypsum rotary dryers, gypsum flash calciners, gypsum kettle calciners, industrial sand rotary dryers, kaolin rotary dryers, kaolin multiple hearth furnaces, perlite expansion furnaces, talc flash dryers, talc rotary dryers, titanium dioxide direct or indirect rotary dryers or vermiculite expansion furnaces who use a dry control device are exempt from the monitoring requirements.

When a wet scrubber is used to comply with the calciner or dryer mass emission standard, the owner or operator would be required to install, calibrate, maintain, and operate monitoring devices that continuously measure and record the pressure loss of the gas stream through the scrubber and the scrubbing liquid flow rate to the scrubber. The pressure loss monitoring device must be certified by the manufacturer to be accurate within 1 inch of water column (in. W.C.) gauge pressure. The liquid flow rate monitoring device must be certified by the manufacturer to be accurate within 5 percent of design scrubbing liquid flow rate.

Method 5 of appendix A, 40 CFR part 60, will be used to determine compliance with the stack concentration standard. Method 9 of Appendix A and the procedures in 40 CFR 60.11 will be used to measure the opacity of stack emissions from dry control devices.

II. Environmental Impacts

The standards will reduce projected nationwide particulate emissions from new, modified, and reconstructed calciners and dryers in the mineral industries in the fifth year following promulgation of the standards by 7,900 megagrams (Mg) (8,800 tons) compared to emissions allowed under typical State process weight regulations. This represents a 78 percent reduction in particulate matter emissions from these sources.

The nationwide increase in solid waste (as a sludge containing 70 percent moisture) in the fifth year would be 7,500 Mg (8,300 tons) compared to the State Implementation Plan (SIP) level. The only solid waste impacts would be from the solids in the sludge produced by wet scrubbers. Typically, a particulate-contaminated water stream is pumped to a settling pond on the site. The solids settle in the pond, and the water is recirculated to the scrubber. When solids fill the pond, the pond could be dredged and the solids could be landfilled, or a new pond could be constructed. Solid wastes from wet scrubbers used to control emissions from dryers and calciners are not classified as hazardous wastes under the regulations adopted to implement the Resource Conservation and Recovery Act. The standards would result in negligible adverse water, noise, and radiation impacts.

III. Energy Impacts

In the fifth year after the NSPS would become applicable, the maximum increase in energy consumption for mineral calciner and dryer control devices would be 17,000 megawatt-hours (MWh) compared to the SIP level of control for typical facilities. This incremental energy requirement of the NSPS to operate control equipment would be less than 1 percent of the energy demands to operate the calciner and dryer process units.

IV. Economic Impacts

Based on industry growth projections, it is estimated that 62 new claciners and 32 new dryers will be installed in the first 5 years that the NSPS is in effect. In addition, during this same time period it is expected that 60 calciners and 44 dryers will be replaced at existing facilities at the end of their useful lives.

The total nationwide incremental capital cost of pollution control equipment in the fifth year would range from $2.2 to $3.0 million under the standards compared to the SIP level. The variation in costs is due to those process units for which either a fabric filter or a wet scrubber could be installed. If only wet scrubbers were installed, the capital cost of installation would be lower than if only fabric filters were installed. For the 104 new process units that are projected in the first 5 years of the NSPS to replace existing units at the end of their useful lives, capital control device costs would increase over baseline levels in 23 percent of the cases as a result of upgrading the design of the control devices (e.g., increased pressure drop for

a wet scrubber). In 11 percent of the cases, the existing wet scrubber control devices are operated at pressure drops that achieve both the SIP and NSPS emission limits and, therefore, no incremental capital costs would be incurred as a result of the NSPS. In 66 percent of the cases, fabric filters installed to meet SIP emission limits would achieve the NSPS emission limit with improved operation and maintenance. Therefore, there is no capital cost increase for fabric filter control devices.

The total nationwide incremental annualized cost of pollution control equipment in the fifth year would range from $0.7 to $1.0 million. If only wet scrubbers were installed where an option exists, the annualized costs would be higher than if only fabric filters were installed because of the additional energy costs associated with operating a scrubber and the product recovery credits associated with operating a fabric filter.

The annualized control device costs for the 104 projected process units would increase as a result of improved operation and maintenance of fabric filters (66 percent of the cases) or as a result of upgrading the design of a wet scrubber or ESP (23 percent of the cases). As with the capital costs, annualized control costs would not change in 11 percent of the cases where wet scrubbers achieve both the SIP and NSPS emission limits.

The projected growth and profitability of the 17 mineral industries are not expected to be affected adversely by implementation of the NSPS. For 15 of the 17 industries included in the analysis, the product price increases that would be required as a result of the NSPS would typically be less than 0.5 percent. Typical size facilities in the fire clay and lightweight aggregate industries would experience product price increases of 1.00 and 1.75 percent, respectively, as a result of implementation of the NSPS.

A detailed discussion of the costs and economic impacts associated with the NSPS is contained in the preamble (51 FR 15438; April 23, 1986) and BID (EPA 450/3-85-025a) for the proposed standards.

V. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (50 FR 31025; July 31, 1985) of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the standards for calciners and dryers in mineral industries recommended for proposal. The meeting was held on September 17, 1985. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The proposed standards were published in the **Federal Register** on April 23, 1986 (51 FR 15438).

The preamble to the proposed standards discussed the availability of the BID, "Calciners and Dryers in Mineral Industries—Background Information for Proposed Standards" (EPA-450/3-85-025a), which described in detail the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal and, when requested, copies of the BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on June 9, 1986, at Research Triangle Park, North Carolina. The hearing was open to the public and each attendee was given an opportunity to comment on the proposed standards. The public comment period was from April 23, 1986, to July 7, 1986.

Fourteen comment letters were received and 12 interested parties testified at the public hearing concerning issues relative to the proposed standards. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed standards.

VI. Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from industry, trade associations, and State air pollution control agencies. A detailed discussion of these comments and responses can be found in the BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serves as the basis for the revisions which have been made to the standards between proposal and promulgation.

In response to the public comments and as a result of EPA's reevaluation, several changes have been made to the standards since proposal. The definition of "mineral processing plant" in the standards was revised to provide that a new, modified, or reconstructed dryer or calciner which processes a mixture of minerals is covered by the standards if the majority of the material being processed (greater than 50 percent) is any of the following minerals or a combination of these minerals: Alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite.

Also, changes have been made with regard to the opacity monitoring requirements. The owners or operators of certain units that use a dry control device to comply with the calciner or dryer mass emissions standard are required to install a COMS, except as discussed previously under Section I of this preamble. In addition, certain calciners and dryers as listed in Section I and in the regulation are exempt from the monitoring requirement.

A technical correction was made to the final standards to clarify the monitoring and recordkeeping requirements for facilities which are controlled by wet scrubbers. In addition, the semiannual recalibration requirements for monitoring devices in § 60.734, Monitoring of emissions and operations, have been deleted. The only requirement for COM's intended for operation and maintenance are daily zero and span checks.

In § 60.735, paragraph (b) was added to clarify that each owner or operator who uses a wet scrubber to comply with the standards must record daily the arithmetic average over a 2-hour period of both the change in pressure of the gas stream across the scrubber and the scrubbing liquid flowrate.

The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: Need for Regulation of Source Category, Control Technology, Economic Impact, Selection of Emission Limits, and Monitoring Requirements.

A. Need for Regulation of Source Category

Several commenters questioned EPA's determination that calciners and dryers in mineral industries are sources of emissions that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public health and welfare.

There are six source categories currently listed on the NSPS priority list (August 21, 1979; 44 FR 49225; revised January 8, 1982; 47 FR 950) that include all 17 mineral industries being covered by this NSPS. Number 13 on the priority list is Nonmetallic Mineral Processing, which includes sand and gravel, clay (ball clay, bentonite, fuller's earth, kaolin), talc, feldspar, diatomite, roofing granules, and vermiculite. Number 14 on the priority list, Metallic Mineral

Processing, includes aluminum, magnesium compounds, and titanium dioxide. The lightweight aggregate (LWA) industry (clay, shale, slate) is Number 32 on the NSPS priority list. Numbers 34, 46, and 54 on the list are gypsum, brick and related clay products (fire clay), and perlite, respectively. The priority list was promulgated under Section 111(f) of the Clean Air Act. Source categories were included on the list if, in the Administrator's judgment, they cause or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Source categories were ranked in order of priority according to (1) quantity of emissions; (2) potential impact on health and welfare; and (3) mobility and competitive nature of the source category.

These industries were included on the NSPS priority list because of their emissions of particulate matter. Particulate matter is a criteria pollutant which has been determined to be an air pollutant that may endanger public health and welfare and for which a national ambient air quality standard (NAAQS) has been promulgated (40 CFR 50.6 and 50.7). Fuller's earth, alumina, ball clay, bentonite, fire clay, kaolin, magnesite, and other dusts emitted by the industries covered by the NSPS are types of particulate matter. The basis for the Administrator's determination that particulate emissions may endanger public health and welfare is presented in the rulemaking for setting and revising the NAAQS for particulate matter (52 FR 24634; July 1, 1987).

The main purpose of standards of performance is to require new sources, wherever located, to reduce emissions to the level achievable by the best technological system of continuous emission reduction considering the cost of achieving such emission reduction, any nonair quality health and environmental impact, and energy requirements (BDT) [Section 111(a)(1)]. Congress recognized that establishing such standards would minimize increases in air pollution from new sources, thereby improving air quality as the nation's industrial base is replaced over the long term. An NSPS thereby serves as a distinct means of achieving the Act's goals, supplementing the role played by the requirements, including Reasonably Available Control Technology requirements for existing and new sources within State implementation plans developed for the purpose of attaining the NAAQS.

The existence of other environmental regulations was considered during selection of BDT, but their existence does not lead the EPA to conclude that standards reflecting better control technology cannot be applied at reasonable costs.

The EPA has considered the emission reductions, costs, and other impacts due to emission controls and has concluded that the controls underlying the standards are BDT. Under Section 111 of the Clean Air Act, EPA is therefore required to promulgate standards of performance that reflect BDT for this category of sources.

B. Control Technology

Several commenters perceived that the proposed standards did not allow for the use of low-energy wet scrubbers because control devices with greater energy consumption are required to achieve the NSPS limits. They felt that energy consumption is an important consideration in the selection of a control device and it is inappropriate to regulate against the use of energy-efficient devices.

The EPA does not necessarily recommend the use of a high pressure drop scrubber or any other emission control technology to attain and maintain compliance with the performance requirements of this standard. Compliance with the pollutant concentration limits of this standard can generally be achieved by application of one of many alternative emission control strategies and, for a specific case, EPA does not require that a particular control device be used.

In several industries, EPA has determined that low energy wet scrubbers (pressure drops less than 6 inches of water gauge) can achieve the standard based on emission test data presented in chapter 4 of the proposal BID. The pressure drops required for scrubbers to meet the standards were based on the most-difficult-to-control case for that particular process unit in each industry. Other process units in that industry that are less difficult to control should be able to comply with this NSPS using lower pressure drops. In all cases, the cost, energy, and economic impacts associated with any increased pressure drop were evaluated and determined to be reasonable by EPA.

C. Economic Impact

Seven commenters stated that the LWA industry is declining due to rising energy costs, environmental control costs, and impacts of product substitutes, in particular, pumice. Two of these commenters felt that the LWA industry would be destroyed by the proposed standards. One commenter stated that, due to the additional environmental control costs, many companies would continue to operate old, existing sources and eventually the industry would die of old age and lack of reinvestment. The commenters suggested that the LWA industry either be dropped because of economic reasons or that an alternative control level equal to current State regulations be selected.

One of the commenters stated that the incremental capital cost for a lightweight aggregate calciner would be 10 to 20 times higher than the cost for other industries based on data in the proposal BID. Also, the commenter calculated the annual incremental cost for this industry to be 4–9 times that estimated by EPA for other industries. He also stated that the costs and product price increases were underestimated by EPA and that these costs and price increases would be overly burdensome on the LWA industry considering that this industry accounted for only 5.8 percent of the emission reduction from this NSPS.

Another commenter believed that this NSPS would have a doubling effect in terms of costs on the LWA industry as the standards also apply to the refractory industry whose products are used by the LWA industry. This commenter also stated that this NSPS would have a similar cumulative economic impact on the fire clay industry as that industry uses both dryers and calciners. He also stated that other regulated minerals are used in the refractory products and, therefore, price increases could approach 3–4 percent and create a major burden on the refractory industry.

The EPA believes the costs and economic impacts associated with this NSPS are reasonable and would not have the disruptive impact on the LWA and refractory industries described by the commenters. Many factors such as obsolete machinery; newer, more efficient and competitive plants; changing market demands; and better substitute products influence a corporate decision as to whether it is prudent to invest in new equipment or to continue to operate old, existing equipment until operation is no longer possible. The product price increases attributable to the NSPS are quite small—less than 2 percent for all industries. It is possible that various forces external to the costs of NSPS would preclude investment in newer plants and equipment. The actual cost, however, resulting from this NSPS is very small, and it is unlikely that investment plans would be made based on a cost so small.

With regard to pumice, there is no doubt that pumice is a substitute for LWA, although in many cases pumice is an inferior substitute. The LWA industry has a far larger share of the total market (LWA plus pumice) than pumice. Pumice's share of the market has ranged from 9 to 19 percent of the total market, an average of 13 percent. The current levels of production of LWA are down from past levels. However, the losses in LWA production are due to other factors and not due to gains by pumice as pumice's recent share of the total market is similar to its historical position. Additionally, pumice production from domestic mines has declined, as well as pumice imports, signalling a downturn in the total market for both products. The EPA does not believe that the cost of this NSPS will lead to a competitive disadvantage for the LWA industry.

In regard to the incremental cost of an NSPS, it is important to establish a common basis. One basis used by EPA is the ratio of the incremental cost of the NSPS to the megagrams (Mg) of reduction in particulate emissions. The range of incremental cost using this approach for the LWA industry, depending on the type and size of the affected facility, is $240 to $1,100/Mg. This is within the range of incremental cost per megagram ratios determined for the other industries affected by the NSPS.

Another measure of the effect of incremental cost relates incremental cost to the selling price of the product. Based on a product price of $22/Mg for the LWA industry and allowing for the increased costs that the commenter felt EPA missed, the percent product price increase including electrical costs would be 0.4 to 2.4 percent depending on the type of control device. These impacts were considered reasonable and not burdensome by EPA.

Additive effects of the NSPS are possible where an industry utilizes both calciners and dryers. In the case of fire clay production, cumulative effects could be as high as 2 percent; although effects would typically be 1.6 percent using the least costly control device for a rotary dryer. The 2 percent estimate is based on the smallest plant size and resultant worst case.

In estimating the additive effects for refractory products manufacturing, the commenter simply added the price increase for LWA and the price increase for fire clay. This is an overstatement because refractories are only a portion of the cost components for LWA. In order to calculate the actual effect, one needs to know the percent of the LWA plant's total expenses that is attributable to refractory products. This can then be used to calculate how much the plant's total expenses will increase as a result of any increase in the price for refractory products. In any case, the increase will be less than the 3 to 4 percent estimated by the commenter. Therefore, EPA does not believe the NSPS will have a doubling effect in terms of cost on the LWA industry.

D. Selection of Emission Limits

One commenter recommended limiting emissions from both calciners and dryers to 0.092 g/dscm (0.040 gr/dscf). The commenter felt the proposed limit for dryers of 0.057 g/dscm would preclude the use of low energy scrubbers. Two commenters questioned the fairness and rationale of having a more stringent standard (0.057 g/dscm) for dryers alone compared with the standard (0.092 g/dscm) for dryers and calciners in series. One of the commenters stated that it did not seem equitable because producers without calciners but with dryers would be bound by a more stringent standard.

The NSPS emission limit for calciners and for dryers and calciners in series (0.092 g/dscm) is different than for dryers alone (0.057 g/dscm) because EPA's emission test data support these limits. As shown in chapter 4 of the proposal BID, all emission test data for dryers were less than 0.057 g/dscm except for four dryers controlled by wet scrubbers and one controlled by a baghouse which was not operating properly as there was leakage through a closed bypass damper. By using EPA's wet scrubber model, increases in pressure drop were calculated to ascertain what is required to achieve 0.057 g/dscm. All emission test data for calciners were less than 0.092 g/dscm except for three calciners controlled by wet scrubbers. Again, EPA's wet scrubber model was used to determine the pressure drop required to achieve 0.092 g/dscm. Also, emission test results for a flash dryer/rotary calciner installed in series were 0.092 g/dscm.

These limits are based on EPA's judgment of the technology which represents BDT considering the cost, any nonair quality health, environmental impact, and energy requirements. In this case, BDT is a baghouse or high energy scrubber, although in some instances low energy scrubbers may achieve comparable performance. A standard based on low energy scrubbers for all sources covered by this NSPS would not reflect BDT or reduce emissions to a level achievable by BDT.

E. Monitoring Requirements

Several commenters felt that the reasons used by EPA to justify continuous opacity monitoring and the associated recordkeeping and reporting are inadequate. Two of the commenters stated that broken bags in a collector are apparent without the need for a COMS and the increased capital and operating costs associated with it are not commensurate with the benefits. They felt that this requirement should apply only to major sources of pollution. Another commenter stated that his company's experience with these monitors has shown them to be expensive, difficult to install, very difficult to maintain, and inaccurate. He recommended dropping the requirements.

One commenter stated that the measured moisture content with the flue gases from their dryers vary from 7 to 22 percent by volume and during cold weather, plume moisture occurs with little or no plume stack separation. In addition, he stated that condensed water has appeared on the stack exterior in the vicinity of the sample ports at his plant. He felt these conditions were not conducive to in-stack opacity monitoring devices and, therefore, it would be more reasonable to require a certified observer to record opacities on a periodic basis. Another commenter felt that a COMS for an ESP controlling a dryer processing bentonite would continuously yield erroneous readings due to dripping water, falling clay-laden films, and clay film bridging. He cited problems his company has experienced with a bentonite dryer controlled by a dry ESP.

In regard to the commenters' concerns about the opacity monitoring requirements and the use of COMS's, section 114 of the CAA authorizes EPA to require such monitoring as is appropriate for enforcing NSPS. Also, Section 302(1) of the CAA defines "standards of performance" to include "any requirement relating to the operation and maintenance of a source to assure continuous emission reduction." The EPA's experience with control devices shows that regular maintenance, both remedial and preventive, greatly enhances control equipment efficiency. As stated in the preamble to the proposed standards (51 FR 15438; April 23, 1986), opacity monitoring can indicate when fabric filter bags are torn loose and when ESP electrodes are damaged or malfunctioning. The EPA's long-time experience with COMS's is that the devices operate accurately and with

minimum downtime with regular and reasonable maintenance.

The EPA agrees with the commenters that a sudden increase in emissions resulting from either broken bags in a baghouse or a sudden failure of a baghouse or ESP would be immediately apparent and require attention by the source operator. However, the purpose of a COMS or other monitoring alternatives such as daily visible emissions observations is to alert industry and enforcement personnel of potential violations of the mass emission standard and to ensure the proper operation and maintenance of particulate control equipment on a continuous basis; i.e., to alert the operator to more subtle and gradual deterioration of the control device efficiency that occurs over time and results in increased emissions unless corrected. The emission reduction performance of air pollution control equipment is dependent upon the proper operation of many components of the control systems. While certain parameters can provide information on the status of certain key components, it is generally not possible to determine overall control device performance by monitoring parameters other than emissions. Without COMS's, operators have essentially no tools that they can use to monitor the continued performance of ESP's or fabric filter systems or to ensure that necessary maintenance is performed. The broken rapper welds and bag deterioration are examples of items that affect emissions and that cannot be evaluated or detected except with COMS's. The reporting of excursions as recorded by COMS's also helps State and local enforcement programs identify sources which are having repeated maintenance problems with their control devices. Since plant inspections and testing are infrequent, gradual deterioration will not be detected until a major failure occurs unless opacity monitoring is required.

The benefits of using a COMS are documented in a recent study conducted at Portland cement plants (Docket A-82-39, Item II-A-130). The study concludes that COMS's installed on control equipment at these plants contributed significantly to lower emissions. The emission reduction benefits are derived from: (1) Indicating when repair and maintenance of control equipment are needed, (2) signalling the need for a change in operating and maintenance practices for the process and the air pollution control device, and (3) quantifying emission reductions after the installation of a COMS. Factors which contributed to the lower emissions from the facilities were: (1) An increased sensitivity of the plant operating personnel that changes in process operating conditions and flue gas characteristics affect stack emissions, and (2) the awareness by plant operators that increased stack opacities below the opacity limit can be indications of excess particulate emissions.

Nevertheless, as the amount of emissions from an individual source decreases, the benefits of monitoring also decrease and at some point it is no longer reasonable to require a COMS or other monitoring alternative. Therefore, as a result of the comments received, EPA evaluated four alternative monitoring requirements: The use of a COMS; the reading of visible emissions daily or weekly by a certified visible emissions observer; and no monitoring requirements (Docket No. A-82-39; Item IV-B-1).

As a result of the analysis, the Administrator has determined that it is reasonable to require the installation of COMS's on all dryers and calciners of a certain type within an industry where the typical size unit of that type has potential emissions after NSPS control equal to or greater than 22.7 Mg/yr (25 tons/yr). For typical size units with emissions less than 22.7 Mg/yr (25 tons/yr) but greater than or equal to 10.0 Mg/yr (11 tons/yr), the Administrator has determined that owners or operators may perform daily visible emission observations in lieu of installing a COMS. The Administrator has also determined that typical units with emissions less than 10.0 Mg/yr (11 tons/yr) should be exempt from any monitoring requirements. Because of the variation in emissions after NSPS control for each size and type of calciner or dryer and for each industry, the monitoring requirements are based on the typical size of a particular type of calciner or dryer in each industry. The specific monitoring requirements for each type of dryer or calciner in each industry are presented in Section 60.734 of the final standards.

The following discussion summarizes the basis for the specific monitoring requirements for each type of dryer or calciner. The EPA used 22.7 Mg/yr (25 tons/yr) as the cutoff level for particulate matter (PM) emissions in determining which facilities would be required to install COMS's if they use dry control devices. In the prevention of significant deterioration (PSD) rules, EPA set *de minimis* levels of emissions for various pollutants. For PM emissions, the level was selected by evaluating the potential effect of different emissions levels on an area's air quality and how that related to the National Ambient Air Quality Standard (NAAQS) for PM. The analysis was based on a source's potential to emit after application of all appropriate Federal regulations such as NSPS. The significance level for PM emissions was set at 22.7 Mg/yr (25 tons/yr). Therefore, the Administrator has determined that it is beneficial and reasonable to require the installation of COMS's on all calciners and dryers of a certain type within an industry where the typical size unit of that type has emissions after NSPS control equal to or greater than 22.7 Mg/yr (25 tons/yr).

As stated previously, however, as the amount of emissions from an individual source decreases, the expected benefits of monitoring decrease and at some point it is no longer reasonable to require a COMS or other monitoring alternative. As a result, for calciners and dryers with emissions of less than 22.7 Mg/yr (25 tons/yr) after NSPS controls, the EPA assessed alternatives other than the installation of a COMS. These alternatives included daily or weekly visible emissions observations and no monitoring requirements. In assessing the reasonableness of performing daily versus weekly visible emission observations, it was determined that the cost of either one would be similar but would not deliver the same benefits. In both cases, employees of the affected plant would need to be formally certified as opacity readers twice per year. The costs associated with the certification would be incurred regardless of whether a daily or weekly monitoring requirement was imposed. The other costs associated with these alternatives are the annual cost of performing the observations and recording the results. The annual cost of weekly readings of visible emissions would be reduced somewhat, but because of the fixed cost of certification, would cost approximately 40 percent of the cost of doing daily observations. Moreover, a daily observation program would be more effective at identifying gradual deterioration of the control device efficiency and allowing a plant operator time to correct the problem prior to a complete failure of the device. A weekly observation program would not identify the gradual deterioration of the control device as quickly and, in some cases, a failure of the control device could occur between two weekly observations. Because requiring daily observations would yield substantially greater benefits than weekly observations and the cost difference

was considered reasonable, the alternative of weekly observations was considered inferior for the sources with less than 22.7 Mg/yr (25 tons/yr) of emissions after NSPS control. Therefore, for typical size units with emissions less than 22.7 Mg/yr (25 tons/yr), but greater than or equal to 10.0 Mg/yr (11 tons/yr), the regulation has been revised to allow the owner or operator to perform daily visible emission observations in lieu of installing a COMS.

On the other hand, the Administrator has determined that typical size units with emissions less than 10.0 Mg/yr (11 tons/yr) should be exempt from any monitoring requirements. In making this determination, consideration was given to the size of the source in terms of the emissions after NSPS control is applied. In addition, the benefits associated with monitoring, such as identifying sources that are having control equipment problems for the appropriate enforcement agency so corrective action can be taken, were considered. For very small sources with small control devices, the benefits associated with a COMS or daily visible emission observations, in terms of reducing excess emissions, are smaller in comparison to larger sources. The cost of daily visible emission observations as a percent of the annualized cost of operating the control equipment was also considered. For these reasons, typical size units with emission less than 10.0 Mg/yr (11 tons/yr) are exempt from any monitoring requirements.

In regard to concerns raised about moisture on the exterior of a stack interfering with the operation or accuracy of a COMS, EPA does not believe this condition will have any effect on the measurement of opacity in the stack and the commenter had no data to support this claim. However, if high moisture content in the stack or other situations such as falling clay-laden films or clay-film bridging are interfering with the performance of a COMS, the owner or operator may petition the Administrator to approve an alternative monitoring procedure, requirement, or location according to 40 CFR 60.13(i).

VII. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

B. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2063-_____.

The public reporting burden for this collection of information is estimated to average 492 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (PM-223), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Paperwork Reduction Project (2063-_____) Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

C. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to certain requirements of the Order. The EPA has determined that the regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be major. The total nationwide incremental annualized costs in the fifth year after the standards would go into effect would range from $0.7 to $1.0 million, less than the $100 million established as the first criterion for a major regulation in the Order. The maximum estimated price increase of 1.75 percent associated with the standards would not be considered a "major increase in costs or prices" specified as the second criterion in the Order. The economic analysis of the standard's effect on the industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms which is the third criterion in the Order.

This regulation was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection in Docket No. A-82-39, at EPA's Air Docket Section listed under the **ADDRESSES** section.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires EPA to consider potentially adverse impacts of regulations on small business "entities." If a preliminary analysis indicates that a regulation would have a significant economic impact on 20 percent or more of small entities, then an RFA must be prepared. The EPA definition of significant effect involves four tests: (1) Prices for small entities rise 5 percent or more, assuming costs are passed on to consumers; or (2) annualized investment costs for pollution control are greater than control costs as a percentage of sales for large entities; or (3) control costs as a percentage of sales for small entities are 10 percent greater than control costs as a percentage of sales for large entities; or (4) the requirements of the regulation are likely to result in closures of small entities.

The Act's definition of "small business" is based on definitions developed by the Small Business Administration (SBA). The SBA's definitions are listed in 13 CFR part 121 by Standard Industrial Classification (SIC) categories. For most of the mineral dryer and calciner industries, the SBA defines a small business as one with 500 or fewer employees (the two exceptions are gypsum and titanium dioxide, each of which is 1,000 employees). Most of the mineral dryer and calciner industries do include small businesses according to the SBA definiton. The regulation would apply to all businesses (small and large) in the 17 industries, and as a result the test of a substantial number of small businesses is met.

Although there are a substantial number of small businesses, the measure of significant effects is not likely to be met. The absolute level of the percent product price increases is quite small for most of the industries, typically about 0.5 percent or less. Thus, the first test is never triggered. Neither are the second or fourth tests triggered. The third test is occasionally triggered, but the absolute sizes of the numbers are so small as to make this test inapplicable. For example, in the diatomite industry, a small flash dryer (4 Mg/h) has control costs as a percentage of sales that are 23 percent higher than

the corresponding percentage for a larger flash dryer (11 Mg/h). But the absolute levels of these two percentages are 0.16 percent and 0.13 percent, and the 23 percent difference between them is virtually meaningless. Thus, because the absolute levels of the percent product price increases are quite small for most of the industries, and because the tests are presented as guidelines, as interpretation of he spirit and purpose of the Act indicates that the industries do not exceed the Act's states. Because these standards impose no adverse economic impacts, Regulatory Flexibility Analysis has not be conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities because the impact of the final rule is not significant.

E. Miscellaneous

The effective date of this regulation is September 28, 1992. Section 111 of the Clean Air Act provides that NSPS or revisions thereof become effective upon promulgation and apply to affected facilities, the construction or modification of which was commenced after the date of proposal, April 23, 1986.

As described in section 111, the promulgation of these standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that calciners and dryers in use in the mineral processing industries contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any NSPS promulgated under section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Metallic minerals, Nonmetallic minerals, Reporting and recordkeeping requirements.

Dated: September 19, 1992.

William K. Reilly,

Administrator.

40 CFR Part 60 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: Sections 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, 7601).

2. By adding a new subpart UUU consisting of §§ 60.730 through 60.737 to read as follows:

Subpart UUU—Standards of Performance for Calciners and Dryers in Mineral Industries

Sec.
60.730 Applicability and designation of affected facility.
60.731 Definitions.
60.732 Standards for particulate matter.
60.733 Reconstruction.
60.734 Monitoring of emissions and operations.
60.735 Recordkeeping and reporting requirements.
60.736 Test methods and procedures.
60.737 Delegation of authority.

Subpart UUU—Standards of Performance for Calciners and Dryers in Mineral Industries

§ 60.730 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each calciner and dryer at a mineral processing plant. Feed and product conveyors are not considered part of the affected facility. For the brick and related clay products industry, only the calcining and drying of raw materials prior to firing of the brick are covered.

(b) An affected facility that is subject to the provisions of subpart LL, Metallic Mineral Processing Plants, is not subject to the provisions of this subpart. Also, the following processes and process units used at mineral processing plants are not subject to the provisions of this subpart: vertical shaft kilns in the magnesium compounds industry; the chlorination-oxidation process in the titanium dioxide industry; coating kilns, mixers, and aerators in the roofing granules industry; and tunnel kilns, tunnel dryers, apron dryers, and grinding equipment that also dries the process material used in any of the 17 mineral industries (as defined in § 60.731, "Mineral processing plant").

(c) The owner or operator of any facility under paragraph (a) of this section that commences construction, modification, or reconstruction after April 23, 1986, is subject to the requirements of this subpart.

§ 60.731 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act and in subpart A of this part.

Calciner means the equipment used to remove combined (chemically bound) water and/or gases from mineral material through direct or indirect heating. This definition includes expansion furnaces and multiple hearth furnaces.

Control device means the air pollution control equipment used to reduce particulate matter emissions released to the atmosphere from one or more affected facilities.

Dryer means the equipment used to remove uncombined (free) water from mineral material through direct or indirect heating.

Installed in series means a calciner and dryer installed such that the exhaust gases from one flow through the other and then the combined exhaust gases are discharged to the atmosphere.

Mineral processing plant means any facility that processes or produces any of the following minerals, their concentrates or any mixture of which the majority (>50 percent) is any of the following minerals or a combination of these minerals: alumina, ball clay, bentonite, diatomite, feldspar, fire clay, fuller's earth, gypsum, industrial sand, kaolin, lightweight aggregate, magnesium compounds, perlite, roofing granules, talc, titanium dioxide, and vermiculite.

§ 60.732 Standards for particulate matter.

Each owner or operator of any affected facility that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test required by § 60.8 is completed, but not later than 180 days after the initial startup, whichever date comes first. No emissions shall be discharged into the atmosphere from any affected facility that:

(a) Contains particulate matter in excess of 0.092 gram per dry standard cubic meter (g/dscm) [0.040 grain per dry standard cubic foot (gr/dscf)] for

calciners and for calciners and dryers installed in series and in excess of 0.057 g/dscm for dryers; and

(b) Exhibits greater than 10 percent opacity, unless the emissions are discharged from an affected facility using a wet scrubbing control device.

§ 60.733 Reconstruction.

The cost of replacement of equipment subject to high temperatures and abrasion on processing equipment shall not be considered in calculating either the "fixed capital cost of the new components" or the "fixed capital cost that would be required to construct a comparable new facility" under § 60.15. Calciner and dryer equipment subject to high temperatures and abrasion are: end seals, flights, and refractory lining.

§ 60.734 Monitoring of emissions and operations.

(a) With the exception of the process units described in paragraphs (b), (c), and (d) of this section, the owner or operator of an affected facility subject to the provisions of this subpart who uses a dry control device to comply with the mass emission standard shall install, calibrate, maintain, and operate a continuous monitoring system to measure and record the opacity of emissions discharged into the atmosphere from the control device.

(b) In lieu of a continuous opacity monitoring system, the owner or operator of a ball clay vibrating grate dryer, a bentonite rotary dryer, a diatomite flash dryer, a diatomite rotary calciner, a feldspar rotary dryer, a fire clay rotary dryer, an industrial sand fluid bed dryer, a kaolin rotary calciner, a perlite rotary dryer, a roofing granules fluid bed dryer, a roofing granules rotary dryer, a talc rotary calciner, a titanium dioxide spray dryer, a titanium dioxide fluid bed dryer, a vermiculite fluid bed dryer, or a vermiculite rotary dryer who uses a dry control device may have a certified visible emissions observer measure and record three 6-minute averages of the opacity of visible emissions to the atmosphere each day of operation in accordance with Method 9 of appendix A of part 60.

(c) The owner or operator of a ball clay rotary dryer, a diatomite rotary dryer, a feldspar fluid bed dryer, a fuller's earth rotary dryer, a gypsum rotary dryer, a gypsum flash calciner, gypsum kettle calciner, an industrial sand rotary dryer, a kaolin rotary dryer, a kaolin multiple hearth furnace, a perlite expansion furnace, a talc flash dryer, a talc rotary dryer, a titanium dioxide direct or indirect rotary dryer or a vermiculite expansion furnace who uses a dry control device is exempt from the monitoring requirements of this section.

(d) The owner or operator of an affected facility subject to the provisions of this subpart who uses a wet scrubber to comply with the mass emission standard for any affected facility shall install, calibrate, maintain, and operate monitoring devices that continuously measure and record the pressure loss of the gas stream through the scrubber and the scrubbing liquid flow rate to the scrubber. The pressure loss monitoring device must be certified by the manufacturer to be accurate within 5 percent of water column gauge pressure at the level of operation. The liquid flow rate monitoring device must be certified by the manufacturer to be accurate within 5 percent of design scrubbing liquid flow rate.

(Approved by the Office of Management and Budget under control number 2060-A999)

§ 60.735 Recordkeeping and reporting requirements.

(a) Records of the measurements required in § 60.734 of this subpart shall be retained for at least 2 years.

(b) Each owner or operator who uses a wet scrubber to comply with § 60.732 shall determine and record once each day, from the recordings of the monitoring devices in § 60.734(d), and arithmetic average over a 2-hour period of both the change in pressure of the gas stream across the scrubber and the flowrate of the scrubbing liquid.

(c) Each owner or operator shall submit written reports semiannually of exceedances of control device operating parameters required to be monitored by § 60.734 of this subpart. For the purpose of these reports, exceedances are defined as follows:

(1) All 6-minute periods during which the average opacity from dry control devices is greater than 10 percent; or

(2) Any daily 2-hour average of the wet scrubber pressure drop determined as described in § 60.735(b) that is within 10 percent of the average value recorded according to § 60.736(c) during the most recent performance test that demonstrated compliance with the particulate matter standard; or

(3) Each daily wet scrubber liquid flow rate recorded as described in § 60.735(b) that is within 20 percent of the average value recorded according to § 60.736(c) during the most recent performance test that demonstrated compliance with the particulate matter standard.

(d) The requirements of this section remain in force until and unless the Agency, in delegating enforcement authority to a State under section 111(c) of the Clean Air Act, approves reporting requirements or an alternative means of compliance surveillance adopted by such State. In that event, affected facilities within the State will be relieved of the obligation to comply with this section provided that they comply with the requirements established by the State.

(Approved by the Office of Management and Budget under control number 2060-A999)

§ 60.736 Test methods and procedures.

(a) In conducting the performance tests required in § 60.8, the owner or operator shall use the test methods in Appendix A of this part or other methods and procedures as specified in this section, except as provided in § 60.8(b).

(b) The owner or operator shall determine compliance with the particulate matter standards in § 60.732 as follows:

(1) Method 5 shall be used to determine the particulate matter concentration. The sampling time and volume for each test run shall be at least 2 hours and 1.70 dscm.

(2) Method 9 and the procedures in § 60.11 shall be used to determine opacity from stack emissions.

(c) During the initial performance test of a wet scrubber, the owner or operator shall use the monitoring devices of § 60.734(d) to determine the average change in pressure of the gas stream across the scrubber and the average flowrate of the scrubber liquid during each of the particulate matter runs. The arithmetic averages of the three runs shall be used as the baseline average values for the purposes of § 60.735(c).

§ 60.737 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: No restrictions.

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BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 514, and 590

[Docket No. 92-36]

Reduction of Notice Requirement for Tariff Increases in the Domestic Offshore Trades; Exemption Under Section 35 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission ("Commission" or "FMC") amends its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce and its rules governing protests and replies thereto. These amendments would reduce notice requirements for tariff increases by carriers providing port-to-port service in the domestic offshore trades and would amend the time for protesting such increases. The exemption would permit such carriers to publish, on not less than seven workdays' notice, any new or changed tariff matter which results in an increased cost to the shipper, but which does not meet the statutory definition of general rate increase, or the new definition of across-the-board increase incorporated in this rule. Protests to increases or changes filed on less than thirty days' notice could be filed not later than 9 a.m. of the last workday prior to the effective date of the increase or rule change.

EFFECTIVE DATE: October 28, 1992.

FOR FURTHER INFORMATION CONTACT: Seymour Glanzer, Director, Bureau of Hearing Counsel, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573-0001; (202) 523-5783 (Phone), (202) 523-5785 (Fax).

SUPPLEMENTARY INFORMATION: Section 2 of the Intercoastal Shipping Act, 1933 ("1933 Act"), 46 U.S.C. app. 844, requires ocean carriers providing port-to-port service in the domestic offshore trades to file, on thirty days' notice, any new or changed tariff matter, except for general rate increases or decreases, which must be filed on sixty days' notice. On December 16, 1991, the Commission issued a final rule in Docket No. 91-42, *Tariff Filing Notice Requirements; Domestic Offshore Trades*, 26 S.R.R. 70 (1991), which creates an exemption under section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 833a, for such carriers to file on one day's notice any new or changed tariff matter which does not increase the shipper's cost of transportation.[1] This action followed and superseded several earlier exemptions to the thirty days' notice requirement which were granted to particular carriers or trades pursuant to individual applications for such relief.[2] In granting these exemptions from statutory notice requirements, the Commission cited regulations of the Interstate Commerce Commission ("ICC"), at 49 CFR 1312.39(h), which permit new and reduced joint, single-factor, motor-water rates to be filed on one day's notice with that agency.

For more than a decade, regulatory jurisdiction in the domestic offshore trades has been split between this Commission and the ICC, depending on whether the form of transportation is port-to-port, or joint intermodal transportation with a segment taking place within a state or the District of Columbia. In the latter case, the entire transportation, including the ocean portion, is subject to ICC jurisdiction.[3]

Independent motor-water rates and charges in the domestic offshore trades filed at the ICC may be increased on not less than seven workdays' notice pursuant to ICC regulations at 49 CFR 1312.39(h) (2) and (4). Those same regulations permit changes on seven workdays' notice to rules or other provisions which effect reductions in the value of service or increases in rates or charges. Rates, rules and charges of ICC-regulated freight forwarders of household goods are governed by the same provisions.

Ocean carriers providing port-to-port services subject to FMC jurisdiction compete with carriers providing motor-water services subject to ICC jurisdiction.[4] Thus, to foster greater consistency in regulation and to permit carriers to compete more equally in the domestic offshore trades, the Commission proposed to reduce notice requirements for tariff increases in these trades from thirty days to seven workdays. The proposed change applied to both vessel-operating carriers and non-vessel operating common carrier ("NVOCCs") and governed commodity rate increases as well as other new or changed tariff filings which would result in an increase in the shippers' cost of transportation, but which would not meet the statutory definition of "general rate increase" ("GRI").[5]

In deciding to reduce the notice period for tariff increases, the Commission also noted that the shorter time period would give shipping lines the flexibility to respond more quickly to market changes and would remove a disincentive to establishing lower rates. As noted by Professor David A. Butz in an Addendum Report to the Advisory Commission on Conferences in Ocean Shipping, p. E-39 (1992), requiring a long notice period to increase individual rates introduces price rigidity and creates an incentive for a carrier not to cut rates.

Currently, the Commission's rules permit protests to proposed tariff changes made pursuant to the 1933 Act to be filed and served no later than twenty days prior to the proposed effective date of the change. 46 CFR 502.67(b)(2). The ICC permits protests of a tariff filed on less than ten days' notice (including motor-water tariffs filed pursuant to 49 CFR 1312.39(h) (2) and (4)) to be submitted not later than 9 a.m. on the last workday before the tariffs scheduled effective date. 49 CFR 1132.1(b). To be consistent with the ICC, and to give protestants the maximum amount of time for preparing protests and requests for investigation and suspension, we proposed a similar rule for challenging tariff increases before the FMC. In addition, the rule proposed to reduce the required contents of such protests to accommodate the shorter time for preparation.

In recognition of the vital interests of offshore states, territories and possessions in ocean transportation, the Commission also proposed that increases filed by carriers on less than 30 days' notice be transmitted by facsimile transmission, or by hand delivery, on the date of filing, to officials or offices designated by states, territories or possessions served by the carrier in order to provide several extra days for review now consumed by the process of mailing such tariff changes. Notice of the proposed rule was published in the **Federal Register** on June 16, 1992, 57 FR 26809.

Comments in support of the proposal were filed by American President Lines, Ltd. ("APL"), Coastal Transportation,

[1] This exemption does not extend to any "general decrease in rates" as that term is defined by section 1 of the 1933 Act, 46 U.S.C. app. 843. Such general decreases still require sixty days' notice.

[2] *Matson Navigation Co., Inc.—Application for Section 35 Exemption*, 24 S.R.R. 1518 (1989); *Tariff Filing Periods—Exemption*, 24 S.R.R. 1604 (1989); *Application of Sea-Land Service, Inc. For Exemption Under section 35 of the Shipping Act, 1916*, 25 S.R.R. 660 (1990); *Tropical Shipping & Construction Co., Ltd.—Application for Section 35 Exemption*, 25 S.R.R. 1471 (1991); *Application of Trailer Marine Transport Corporation Under Section 35 of the Shipping Act, 1916*, 25 S.R.R. 1660 (1991); *Puget Sound Tug & Barge Co.—Application for Section 35 Exemption: Hawaii and Alaska Trades*, 26 S.R.R. 61 (1991).

[3] *Puerto Rico Maritime Shipping Authority* v. *ICC*, 645 F. 2d 1102 (D.C. Cir. 1981); *Trailer Marine Transport Corp.* v. *FMC*, 602 F. 2d. 370 (D.C. Cir. 1979).

[4] There also may be competition in some of the domestic offshore trades from carriers offering rail-water services subject to ICC jurisdiction. In general, rates, rules and charges for rail services may be increased on 20 days' notice. 49 CFR 1312.39(h)(2) and 1312.4(e)(1)(i)(A). However, rail carriers also may provide intermodal service which is exempt from regulation under 49 CFR part 1090.

[5] General rate increases, as defined by section 1 of the 1933 Act, would continue to be filed on sixty days' notice, to permit the thorough analysis of these increases directed by Congress in the 1978 amendments to that statute. See H.R. Rep. No. 474, 95th Cong. 1st Sess. 9 (1977); S. Rep. No. 1240, 95th Cong. 2d Sess. 12 (1978).

Inc. ("Coastal"), Crowley Maritime Corporation ("Crowley"), Matson Navigation Company, Inc. ("Matson"), Puerto Rico Maritime Shipping Authority ("PRMSA"), Sea-Land Service, Inc. ("Sea-Land"), and Tropical Shipping and Construction Co., Ltd. ("Tropical"). Opposing comments were filed by the State of Hawaii ("Hawaii"), and Tobias E. Seaman/NASCCMA aka National Association of Shippers, Consignees and Consumers for Maritime Affairs ("Seaman").

Generally, the seven commenting carriers support the proposed rule, and agree the that FMC-regulated carriers will be able to compete more equally with ICC-regulated carriers should this proposal be implemented. Several of these comments, however, indicate a preference for other forms of regulation or relief. For example, APL states a belief that a requirement of thirty days' notice of increases is desirable because of the stability and opportunity for competitive equality such a notice provides to shippers. Nevertheless, APL supports this rule because of the availability of seven workdays' notice of increases for motor-water rates in these trades. Coastal would prefer seven calendars days', rather than seven workdays' notice of increases. Tropical would prefer that the Commission adopt a zone of reasonableness for rate increases up to ten percent and further zone of reasonableness for the U.S. Virgin Islands Trade, as suggested by its comments in Docket No. 91-51, Financial Reports of Common Carriers by Water in the Domestic Offshore Trades, advance notice of proposed rulemaking, 56 FR 57298 (Nov. 8, 1991).

In addition, clarification is sought by PRMSA as to whether the term "tariff matter" as used in § 550.2(b) 1) and (2) is intended to include all "rules, rates, charges and notes." PRMSA states that its experience in filing tariff matter that does not result in an increased cost to the shipper on one day's notice, as currently permitted by § 550.1(b)(1), has been that notes and footnotes have not been included within this definition.

Both APL and PRMSA suggest modifications to the provision requiring carriers to deliver short notice tariff increases by hand or facsimile transmission ("fax") to officials or offices of states, commonwealths or territories. APL urges that such a requirement be implemented without directing carriers to place a rule in their tariffs to that effect. PRMSA seeks clarification whether this requirement applies to all states served by the carrier, or just to offshore jurisdictions. PRMSA also urges clarification that the obligation rests upon individual states, commonwealths and territories to provide the name, address and fax number of each official or office designated to receive such tariff changes. Tropical suggests that the Commission solicit the views of the various offshore governments and allow them to decide if and when they want notice of rate increases, rather than assume that an offshore government desires to receive each and every change filed by a carrier.

Two of the carriers suggest modifications or clarifications to that part of the proposed rule which would permit protests to increases to be filed as late as 9 a.m. of the day prior to the effective date of the increases. APL and Sea-Land urge retention of the current rules for protests against increases that are filed (voluntarily) on at least thirty days' notice. Currently, protests are required to be filed and served no later than twenty days prior to the proposed effective date of the change. Sea-Land also argues that the proposed rule should not remove the current requirement that protests include a subscription and verification.

Hawaii opposes that portion of the proposed rule which would affect across-the-board rate increases of less than three percent. It argues that GRIs have become the exception, rather than the rule, and that the instant proposal would effectively remove non-GRIs, which can have significant impact, from regulatory oversight. While recognizing the problems which arise because the ICC and FMC apply different regulatory models to competitors, and sometimes to the same carrier, Hawaii argues that it is the FMC's model that should be preserved (with certain other modifications) and the ICC's which should be revisited. Hawaii also questions the Commission's authority to promulgate this rule and argues that neither the market, which is said to be distorted by cabotage laws and other government aids, nor the right to file a complaint seeking reparation, are satisfactory substitutes for effective regulation.

Seaman on behalf of himself and NASCCMA and its members,[6] describes the proposed rule as an attempt to deregulate the domestic offshore trades and lists nine reasons for opposing the Commission's proposed action.

Among the nine reasons, Seaman argues that the Commission is proposing to exceed its authority by amending section 2 of the 1933 Act, that the proposal is contrary to the language and legislative history of section 35 of the 1916 Act, and that the proposal would place an unfair burden on shippers and violate their due process rights as well as the 1916 Act and the Administrative Procedure Act 5 U.S.C. 551 et seq. Seaman also points to differences in statutes administered by the FMC and ICC as reasons for not adopting ICC regulations governing rate increases, and asserts that there is no need to conform to ICC regulations because any carrier may file tariffs with the ICC at any time. Seaman argues that the domestic offshore trades are not contestable markets, citing the recent decision of the U.S. Court of Appeals for the D.C. Circuit upholding the Commission's conclusion to that effect in FMC Docket No. 90-09,[7] and asserts that there is no basis in fact that carriers in these trades would be more likely to reduce their rates if they were permitted a shorter notice period for rate increases. In addition, Seaman suggests that the Commission has misread President Bush's memorandum of January 28, 1992 (Reducing the Burden of Government Regulation), and that it was not the President's intent to remove regulations where the result would be substantial cost increases to the consumer.

The Commission is persuaded by the comments of Hawaii and Seaman that the proposed exemption should not apply to across-the-board increases of less than 3 percent. Recent experience with such increases in the Hawaii trade and the similarity of such increases to GRIs warrants a distinction between these and other types of non-GRI increases.

As noted in Hawaii's comments, across-the-board increases of less than 3 percent have been a significant feature of recent domestic offshore ratemaking. In fact, a table introduced by Hawaii in Docket No. 90-09,[8] *supra*, listed twenty across-the-board rate increases in the Hawaii trade between 1983 and 1990, thirteen of which did not meet the GRI threshold of 3 percent. The Commission instituted two separate investigations into across-the-board rate increases of less than 3 percent in 1985, found one increase to be unreasonable[9] and

[6] Mr. Seaman has appeared and filed documents on behalf of NASCCMA in several FMC proceedings, but has never identified the membership of that organization.

[7] *Matson Navigation Company, Inc. Proposed General Rate Increase of 3.6 Percent Between U.S. Pacific Coast Ports and Hawaii Ports*, 25 S.R.R. 1102 (1990), *aff'd sub nom. Matson Navigation Company, Inc. v. FMC*, 959 F.2d 1038, 26 S.R.R. 283 (D.C. Cir. 1992).

[8] Exhibit SOH-DT-608.

[9] Docket No. 85-24, *Matson Navigation Company, Inc. Proposed Overall Rate Increase of 2.5 Percent*

Continued

discontinued the investigation of the other because of a deadlocked 2-2 vote.[10]

Therefore, the Commission is retaining the statutory notice period of 30 days for such across-the-board increases and retaining the current rules at 46 CFR 502.67(b)(2) which apply to protests of such increases. Other changes to these rules governing protests are being considered in response to Hawaii's Petition P1-92, Amendments to Rules Governing Rate Proceedings in the Domestic Offshore Trades, 57 FR 2702 (Jan. 23, 1992).

In order to distinguish across-the-board increases from other non-GRI increases, the Commission is adding the following definition to 46 CFR 550.2:

Across-the-board increase means any change in rates, fares, or charges which will: (1) result in an increase in not less than 50 percent of the total rate, fare or charge items in the tariffs per trade of any carrier, and (2) directly result in an increase in gross revenues of said carrier for the particular trade of less than 3 percent.[11]

Having excluded across-the-board increases from the scope of this rule, the new, seven workdays' notice period and accompanying adjustments to the Commissions rules governing protests will apply to all individual commodity rate increases and other non-GRI increases filed by domestic offshore carriers. These filings constitute the majority of tariff increases in the domestic offshore trades. Thus, the stated objectives for the proposed rule—greater consistency with ICC tariff regulations, and the removal of a possible disincentive for carriers to reduce rates—are essentially satisfied.

We are confident that this rule, as amended, will not substantially impair effective regulation, be unjustly discriminatory or be detrimental to commerce. Since at least 1981, the Commission has not investigated any of the types of increases that could be filed on seven workdays' notice pursuant to the final rule.[12] Moreover, the rule will not prevent the Commission from investigating any such increases under either section 3 of the 1933 Act, 46 U.S.C. app. 845, or under section 18(a) of the 1916 Act, 46 U.S.C. app. 817(a). Thus, effective regulation will not be impaired.

Because the reduced notice period will be available to all vessel operating common carriers as well as NVOCCS, it will not be unjustly discriminatory among carriers. To the contrary, it will remove a significant difference in notice periods available to ICC-regulated and FMC-regulated carriers.

Nor can the Commission perceive any unjust discriminatory among shippers or other entities which might result from this reduction in tariff filing notice. Shippers which utilize FMC-regulated services will receive the same notice of most tariff increases as shippers which utilize ICC-regulated services.

By bringing FMC regulations closer to ICC regulations, and by removing a possible disincentive to establishing and maintaining lower rates, this rule will have a positive, rather than detrimental, effect upon commerce in the domestic offshore trades. This regulatory consistency is achieved without significant impact on the Commission's ability to control the level of rates in these trades.

The Commission has considered each of the clarifications and technical modifications suggested in the carriers' comments and has accommodated most of those suggestions as follows.

In response to PRMSA's comments, the term "tariff matter" as used in § 550.1(b) (1) and (2) is intended to include all rules, rates, charges and notes as well as any other matter properly filed in domestic offshore tariffs. The experience that PRMSA refers to in connection with notes and footnotes effecting short notice decreases was apparently the result of unrelated technical problems, which has since been corrected.

We concur with APL's suggestion that the requirement to deliver short notice tariff increases by hand or by fax to officials or offices of states, commonwealth or territories should be implemented without directing carriers to place a rule in their tariffs to that effect. Placing this provision in the Commission's rules will be sufficient to accomplish the purpose, without encumbering the carriers' tariffs with another required rule. Failure to serve copies of such increases on designated offices or officials could still result in rejection of the increases by the Commission. The final rule reflects this change in § 550.3(h)(2).

PRMSA's suggestions is also well taken that we clarify whether the requirement to serve copies of short notice increases applies to all states served by the carrier or just to offshore jurisdictions. The rule itself is clear, as is the existing language of § 550.3(h)(2), in that the governor of any state, commonwealth or territory served by a carrier may request that carrier to furnish copies of any filed tariff matter which affects that jurisdiction. The confusion to which PRMSA refers was generated by the Supplementary Information of the proposed rule, which stressed the vital interests of offshore jurisdictions in ocean transportation. The Commission intends that this requirement continue to be applicable with respect to any state, commonwealth, or territory served by a domestic offshore carrier.

We have also accommodated PRMSA's related suggestion for clarification of the carrier's obligations under § 550.3(h)(2). The language of that section in the proposed rule, as well as in the existing regulations, is clear that the carrier's obligation to provide copies of tariffs and tariff changes to officials or offices of states, commonwealths or territories arises only upon the written request of the governor of that jurisdiction and the designation by that governor of the official or office to receive such tariff matter. The carrier has no obligation to provide such tariff matter or to serve copies of short notice increases by fax or hand delivery until the governor has made such a request and the related designation. However, because the Commission is adopting APL's suggestion to delete the requirement for carriers to place a rule in their tariffs to implement the new service requirements for short notice increases, we are specifying in § 550.3(h)(2) that the name, address and fax number of the designated official or

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between United States Pacific Coast Ports and Hawaii Ports, Order Partially adopting Initial Decision, 23 S.R.R. 1216 (1986), Report on Remand, 25 S.R.R. 83 (1989); *Aff'd per curiam sub nom. Tobias E. Seamon v. Federal Maritime Commission*, Docket No. 89-1407 (D.C. Cir. March 23, 1990).

[10] Docket No. 85-3, *Matson Navigation Company, Inc. Proposed Overall Rate Increase of 2.5 Percent Between United States Pacific Coast Ports and Hawaii Ports*, Order Discontinuing Proceeding, 23 S.R.R. 662 (December 27, 1985). The rate level that resulted from the across-the-board increase that was investigated in Docket No. 85-3 was later investigated as part of Docket No. 85-24 and was found unreasonable. The Commission ordered a roll-back of 1.5 percent.

[11] This definition, like the current definition of general increase contained at 46 CFR 550.2(k), would include surcharges, as well as other types of across-the-board increases. In its comments, Coastal noted a particular interest in how the proposed rule would affect filing of fuel surcharges and asserted that the proposed rule would have allowed surcharges to be increased on seven workdays' notice. This only would have been true under the proposed rule if the surcharge were less than 3 percent. Otherwise, it would likely meet the definition of GRI and require 60 days' notice, unless special permission were obtained to file on shorter notice. Carriers in these trades frequently seek and obtain special permission to file cost pass-through surcharges on short notice and accompanied by abbreviated, alternative data under 46 CFR part 552.

[12] In 1981, the Commission investigated tariff amendments filed by PRMSA which increased approximately 300 commodity items by 2.9 percent. Docket No. 81-70, *Puerto Rico Maritime Shipping Authority-Proposed 2.9% Rate Increase Affecting Major Commodities in the U.S. Atlantic and Gulf Puerto Rico and Virgin Islands Trades*, Order of Investigation and Suspension, November 19, 1981, Order of Discontinuance, December 30, 1981 (unreported).

office must also be furnished by the governor before this new service requirement must be implemented by a carrier.

We find it unnecessary to act upon Tropical's suggestion that the Commission solicit the views of these governments rather than assume that they desire to receive each and every short notice rate increase. No such assumption is contained in the proposal or in the existing rule. The governor of each such state, commonwealth or territory must make a written request, designate an official or office, and provide the address and fax number to which such increases must be sent.

The Commission is adopting the suggestion made by both APL and Sea-Land to require that protests of increases filed on at least thirty days' notice continue to be submitted no later than twenty days prior to the effective date of the pertinent increase. This is particularly appropriate in view of the Commission's retention of thirty days' notice for across-the-board increases, as discussed above. The requirement to file protests no later than twenty days prior to the effective date of a tariff change will also be applicable to other, non-GRI tariff increases filed voluntarily on at least thirty days' notice.[13] Thus, the ability to file streamlined protests as late as 9 a.m. on the day prior to the effective date of a tariff increase will be limited to new or amendatory tariff matter filed on less than thirty days' notice.

Finally, we believe that Sea-Land's suggestion to retain the requirement that protests include a subscription and verification is unnecessary. New § 502.67(b)(3) requires that protests shall be filed and served in accordance with subpart H of 46 CFR part 502. That subpart, at § 502.112, contains the Commission's requirements for subscription and verification of documents.

In addition to these clarifications and modifications in response to carrier comments, the Commission has made other technical changes in the final rule which are necessitated by the distinction, discussed above, between across-the-board increases and other, non-GRI increases. Further, for clarification, we have added a new definition of "workday" to § 550.2, which is identical to that set forth in ICC regulations at 49 CFR 1314.5(c).

As mentioned in the Supplementary Information of the proposed rule, the actions taken here also will impact the interim rule in Docket No. 90-23, Tariffs and Service Contracts, published on August 12, 1992 (57 FR 36248). Accordingly, appropriate amendments are herein made to that interim rule, published at 46 CFR part 514.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(n), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions. The rule only will adjust the notice period and the protest period for a class of rate increases which the Commission has found no reason to investigate since at least 1981. Moreover, the ability to raise such rates on shorter notice may encourage carriers to establish and maintain lower rates.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 3072-0005. Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20573.

List of Subjects

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Reporting and recordkeeping requirements.

46 CFR Part 514

Barges, Cargo, Cargo vessels, Exports, Fees and user charges, Freight, Harbors, Imports, Maritime carriers, Motor carriers, Ports, Rates and fares, Reporting and recordkeeping requirements, Surety bonds, Trucks, Water carriers, Waterfront facilities, Water transportation.

46 CFR Part 550

Maritime carriers, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, section 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, parts 502, 514, and 550 of title 46, Code of Federal Regulations are amended as follows:

PART 502—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 551, 552, 553, 559; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C.. 2112(a); 46 U.S.C. app. 817, 820, 821, 826, 841a, 1114(b), 1705, 1707-1711, 1713-1716; E.O. 11222 of May 8, 1965 (30 FR 6569); and 21 U.S.C. 853a.

2. In § 502.67, paragraph (b)(2) is revised and a new paragraph (b)(3) is added to read as follows:

§ 502.67 Proceedings under section 3(a) of the Intercoastal Shipping Act, 1933.

* * * * *

(b) (1) * * *

(2) Protests against across-the-board increases, as defined in § 550.2 of this chapter, and against other proposed changes in tariffs filed on at least thirty (30) days' notice, shall be filed and served no later than twenty (20) days prior to the proposed effective date of the change. The provisions of paragraph (b)(1) of this section relating to the form and manner of filing protests against a proposed general rate increase or decrease shall be applicable to protests against across-the-board increases and

[13] The content of protests against non-GRI increases filed on at least thirty days' notice is being considered in connection with Hawaii's Petition P1-92, *supra*.

other proposed changes in tariffs filed on at least thirty (30) days' notice. A protest is deemed filed on the date it is received by the Commission.

(3) Protests against other proposed changes in tariffs filed on less than thirty (30) days' notice shall be filed and served not later than 9 a.m. on the last workday before the scheduled effective date of the change. any protest may be made by letter and shall be filed with the Director, Bureau of Tariffs, Certification and Licensing, and served upon the tariff publishing officer of the carrier in accordance with subpart H of this part. Such protest shall identify the tariff in question and the grounds for opposition to the change as well as the relief sought by the protestant. A protest is deemed filed on the date it is received by the Commission.

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PART 514—TARIFFS AND SERVICE CONTRACTS

3. The authority citation for part 514d continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1705, 1707–1709, 1712, 1714–1716, 1718 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

4. In § 514.2, add the following definitions in alphabetical order:

§ 514.2 Definitions.

* * * * *

Across-the-board increase (domestic offshore commerce) means any change in rates, fares, or charges in domestic offshore commerce which will: (1) Result in an increase in not less than 50 percent of the total rate, fare or charge items in the tariffs per trade of any carrier, and (2) directly result in an increase in gross revenues of said carrier for the particular trade of less than 3 percent. See § 514.9(b)(1).

Workdays (domestic offshore commerce) means all days except Saturdays, Sundays, and all federal holidays observed in the District of Columbia. See § 514.9(b)(24)(ii).

* * * * *

5. In § 514.3, paragraph (d)(1) is revised to read as follows:

§ 514.3 Exemptions and exclusions.

* * * * *

(d) *Domestic offshore commerce—(1) Notice requirements; general.* Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish:

(i) On one day's notice, any new or amendatory tariff matter that does not result in an increased cost to the shipper. This exemption may not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the 1933 Act. See § 514.2; and

(ii) On seven workdays' notice, any new or amendatory tariff matter that results in an increased cost to the shipper. This exemption may not apply to any increase which is part of a "general increase in rates" as defined by section 1 of the 1933 Act (see § 514.2), or any increase which is part of an "across-the-board" increase in rates as defined in § 514.2.

(2) * * *

* * * * *

6. In § 514.4, paragraph (a) is revised to read as follows:

§ 514.4 Content, filing and cancellation of tariff material; general.

(a) *Effectiveness of new or initial and conference tariffs in the domestic offshore and foreign trades.* Unless otherwise provided by the Commission or this part, all conference and carrier tariff material tendered for filing (including the tariffs of carriers entering a trade for the first time), shall bear an effective date which complies with the appropriate notice period(s) prescribed in § 514.9 or in other sections of this part. The notice period between filing and effective date shall commence at 12:01 a.m. of the day of filing, as evidenced by the Commission's receipt notation. The tariff may take effect at 12:01 a.m. of the day after the notice period expires.

* * * * *

7. In § 514.8, paragraphs (k)(1)(i) and (k)(1)(ii) are revised to read as follows:

§ 514.8 Electronic filing.

* * * * *

(k) *Publication; paper copies of tariff materials—(1) Publication—(i) Availability for public inspection.* (A) During normal business hours, every carrier, conference and terminal operator shall promptly make available to the public in paper or electronic form and at a reasonable charge (such as for a regular subscription under § 514.15(b)(30)) all tariff material required by this part to be filed by the carrier, conference or marine terminal operator, as well as all Commission actions affecting such tariff material, such as rejections, suspensions, etc.

(B) In addition to the requirements of paragraph (k)(1)(i)(A) of this section, every domestic offshore carrier shall make available to the public at each facility at which it receives freight or passengers for transportation, or at which it employs a general or sales agent, all tariff material governing transportation to and from the facility in question.

(ii) *Availability of domestic offshore tariff materials to government officials.* The governor of any state, commonwealth or territory served by a domestic offshore carrier may request a carrier in writing to furnish to a designated government official or office tariff matter filed by the carrier which pertains to trades affecting the state, commonwealth or territory in question. Such request may be for the tariff matter either to be made available in electronic format, or to be furnished in no more than two (2) paper copies. Upon receipt of such a request, which shall include the name, address and facsimile transmission number(s) of the designated official or office, the carrier shall promptly provide to the designated official or office the requested tariff material and add the official or office to its list of tariff subscribers. No charge shall be made for the service, but such officials and offices shall be treated in the same fashion as paid subscribers in all other respects. See § 514.15(b)(30). In addition, a copy of any new or amendatory tariff matter that results in an increased cost to the shipper and that is filed on less than 30 days' notice pursuant to § 514.9(b)(24)(ii), shall be provided to the designated Government officials or offices, on the same day that such tariff matter is filed with the Federal Maritime Commission, by hand delivery or facsimile transmission of one paper copy, or by electronic transmission, if available.

* * * * *

8. In § 514.9, paragraphs (b)(1) and (b)(24)(ii) are revised to read as follows:

§ 514.9 Filing/Amendment codes and required notice periods.

(a) * * *

(b) * * *

(1) *"A" Increase (Foreign commerce and across-the-board increase which is not a general rate increase in domestic offshore commerce under paragraph (b)(7) of this section ["G"]: 30 days' notice.* (i)(A) Except for a general rate increase in domestic offshore commerce, amendments which provide for changes in rates, charges, rules, or other tariff provisions (including fares in domestic offshore commerce); which constitute a cost increase in foreign commerce or an

across-the-board increase in domestic offshore commerce, shall use the symbol "A" and be filed to become effective not earlier than 30 days' after the date of filing, unless an exemption or special permission to become effective on less than said 30 days' notice has been granted by the Commission. See paragraph (b)(24)(ii) of this section for domestic offshore increases which may be filed on seven workdays' notice.

(B) With the filing of tariff material under this paragraph (b)(1)(i), domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(ii) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher "cargo n.o.s." or similar general cargo rate, is a rate increase requiring the appropriate notice period and corresponding symbol under this section.

* * * * *

(24) * * *

(i) * * *

(ii) *Domestic offshore tariff increases not general or across-the-board increases (7 workdays' notice).* (A) Except for an across-the-board increase ("A") or a general rate increase ("G") in domestic offshore commerce, an amendment which provides for changes in rates, fares, charges, rules, or other tariff provisions, which constitutes a cost increase in domestic offshore commerce, shall use the symbol "X" and be filed to become effective not earlier than 7 workdays' after the date of filing, unless an exemption or special permission to become effective on less than said 7 workdays' notice has been granted by the Commission. See paragraphs (b)(1) and (b)(7) of this section.

(B) With the filing of tariff material under this paragraph (b)(24)(ii), domestic offshore carriers shall simultaneously submit in paper format any supporting data required by part 552 of this chapter.

(C) An amendment which deletes a specific commodity and rate applicable thereto from a tariff, thereby resulting in the application of a higher "cargo n.o.s." or similar general cargo rate, is a rate increase requiring the appropriate notice period and corresponding symbol under this section.

* * * * *

PART 550—PUBLISHING, FILING AND POSTING OF TARIFFS IN DOMESTIC OFFSHORE COMMERCE

9. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

10. In § 550.1, paragraph (b) is revised to read as follows:

§ 550.1 Exemptions.

* * * * *

(b) Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, a Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish:

(1) On one day's notice, any new or amendatory tariff matter that does not result in an increased cost to the shipper. This exemption shall not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843; and

(2) On seven workdays' notice, any new or amendatory tariff matter that results in an increased cost to the shipper. This exemption shall not apply to any increase which is part of a "general increase in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843, or any increase which is part of an "across-the-board" increase in rates as defined in § 550.2.

11. In § 550.2, paragraphs (a) through (z) are redesignated paragraphs (b) through (aa), and new paragraphs (a) and (bb) are added to read as follows:

§ 550.2 Definitions.

* * * * *

(a) *Across-the-board increase* means any change in rates, fares, or charges which will:

(1) Result in an increase in not less than 50 percent of the total rate, fare or charge items in the tariffs per trade of any carrier; and

(2) Directly result in an increase in gross revenues of said carrier for the particular trade of less than 3 percent.

* * * * *

(bb) *Workdays* means all days except Saturdays, Sundays, and all federal holidays observed in the District of Columbia.

12. In § 550.3, paragraphs (f) and (h)(2) are revised to read as follows:

§ 550.3 Filing of tariffs; general.

* * * * *

(f) All tariff matter tendered for filing shall bear an effective date which complies with the notice periods prescribed in § 550.10 or in other sections of this part. The notice period between filing and effective date shall commence at 12:01 a.m. of the day of filing, as evidenced by the Commission's receipt notation. The tariff may take effect at 12:01 a.m. of the day after the notice period expires.

* * * * *

(h) * * *

(2) The governor of any state, commonwealth or territory served by a domestic offshore carrier may request a carrier in writing to furnish a designated government official or office no more than two (2) copies of any tariff matter filed by the carrier which pertains to trades affecting the state, commonwealth or territory in question. Upon receipt of such a request, which shall include the name, address and facsimile transmission number of the designated official or office, the carrier shall provide promptly to the designated officer or office the requested copies of its tariff(s) and add the official or office to its list of tariff subscribers. No charge shall be made for the service, but such officials and officers shall be treated in the same fashion as paid subscribers in all other respects. In addition, a copy of any new or amendatory tariff matter that results in an increased cost to the shipper and that is filed on less than 30 days' notice pursuant to 46 CFR 550.1(b)(2), shall be provided to the designated government officials or offices by facsimile transmission, or hand delivery, on the same day that such tariff matter is filed with the Federal Maritime Commission.

* * * * *

13. In § 550.10, paragraph (b) is revised to read as follows:

§ 550.10 Amendments to tariffs.

* * * * *

(b) Amendments establishing new or initial rates, or changing rates, fares, charges, rules, or other tariff provisions, which do not constitute a general increase or decrease in rates, shall be posted and filed, together with any supporting material required by 46 CFR part 552 of this chapter, as follows:

(1) Amendments extending actual service to additional ports at rates or fares already in effect for similar service at the ports being added may take effect on the same day they are filed and posted;

(2) Amendments adopting a tariff pursuant to § 550.17 may take effect on the same day they are filed and posted;

(3) Amendments completely canceling a tariff pursuant to § 550.12(a)(2) due to a cessation of all service by the publishing carrier between the ports or points listed in the canceled tariff, may

take effect on the same day they are filed and posted;

(4) Amendments which do not result in an increased cost to the shipper, except for general rate decreases, may be posted and filed on not less than one day's notice;

(5) Amendments which result in an increased cost to the shipper, except for general rate increases and across-the-board increases, may be posted and filed on not less than seven workdays' notice;

(6) Amendments changing rates, fares, charges, rules, or other tariff provisions, which constitute an across-the-board increase, shall be posted and filed at least 30 days prior to their effective date.

* * * * *

14. In § 550.3(o)(3) remove the words "30 days" and add, in their place, the words "7 workdays".

§ 550.17 [Amended]

15. In 46 CFR Part 550, remove the words "30 days' notice" and add, in their place, the words "7 workdays' notice" in the following places:

(a) Section 550.17(b)(2).

(b) Section 550.17(c).

(c) Section 550.17(e).

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-23499 Filed 9-25-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-112; RM-7982]

Radio Broadcasting Services; Hawkinsville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 280C3 for Channel 280A at Hawkinsville, Georgia, and modifies the license for Station WCEH (FM) to specify the higher powered channel at the request of Tri-County Broadcasting Co. See 57 FR 21919, May 26, 1992. Channel 280C3 can be allotted to Hawkinsville in compliance with the Commission's minimum distance separation requirements with a site restriction 20.9 kilometers (13 miles) southwest to accommodate the petitioner's desired transmitter site. The coordinates are North Latitude 32-10-32 and West Longitude 83-39-11. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 6, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-112, adopted August 21, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 280A and adding Channel 280C3 at Hawkinsville.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-23407 Filed 9-25-92; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 57, No. 188
Monday, September 28, 1992

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1413

1993 Rice Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage, if any, for the 1993 crop of rice. This action is required by section 101B of the Agricultural Act of 1949, as amended (the 1949 Act). This proposed rule outlines a range of acreage reduction percentage options proposed for the 1993 crop of rice.

DATES: Comments must be received on or before October 20, 1992, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to: Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3090–S, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Gene S. Rosera, Agricultural Economist, Fibers and Rice Analysis Division, USDA, ASCS, room 3758–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation (CCC) is required by section 105b(o) of the 1949 Act to request comments with respect to the subject matter of this rule.

A Preliminary Regulatory Impact Analysis was prepared, which determined that this regulation will have no significant impact on a substantial number of small entities because the particular acreage reduction percentages considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. Accordingly, CCC certifies that the rule will have no significant impact on a substantial number of small entities. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal assistance program, as found in the catalog of Federal Domestic Assistance, to which this proposed rule applies, are: Rice Production Stabilization—10.065.

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

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

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

In accordance with section 101B of the 1949 Act, an acreage reduction program (ARP) may be implemented for the 1993 rice crop if it is determined that the total supply of rice, in the absence of such a program, would be excessive taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency.

Land diversion payments also may be made to producers if needed to adjust the total national acreage of rice to desirable goals. A paid land diversion program is not considered because, given the considered program options, it is not needed to achieve the statutory stocks-to-use levels of rice.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction (from 0 to 35 percent) to the rice crop acreage base for the crop for each rice producing farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce rice in excess of the permitted acreage for the farm plus any rice acreage planted in accordance with the flexibility provisions are ineligible for loans and purchases and all payments with respect to that crop on the farm.

The Secretary is required to carry out an acreage limitation program in a manner that will result in carry-over stocks equal to 16.5 to 20.0 percent of the simple average of the total disappearance (including domestic, export, and residual disappearance) of rice for each of the 3 marketing years preceding the year for which the announcement is made. The 1993-crop options considered are:

Option 1. 0-percent ARP.
Option 2. 2.5-percent ARP.
Option 3. 5.0-percent ARP.
Option 4. 7.5-percent ARP.
Option 5. 10.0-percent ARP.

The estimated impacts of these options are shown in Table 1.

TABLE 1.—ESTIMATED IMPACTS OF 1993 ARP OPTIONS

	Options				
	1	2	3	4	5
ARP (%)	0.0	2.5	5.0	7.5	10.0
Participation (%)	94	94	94	94	94
Planted Acres (1000 Ac.)	3003	2920	2835	2751	2667
Production (Mil cwt)	165.6	161.2	156.8	152.4	147.9
Domestic/Residual Use (Mil cwt)	97.6	97.2	89.8	89.4	89.0
Exports (Mil cwt)	76.0	74.0	72.0	70.0	68.0
Ending Stocks (mil cwt)	32.9	31.0	28.9	26.9	24.9
Stocks/Use Ratio (%) Prior 3 Years	20.5	19.3	18.0	16.8	15.5
Season Avg. Price ($/cwt)	6.70	6.85	7.00	7.20	7.35
Net Outlays (Mil $)	736	707	665	611	572

Accordingly, comments are requested whether to establish an ARP for the 1993 rice crop, and if so, at what reduction percentage.

The final determination of this percentage will be set forth at 7 CFR part 1413.54(a)(4).

List of Subjects in 7 CFR Part 1413

Cotton, Feed grain, Related programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. In § 1413.54, paragraphs (a)(4) (ii) and (iii) and (d)(3) are revised to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(4)(i) * * *

(ii) * * * 1992 rice, 0 percent.

(iii) 1993 rice, within the range of 0 to 35 percent, if supplies are excessive, as determined and announced by CCC with no paid land diversion.

* * * * *

(d) * * *

(3) Shall not be made available to producers of the 1993 crops of wheat, feed grains and rice, as determined and announced by CCC.

* * * * *

Signed on September 22, 1992, at Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–23385 Filed 9–22–92; 4:19 pm]

BILLING CODE 3410–05–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE38

Acceptability of Plant Performance for Severe Accidents; Scope of Consideration in Safety Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering an amendment to its regulations for future light water reactors (LWRs). The amendment would add provisions for the design of the plant structures to withstand certain challenges from phenomena associated with severe core damage accidents beyond the current "design basis accidents." The NRC is issuing this notice to invite advice and recommendations from interested parties on the proper scope and method to incorporate these provisions into safety regulations.

DATES: Comment period expires December 28, 1992. The NRC will consider comments received after this date only if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Send written comments to: The Secretary of the Commission, U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:45 am and 4:15 pm on Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas King, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3980.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) is considering developing regulations under 10 CFR part 50 for future LWRs to address the ability of the plant to withstand challenges from phenomena associated with severe core damage accidents. Severe core damage accidents are low probability events beyond the design basis established in 10 CFR part 50 that can lead to significant core damage and radioactive material release from the reactor fuel pins. The NRC believes that research and engineering on the significant severe accident phenomena, event sequences, and cost effective methods to mitigate them, coupled with its understanding of the details of future plant designs, have sufficiently matured to allow the development of plant performance criteria for future LWRs. This advance notice of proposed rulemaking (ANPRM) requests from interested parties advice and recommendations on the proper scope and method to incorporate these considerations into the NRC's regulations.

This ANPRM reflects consideration of the extensive work accomplished in the severe accident area. Specifically, the NRC has already taken various actions in response to severe accident concerns. On October 2, 1980, the Commission issued (45 FR 65474) an ANPRM that invited advice and recommendations on the consideration of degraded or molten cores in safety regulation. Based on recommendations received from that ANPRM, the Commission developed a policy statement that addressed severe accident considerations and withdrew the ANPRM (August 8, 1985; 50 FR 32151). In its "Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants" published August 8, 1985 (50 FR 32133),

the Commission stated its intentions for rulemakings and other regulatory actions for resolving severe accident safety issues. For existing plants, the Commission concluded that these plants posed no undue risk to public health and safety. Therefore, it did not see a need for immediate action on generic rulemaking for these plants because of the low severe accident risk. The Commission has continued to take all reasonable steps to further reduce the risk from severe accidents at existing plants through its regulatory programs. For example, the Commission completed rulemakings on several key issues related to severe accidents (i.e., station blackout, anticipated transients without scram, hydrogen generation and control), has implemented a containment performance improvement program based upon insights regarding containment performance under severe accident conditions, and has initiated a program for individual plant examination (IPE) for severe accident vulnerabilities.

For future plants, the Severe Accident Policy Statement established the criteria and procedural steps under which a new design for a nuclear power plant could be acceptable for meeting severe accident concerns. The NRC recognized the need to strike a balance between accident prevention and consequence mitigation in exploring the need for additional design features in the next generation of plants. Also, the NRC expected that these new plants would achieve a higher standard of severe accident safety performance than prior designs. The Commission stated that a "clarification of containment performance will be made including a decision on whether to establish new performance criteria for containment systems and, if so, what these should be."

The NRC staff has been reviewing proposed criteria for future LWRs submitted by Electric Power Research Institute (EPRI) and several new LWR designs with respect to the Commission's severe accident policy and the design certification aspects of 10 CFR part 52. In performing these reviews, the NRC staff has proposed criteria to address severe accident and containment issues that depart from the existing regulations. For the evolutionary LWR designs, many of these proposed criteria are contained in a paper provided to the NRC Commissioners on January 12, 1990, SECY-90-016, "Evolutionary LWR Certification Issues and Their Relationship to Current Regulatory Requirements." The NRC staff has sought and received Commission guidance on the application of these proposed severe accident and containment criteria to the evolutionary LWR designs now under review. Guidance from the Commission was provided in a Staff Requirements Memorandum, S. Chilk to J. Taylor, dated June 26, 1990. The criteria discussed in this ANPRM would codify much of the Commission's guidance for general application to all future LWRs.

Additionally, the NRC plans to improve its regulations for future plants by separating (decoupling) the acceptance criteria for a reactor site from the acceptance criteria for the design of various engineered safety features (ESF) via rulemaking changes to 10 CFR Parts 50 and 100. The first phase of this decoupling of siting criteria from design criteria focuses on updating and revising siting criteria. The second phase of this process would focus on updating 10 CFR part 50 for future LWRs to:

(1) Implement new LWR source term information,

(2) specify performance criteria for plant design features based on improved knowledge of the release of radioactive material into containment (i.e., new source term), and

(3) specify criteria for plant performance under severe accident conditions. The criteria discussed in this ANPRM are associated with a portion of this second phase, namely item (3) above.

Purpose of the Rule

The NRC believes that adopting a rule to specify acceptable plant performance in response to severe accidents would accomplish the following:

1. Codify the Commission's guidance on severe accident and containment issues that resulted from the review of advanced light water reactors.
2. Provide assurance that the performance of future LWRs under severe accident conditions is consistent with assumptions about severe accident performance used in developing new source term information.
3. Provide guidance to future LWR designers and potential applicants.
4. Add consistency and standardization to the resolution of severe accident issues based on the current technical information.
5. Facilitate design certification rulemakings.

This rule would then help assure that the risk to the public from severe accidents in future LWRs is maintained at very low levels in accordance with experience from existing plants, current insights from risk studies and research results, and the Commission's Safety Goal Policy (August 4, 1986; 51 FR 28044). In addition, this rule could complement and support the review of Severe Accident Design Mitigation Alternatives (SAMDAs) on future LWRs as part of the environmental review carried out under 10 CFR Part 51.

Basis for the Rule

This rule would reflect the NRC's current understanding of severe accident issues from its research, experience with light water reactors now in operation, and review of future designs. Accordingly, this rule would apply to light water reactor designs only, but could possibly provide guidance for establishing criteria for other reactor types. The development of this rule relies on the major factors discussed below.

Since the accident at Three Mile Island in 1979, considerable research on severe accidents has been performed. This research has explored the phenomena associated with in-vessel and ex-vessel severe accident processes; hydrogen generation and control; the form, quantity, and timing of radioactive material release into the containment; challenges to containment integrity; and the consequences to the public. This research has led to the development of data and analytical tools to analyze severe accidents for current and future designs, assess severe accident risk, and evaluate potential risk-reduction improvements in design and operation.

Application of these research results has occurred in many areas. One comprehensive application has been the development of NUREG-1150 [1], "Severe Accident Risk: An Assessment for Five U.S. Nuclear Power Plants." NUREG-1150 used probabilistic techniques to analyze five operating plants from a severe accident risk perspective. This analysis provided the NRC staff with basic insights into the important event sequences that can lead to severe accidents and the mechanisms that can lead to a loss of containment function during severe accidents. These basic insights identified challenges to containment integrity that can be divided into two groups: energetic or rapid energy releases, and slower,

[1] Copies of NUREGS may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

gradually evolving releases to the closed containment system. Examples of containment loadings in the first group include high pressure core melt ejection with direct containment heating, hydrogen combustion, and the initial release of stored energy from the reactor coolant system. Decay heat and noncondensible gas generation from core-concrete interactions typify the group of slow energy releases to the containment. Further insights from this analysis identified major contributors to risk to the public and potential design solutions.

Also, the NRC has frequently interacted over the past several years with EPRI and various reactor designers concerning regulatory criteria for the future evolutionary and passive LWRs. Some of these interactions have addressed both probabilistic and deterministic criteria associated with plant performance under severe accident conditions. These potential criteria have been discussed in various correspondence with EPRI and the reactor designers, and are documented in draft safety evaluation reports on the EPRI Advanced Light Water Reactor Requirements Document.

Finally, in preparing this ANPRM, the NRC has benefitted from the insights provided by an independent study of containment design criteria made by the Advisory Committee on Reactor Safeguards (ACRS). In a letter to the Commission on May 17, 1991, the ACRS proposed a set of criteria addressing the specific challenges posed by severe accidents to the containment design for future light water reactor nuclear power plants. In SECY-92-070, dated February 28, 1992, the NRC staff analyzed these ACRS criteria with respect to EPRI design requirements for evolutionary and passive LWRs, evolutionary vendor designs, passive vendor designs, and the existing Commission guidance for the NRC staff's review of severe accident issues for evolutionary LWRs. This ANPRM reflects consideration of the results of this analysis and the ACRS proposed criteria.

Applicability of the Rule

The NRC has accumulated an understanding of the evolutionary light water reactor designs to complement its understanding of severe accident issues from operating reactors. Based on this understanding, it is expected that the criteria developed in this rule would be consistent and compatible with the criteria being developed and applied in evolutionary LWR reviews. However, due to the advanced stage of the reviews of the current evolutionary designs (GE ABWR and ABB/CE System 80+), it is likely that the resolution of severe accident issues for these designs will occur via the individual design certifications before completion of this rulemaking. The NRC expects the resolution of severe accident issues for the evolutionary LWRs and the results of this rule to be essentially the same.

The NRC staff is also reviewing future LWR designs that use a passive design concept. In contrast to the evolutionary designs, the NRC staff has reviewed only conceptual design information from the passive plant vendors. This preliminary review has not identified any unique features that would prevent the evaluation of these designs under the rule discussed in this ANPRM. Therefore, this rule would be generally applicable to passive LWR designs. However, as detailed design information becomes available and review of the passive systems is completed, further rulemaking may be necessary.

Proposed Changes to Part 50

Discussed below are three potential alternatives for incorporating plant performance criteria for severe accidents into the regulations.

Alternative 1: Hardware Oriented Rule

This alternative (as are the other alternatives discussed in this ANPRM) is based upon ensuring that the risk significant severe accident phenomena, which may cause a loss of containment function in an LWR, are considered in future LWR designs. Based upon currently available information, including the results of risk studies and severe accident research programs, these risk significant severe accident phenomena are:

1. Hydrogen generation and transport, including burning and/or detonation, resulting from metal-water and core concrete reactions;
2. High pressure ejection of molten core material from the reactor vessel;
3. Interactions between molten core debris and reactor basemat material, containment wall and structural material;
4. Containment overpressure and overtemperature from decay heat, non-condensible gas generation, metal-water reactions;
5. Steam explosions from fuel-coolant interactions; and
6. Containment bypass.

Alternative 1 would specify reasonable design features or attributes of design features directed toward prevention or mitigation of the above phenomena. Where design features cannot be precisely specified to prevent or mitigate a severe accident phenomenon, this alternative would require that the applicant provide an evaluation of the phenomenon with respect to the overall containment performance objective specified in the rule. This alternative is derived from the containment performance criteria developed as part of the Commission's advanced reactor reviews and essentially codifies those criteria.

In this approach, those features of the design needed for severe accident prevention and mitigation would be specified directly in the rule. These requirements would be an "overlay" on the existing design basis requirements in 10 CFR part 50 for nuclear power plants. The requirements would be considered and justified on an enhanced safety basis (i.e. using safety goal, cost-benefit analysis and other appropriate considerations such as defense-in-depth and uncertainties) and would complement the existing design basis to enhance the level of safety. However, because of the low likelihood of severe accidents, these new requirements would not be considered to be traditional design basis requirements. For example, design features provided only for severe accident mitigation would not be subject to the same conservative analysis and design requirements that are necessary for systems developed to cope with design basis accidents. A regulatory guide would provide additional guidance on such design details as redundancy, diversity, system capacity, power supply, equipment survivability and analytical assumptions.

An example of this alternative follows:

50.XX Prevention and mitigation of severe accidents

(a) *Applicability.* The criteria of this section apply to the design of light water nuclear power reactors being considered for a construction permit or operating license under 10 CFR part 50 or applications under 10 CFR part 52 on or after the effective date of this rule. The criteria of this section also may provide guidance in establishing the requirements for other types of reactor designs.

(b) *Containment Performance Objective.* The design shall include a containment system that provides a barrier against the release of radioactive material for a period of approximately 24 hours following the onset of core damage under the more likely severe accident challenges. Following this 24 hour period, the containment should continue to maintain a barrier against the uncontrolled release of large

quantities of fission products. This shall be accomplished by:

(1) Including plant design features that:

(i) Provide the reactor coolant system (RCS) with the capability to rapidly and reliably reduce RCS pressure.

(ii) Provide a reactor cavity design that restricts as much as practical the amount of ejected core debris that reaches the upper containment or impinges directly on the containment wall. The cavity design, as a mitigating feature, should not unduly interfere with operations including refueling, maintenance, or surveillance activities.

(iii) Provide a reactor vessel support structure sufficient to retain the reactor vessel in place under the loads generated by a high pressure core-melt ejection.

(iv) Provide for containment-wide hydrogen control (e.g., igniters, large volume), that accommodates the hydrogen resulting from a 100-percent metal-water reaction of the active fuel cladding, and limits containment hydrogen concentration to no greater than 10 percent; or provides that the post-accident atmosphere will not support hydrogen combustion.

(v) Reduce the potential for and effect of interactions with molten core debris by:

(A) Providing reactor cavity floor space to promote core debris spreading and coolability;

(B) Providing a means to flood the reactor cavity to assist in the cooling process and scrubbing of fission products;

(C) Protecting the containment liner and other structural members from direct contact by molten core debris;

(D) Employing basemat materials which reduce the production of non-condensible gases when in contact with molten core debris; and

(E) Ensuring that containment temperature and pressure increases or the generation of missiles resulting from decay heat, fuel-coolant interactions, combustible gas generation and control, and core-basemat material interactions involving a range of event sequences which release core debris into the containment do not cause containment stresses to exceed ASME service level C limits for steel containments, or equivalent for concrete containments, or significant degradation of the containment design leak rate.

(vi) Reduce the possibility of containment bypass and a loss of coolant accident outside containment by designing, to the extent practical, all elements of systems and subsystems (e.g. piping, instrument lines, pump seals, heat exchanger tubes, and valves) located outside containment and connected to the RCS to an ultimate rupture strength at least equal to the full RCS pressure.

(2) Not crediting use of containment venting during the 24 hour period following the onset of core damage in evaluating the design for compliance with the containment performance objective in paragraph (b) above.

(c) *Equipment Survivability.* Features provided for severe accident prevention or mitigation shall be designed to operate for the time period needed in the environment (e.g., pressure, temperature, radiation) in which the equipment is relied upon to function, including consideration of the circumstances of applicable initiating events (e.g., transients, loss of AC power, loss of coolant accidents).

Maintaining containment integrity for a period of approximately 24 hours following the onset of core damage provides time for the remaining airborne activity in the containment (principally noble gases and iodine) to decay to a level that, when analyzed realistically, would be unlikely to cause prompt health effects if containment failure or controlled venting were to occur after that time. In addition, it represents a level of safety significantly below the quantitative health objective for prompt fatalities defined in the Commission's Safety Goal Policy. However, considering the uncertainties involved in analyzing the severe accident phenomena and progression and emphasis on defense-in-depth, it is not unreasonable to include some conservatism in the criteria. This time period would also enhance the time available for offsite protective actions.

To the extent practical during this period, the passive capability of the containment and any related design features (e.g., suppression pool) should provide for containment integrity. Following this period, the containment should continue to provide a barrier against the uncontrolled release of fission products. However, in keeping with the concept of allowing for intervention in coping with long-term or gradual energy release, controlled, elevated venting (if provided in the design) may be given credit in the design analysis after the initial 24 hour period to reduce the chance of containment failure. The intent of specifying in the design analysis no reliance on containment venting during the initial 24 hour period is to achieve the design objective of high containment integrity but not to constrain use of venting during operation if for some reason venting were the desired course of action. Alternatively, a design may use diverse containment heat removal systems or rely on the restoration of normal containment heat removal capability if enough time is available for major recovery actions.

The advantages of this approach include prescribing those design features to reduce the risk from severe accidents, thus promoting a more standardized resolution to severe accident issues. In effect, this alternative is also prescriptive regarding the severe accident phenomena that a future LWR design must address, since the design features specified are a direct result of the phenomena considered. The prescriptive nature of this alternative will also tend to facilitate the NRC review and design certification process by focusing the review on the severe accident phenomena which must be considered and the basic features which the design must incorporate to address those phenomena, thus enhancing regulatory efficiency. In addition, this approach essentially codifies Commission guidance on severe accident and containment issues from the advanced LWR reviews. This approach does not require the applicant to perform extensive severe accident analysis to show compliance with the rule. The applicant could primarily rely upon design features which, through previous analyses and research, have been shown to be effective in reducing the risk from the more likely severe accident scenarios, coupled with deterministic analysis to confirm that the containment performance objective is met.

The disadvantage to this option is that it could discourage designers of future LWRs from developing other design approaches that might be more cost-effective, innovative, or safer.

Alternative 2: Phenomena Oriented Rule

This alternative is a modified version of the first alternative. It, like the first alternative, states an overall containment performance goal and is based upon preventing or mitigating the same severe accident phenomena as described in Alternative 1. However, instead of specifying hardware requirements in the rule to meet the goal, this alternative specifies the severe accident phenomena that need to be addressed in the design. Based upon analysis of these severe accident phenomena, the designer would develop and propose the actual design features necessary to meet the goal. Regulatory guides would address items such as analytical methods, assumptions, acceptance criteria and guidance on design criteria for severe accident

hardware. An example of this alternative follows:

50.XX Prevention and mitigation of severe accidents

(a) *Applicability.* The criteria of this section apply to the design of light water nuclear power reactors being considered for a construction permit or operating license under 10 CFR part 50 or applications under 10 CFR part 52 on or after the effective date of this rule. The criteria of this section also may provide guidance in establishing the requirements for other types of reactor designs.

(b) *Containment Performance Objective.* The design shall include a containment system that provides a barrier against the release of radioactive material for a period of approximately 24 hours following the onset of core damage under the more likely severe accident challenges. Following this 24 hour period, the containment should continue to maintain a barrier against the uncontrolled release of large quantities of fission products. This shall be accomplished by:

(1) Minimizing the likelihood or effects on containment integrity of the following severe accident phenomena:

(i) Uncontrolled hydrogen burning and detonation;

(ii) Interactions between molten core debris and the reactor basemat material, reactor vessel support structure, containment wall, and other structural materials;

(iii) High pressure melt ejection;

(iv) Containment bypass and loss of interfacing system integrity;

(v) Steam explosions due to fuel-coolant interaction; and

(2) Not crediting use of containment venting during the 24 hour period following the onset of core damage in evaluating the design for compliance with the containment performance objective in paragraph (b) above.

(c) *Equipment Survivability.* Features provided for severe accident prevention and mitigation shall be designed to operate for the time period needed in the environment (e.g., pressure, temperature, radiation) in which the equipment is relied upon to function, including consideration of the circumstances of applicable initiating events (e.g., transients, loss of AC power, loss of coolant accidents).

The approach in this phenomena-oriented alternative would be similar to the hardware-oriented alternative in that it is prescriptive regarding the severe accident phenomena which must be addressed in the design; however, it does provide flexibility for the designer to propose solutions specific for the design. This alternative could be made more prescriptive by specifying, for example, the amount of hydrogen or molten core debris which must be considered but, nevertheless, would provide designers with considerably more design flexibility to address severe accident issues than Alternative 1. Applicants would be required to provide analyses showing that their proposed design meets the containment performance objective. However, this alternative would place a heavy reliance on analytical codes to predict the likelihood of severe accidents and their behavior accurately. Limitations of these analytical codes and gaps in knowledge of the phenomenological progression of severe accidents may make such a heavy reliance unacceptable, unless bounding parameters are used. Like Alternative 1, this alternative would facilitate the NRC review and design certification process by focusing the review and limiting litigation on the severe accident phenomena which must be considered; however, it would leave open to review and litigation whether the designer has adequately addressed the severe accident phenomena. Accordingly, this alternative could potentially require considerable NRC review effort prior to accepting an applicant's analytical results. Similar to Alternative 1, this alternative would be in the form of an overlay on the existing design basis specified in 10 CFR part 50 and justified on an enhanced safety basis.

Alternative 3: General Design Criteria (GDC) Oriented Rule

In this alternative, the NRC would develop a set of new design requirements that would include definition of specific challenges posed by severe accidents and issue them as changes or additions to appendix A, "General Design Criteria" (GDC), to 10 CFR part 50. Each new GDC would describe the nature of the severe accident challenge or containment load as well as a success criterion. Usually, success would be defined simply as maintenance of the containment function for an appropriate period following the particular challenge. Regulatory Guides would be developed to provide additional guidance on items such as analysis methods and assumptions. The ACRS outlined this approach in more detail in a letter to NRC Chairman K. Carr, dated May 17, 1991.[2]

This alternative would differ from the other alternatives in that the existing 10 CFR part 50 design basis would be modified to include severe accidents. Accordingly, the design requirements for the severe accident equipment (e.g., quality assurance, equipment survivability, redundancy/diversity) would need to be determined in relation to those for traditional design basis equipment. Different design requirements may be appropriate for severe accident equipment because of the low probability associated with severe accident scenarios. This alternative would give the designer flexibility in devising proposed solutions to severe accident phenomena. Like alternative 2, this alternative would require applicants to submit analyses showing that the criteria are met. Like alternative 2, this would place a heavy reliance on analytical codes to predict severe accident behavior accurately and would leave open to review and litigation in a licensing hearing or design certification rulemaking whether the designer has adequately addressed the severe accident phenomena.

Plans and Schedules

The plant performance requirements described in this ANPRM are part of the second phase of a program to decouple siting and design criteria. In this phase, plant performance requirements for severe accidents, in combination with other necessary changes to 10 CFR part 50, will result in a rule that would complete the decoupling of siting and design. Currently, the Commission plans to publish the proposed rule for comment in mid-1993 and to publish the final rule in mid-1994.

Specific Considerations

The NRC invites comments and recommendations from interested persons on the three alternatives for the proposed rulemaking or additional alternatives, if desired. Furthermore, the NRC requests comments and supporting legal and technical information on the following questions:

1. Is a rulemaking addressing severe accident plant performance criteria desirable? If so, why? If not, why not? Would a rule provide better coherence and predictability to the design review and certification processes for future reactor designs or is rulemaking on these issues via individual design certification sufficient?

[2] The ACRS letter is available for inspection at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are available from Mr. Thomas King, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)492-3980.

2. Would a new rule in 10 CFR part 50 concerning plant performance for severe accidents, as discussed in the three alternatives, provide a basis for revising the requirements on Emergency Planning Zones for future LWRs? If so, why? If not, why not?

3. One option for an overall containment performance criterion that has been considered is that the conditional failure probability of the containment should be less than approximately one in ten. Two of the alternatives use a deterministic surrogate that states that the containment should remain leak tight for a period of approximately 24 hours following the onset of core damage and, after that time, remain a barrier against the uncontrolled release of radioactivity when faced with challenges from the more likely severe accident phenomena. Is this criterion a suitable substitute for the conditional containment failure probability of one in ten? If so, explain why. If not, explain why not. Is a period of approximately 24 hours an appropriate time frame? Is its degree of conservatism appropriate considering uncertainties and defense-in-depth? If not, what alternative would be appropriate? What other criteria (probabilistic or deterministic) might be considered?

4. Alternative 2 would require extensive reliance on analytical tools that calculate the effects of severe accident phenomena. Are there analytical tools that are sufficiently developed and adequate to allow effective implementation of such a phenomena-based rule? If so, what are they, and for what phenomena could they be used? How would alternative 2 be implemented? For example, should the codes and input parameters be approved by NRC? Should acceptance criteria be codified or put in a regulatory guide?

5. Should future LWR containment designs include features beyond those described in alternative 1 to prevent/mitigate severe accidents? If so, what are they?

6. Alternatives 2 and 3 specify phenomenological severe accident challenges that should be considered in the design. Alternative 1 is based upon the same phenomena/challenges. Are there other severe accident phenomena/challenges that should be considered? What should be the criteria for deciding whether a severe accident phenomena or challenge is likely and should be considered? Should the challenges be specified in more detail (for example, specifying the amount of hydrogen generation) or is a general statement of the challenge more desirable?

7. For what reason (e.g., not a risk significant phenomena, not a cost effective solution) would any of the criteria proposed in the three alternatives not be fully applicable to passive designed LWRs?

8. What features could an advanced LWR design include that would prevent or mitigate fuel-coolant interactions?

9. If a design includes the capability to rapidly depressurize the primary system, should it also be required to have a reactor cavity design and/or a reactor vessel support structure capable of mitigating and accommodating a high pressure melt ejection?

10. Should future LWR designs include an on-line instrumentation system that monitors containment atmosphere for gross leakage to reduce the risk from an inadvertent bypass of containment function? Would application of this system be sufficient basis to modify leak rate testing requirements under 10 CFR part 50, appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

11. What design criteria should be developed that provide assurance that the containment's integrity could easily be established during certain shutdown conditions?

12. Should equipment provided only for severe accident prevention or mitigation be subject to (a) the same requirements as design basis equipment (e.g., redundancy/diversity, power supply, environmental qualification, inclusion in plant Technical Specifications, maintenance priority, quality assurance); or (b) lesser standards (e.g., reduced design margins or the regulatory guidance found in appendices A and B of Regulatory Guide 1.155, "Station Blackout?"). If lesser standards, what standards would be appropriate?

13. Alternative 1 discusses not exceeding ASME service level C stress limits for steel containments under certain severe accident conditions. Are these limits appropriate for severe accident conditions? If not, what limits would be appropriate? Could these same stress limits also be used for loads generated by missiles? If not, what limits would be appropriate? What equivalent limits would be appropriate for concrete containments?

14. What information is available regarding the costs (capital and operational/maintenance) of design features that would be required under these alternatives?

15. The containment performance objective discussed in Alternatives 1 and 2 (i.e., containment shall provide a barrier against the release of radioactive material for a period of approximately 24 hours following the onset of core damage) represents a level of safety for a 3800 Mwt plant sited in accordance with 10 CFR part 100 approximately three orders of magnitude below the Commission's quantitative health objective for prompt fatalities, as defined in the Commission's Safety Goal Policy Statement. It could be argued that a future LWR design meeting this objective through analyses and the incorporation of design features need not consider the addition of other features, since these other features would be directed at even more highly unlikely severe accident phenomena and sequences which could be considered "remote and speculative" under the National Environmental Policy Act (NEPA) and 10 CFR part 51. Therefore, would the codification and compliance with such a containment performance objective be sufficient to also define a point of truncation and serve as the basis for an amendment to 10 CFR part 51 eliminating the need for further review of SAMDAs for future LWRs under 10 CFR part 51?

The preliminary views expressed in this ANPRM may change after considering the comments received. In any case, the NRC will provide an opportunity for additional public comment on any proposed rule developed as a result of this notice.

List of Subjects in 10 CFR Part 50

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

The authority citation for this document is: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, Pub. L. 93–438 88 Stat. 1242, as amended (42 U.S.C. 5841).

Dated at Rockville, Maryland, this 22d day of September, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–23436 Filed 9–25–92; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960-AC55

Supplemental Security Income for the Aged, Blind, and Disabled; Continuation of Full Benefit Standard for Persons Temporarily Institutionalized

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would implement section 3 of the Employment Opportunities for Disabled Americans Act and section 9115 of the Omnibus Budget and Reconciliation Act of 1987. These statutory provisions amend the Social Security Act (the Act) to permit certain recipients to receive payments based on the full supplemental security income (SSI) benefit rate for a limited period after becoming residents of medical or psychiatric institutions.

DATES: To be sure your comments are considered, we must receive them no later than November 27, 1992.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, or delivered to the Office of Regulations, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: L.V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965-1795.

SUPPLEMENTARY INFORMATION: The present regulations generally require the suspension of SSI benefits when a recipient is a resident of a public institution throughout a month, except that the recipient may receive a reduced benefit if he or she is a resident throughout a month in a public or private institution where over 50 percent of the cost of care is paid for by Medicaid. The following legislative provisions, however, now allow for benefits based on the full SSI Federal benefit rate to continue during months of residency in an institution under certain circumstances.

Benefits Payable Based on Section 1611(e)(1)(E) of the Act

Section 3 of Public Law 99-643 (the Employment Opportunities For Disabled Americans Act) added subparagraph (E) to section 1611(e)(1) of the Act. Based on this added provision, a recipient, whose SSI eligibility is based on section 1619 (a) or (b) of the Act for the month preceding the first full month of residence in (1) a public medical or psychiatric institution or (2) a public or private institution where Medicaid is paying more than 50 percent of the cost of care, can remain eligible for an SSI benefit based on the full Federal benefit rate for up to 2 months after entering the institution. This statutory provision also provides that payment is conditioned on an agreement by the institution that these benefits are to be retained by the recipient and cannot be used to defray the cost of institutional care.

Section 1902(o) of the Act requires that all State Medicaid plans provide for disregarding any SSI payments in computing the post-eligibility contribution of the individual to the cost of care. Therefore, if the institution is receiving Medicaid payments for the recipients, we will rely on the agreement the institution signed with the State Medicaid agency to ensure that this condition is met.

Benefits Payable Based on Section 1611(e)(1)(G) of the Act

Section 9115 of Public Law 100-203 (the Omnibus Budget Reconciliation Act of 1987) added subparagraph (G) to section 1611(e)(1) of the Act. Based on this added provision, a recipient is eligible for continued benefits for up to 3 full months after entering the institution if the following conditions are met:

1. A physician certifies that the recipient's stay in the institution or facility is likely not to exceed 3 months;
2. The recipient demonstrates a need to continue to maintain and provide for the expenses of a home or other living arrangement to which he or she may return after leaving the facility; and
3. The recipient was eligible for Federal SSI cash benefits or Federally-administered State supplementation in the month before the month benefits would otherwise be reduced or suspended because of residence in an institution.

The following policies implement the provisions of section 1611(e)(1)(G) of the Act.

We state in the proposed regulations at § 416.212(b) that, in order for a recipient to be eligible for these benefits, the physician's certification and the evidence of the need to pay home or living arrangement expenses must be submitted to SSA no later than the day of discharge or the 90th full day of confinement, whichever is earlier. We will determine the date of submission to be the date we receive it or, if mailed, the date of the postmark. This time frame for submission of the needed evidence to establish eligibility for continued payments represents what we believe is the best balance between the statutory language and congressional intent that:

- The benefits are payable "without interruption;"
- The physician's statement must be "anticipatory" (i.e., based on an expectation rather than accomplished fact); and,
- The Secretary will assist recipients in establishing eligibility for the payments.

We will encourage recipients to submit the necessary evidence as early as possible to facilitate our administration of the provision.

Section 1611(e)(1)(H) allows, but does not require, the Secretary to enter into agreements with outside agencies and organizations for making the determinations required under section 1611(e)(1)(G). We are not exercising the option at this time. The determinations are of a kind that the Social Security Administration makes in the normal course of administering the SSI program.

Proposed Regulations Applicable to Both Categories of Benefits

The proposed regulatory amendments include the following policy provisions that are applicable to both categories of benefits:

1. We will compute a recipient's benefits under sections 1611(e)(1)(E) and 1611(e)(1)(G) of the Act on the basis of the permanent living arrangement used to compute benefits for the month immediately prior to the first month the recipient is otherwise subject to suspension under § 416.1325 or subject to a reduced benefit amount under § 416.414 because of residence in an institution. All the Federal income provisions (including living arrangements, in-kind support and maintenance, and deeming) applicable to the recipient's permanent living arrangement will continue to apply for the period in which benefits are payable while in the institution. This also means that we will compute the benefits as an eligible couple (instead of as two eligible individuals) for months in which

either benefit is being paid to one member of the couple.

We are also proposing to amend the rules on temporary absence from a living arrangement at § 416.1149 to show that these recipients are "temporarily absent" from their permanent living arrangement. This living arrangement as a computation basis will not extend past the last month that section 1611(e)(1)(E) or section 1611(e)(1)(G) benefits are payable or, if the recipient is discharged in the month following the last month of eligibility for section 1611(e)(1)(E) or section 1611(e)(1)(G) benefits, past the date of discharge. In the event the recipient remains institutionalized and becomes eligible for a reduced benefit, the temporary absence ends, and we will consider the institution as the permanent living arrangement. The computation basis will no longer include factors (e.g., deemed income) which were applicable in the recipient's last permanent living arrangement.

We are amending §§ 416.1147, 416.1149, and 416.1167 to reflect the temporary absence rules applicable to the treatment of in-kind support and maintenance and deeming of income and resources for these two types of benefits. We are also amending §§ 416.410, 416.412, 416.413, and 416.414 both to reference the extension of full benefit eligibility to institutionalized recipients under sections 1611(e)(1)(E) and 1611(e)(1)(G) and to update and include the full Federal yearly benefit rate applicable in recent years to an eligible individual, qualified individual, and an eligible couple.

2. The proposed new §§ 416.212(a)(2) and 416.212(c) and proposed amendments to § 416.540 (b) and (c) state the policy barring reimbursement to an institution for a recipient's current maintenance (excepting, of course, reimbursement of expenditures for personal needs) from the benefits authorized under section 1611(e)(1)(E) and section 1611(e)(1)(G) of the Act.

Section 1611(e)(1)(E) prohibits payment of benefits unless the institution agrees to permit the recipient to retain any benefits paid under this section. If the institution is receiving Medicaid payments for the recipient, we rely on the agreement the institution signed with the State Medicaid agency to ensure this condition is enforced. However, section 1611(e)(1)(G) does not specifically require that the recipient be permitted to retain the benefits payable under that section, as does section 1611(e)(1)(E). The legislative history is clear, however, that Congress intended that the benefits payable under section 1611(e)(1)(G) be available for maintenance of the recipient's home or living arrangement and not for paying the institutions for the cost of the recipient's current maintenance except reimbursement of expenditures of personal needs. Moreover, as noted above, section 1902(o) of the Act requires that all State Medicaid plans provide for disregarding any SSI payments in computing the post-eligibility contribution of the individual to the cost of care. Consequently, to permit institutions to secure these benefits would appear to negate the purpose of the legislation and in the case of Medicaid institutions, be in conflict with section 1902(o) of the Act. Based on this intent and section 1902(o), we are extending the prohibition on the payment of benefits to, or the use of benefits by, an institution to defray current maintenance costs, except personal needs items, to benefits payable under section 1611(e)(1)(G). This prohibition concerning benefits payable under the two sections will be implemented as follows.

The current § 416.640(c) prohibits a representative payee from reimbursing an institution from SSI benefits for the current maintenance costs of an institutionalized recipient when Medicaid pays to the institution more than 50 percent of the cost of the individual's care. We amended § 416.640(c) to provide that the prohibition on reimbursement for current maintenance costs (with the exception of personal needs) would apply to recipients who are receiving benefits payable under section 1611(e)(1)(E) as well as section 1611(e)(1)(G) of the Act. Additionally, in view of Congressional intent that benefits payable under these two sections be used for meeting expenses outside the institution, the amended § 416.640(b) and new §§ 416.212(a)(2) and 416.212(c) provide that an institution must allow the recipient to retain benefits paid under sections 1611(e)(1)(E) and 1611(e)(1)(G). The institution can only be reimbursed for nominal costs it may have incurred for the recipient's personal needs such as personal hygiene items, snacks, and candy. We believe that payments to the institution for these costs is not inconsistent with sections 1611(e)(1)(E) and 1611(e)(1)(G). However, reimbursement is not permitted beyond personal needs.

3. We are proposing to amend § 416.2040 to reflect that for States whose supplementation programs are federally administered under the authority of section 1616(a) of the Act and/or section 212 of Public Law 93-66, institutionalized recipients receiving benefits under either section 1611(e)(1)(E) or section 1611(e)(1)(G) can continue to be eligible to receive the optional/mandatory State supplementary payments. In addition, a recipient who would be eligible for benefits authorized under § 416.212 but for countable income which reduces his or her Federal SSI benefit to zero may still be eligible to receive a Federally-administered States supplementary payment. Non-Federally-administered States will elect whether institutionalized beneficiaries receiving Federal benefits under either section 1611(e)(1)(E) or section 1611(e)(1)(G) will receive the same State supplementary payment they received in the first full month of institutionalization or the payment (if any) normally made in such circumstances.

We are extending eligibility for federally administered State supplementation to recipients receiving benefits payable under the two sections. With respect to federally administered optional State supplementation, section 1616(b)(2) of the Act provides the Secretary with broad authority to adopt such " * * * procedural or other general administrative provisions, as the Secretary finds necessary * * * to achieve efficient and effective administration of both the program which he conducts under this title and the optional State supplementation." The regulation at § 416.2005(d) provides similar authority for federally administered mandatory State supplements. These authorities enable SSA to administer statutory provisions that affect State supplementation in a fashion fully in accord with their underlying congressional intent. Congress, when enacting section 1611(e)(1)(E) and section 1611(e)(1)(G), intended that recipients not be disadvantaged financially when entering an institution for a stay of short duration. To implement this intention, we consider the recipient's living arrangement as not having changed when computing the amount of the Federal benefit payable under sections 1611(e)(1)(E) and 1611(e)(1)(G). The same policies used for determining the Federal benefit will be used to determine the State supplementary payment. Thus, a recipient's living arrangement would not be considered to have changed for purposes of determining the recipient's State supplementary payment. This will ensure that the State supplementary payments payable in the month prior to the first full month of institutionalization will, subject to the income counting provisions, continue through the months of institutionalization. Thus, we believe

that the policy will assist the Secretary in achieving efficient and effective administration of both the title XVI and State supplementary payment programs, because continuing the State supplementary payments will negate the need for field office intervention, with attendant error potential.

In light of the programmatic and administrative concerns set forth above, it is reasonable to conclude that the Secretary may exercise discretion and require, under the authority of section 1616(b)(2) of the Act, States, whose State supplementary payments are federally administered, to continue to supplement the full benefit rate payable for months of hospitalization under both section 1611(e)(1)(E) and section 1611(e)(1)(G).

4. We are also amending § 416.1325 of subpart M in part 416 to show that benefits will not be suspended for months of residency in a public institution is the recipient is eligible for benefits payable under section 1611(e)(1)(E) or section 1611(e)(1)(G) of the Act for those months. However, this amended rule is not being included in these regulations and, instead, will be separately published as an interim final rule in final regulations which recodify subpart M entitled: "Suspensions, Terminations, and Advance Notice of Unfavorable Determination."

Regulatory Procedures

Executive Order 12291

These proposed regulations have been reviewed under Executive Order 12291 and the Secretary has determined that this is not a major rule because program costs for implementing the legislation upon which these rules are based are not anticipated to exceed $16.9 million a year for the next 2 fiscal years. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

This proposed rule contains information collection requirements in §§ 416.212(b)(3) and 416.212(b)(4). As required by section 2(a) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), we will submit a copy to the Office of Management and Budget (OMB) for its review. Other organizations and individuals desiring to submit comments on these information collection requirements should direct them to the agency official whose name appears in this preamble and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, room 3208, Washington, DC 20503, Attention: Desk Officer for HHS.

Public reporting burden for each of these collections of information is estimated to average 5 minutes per response. This includes the time it will take to read the instructions, gather the necessary facts, and provide the information requested. The respondents to the collection in subsection (3) will be physicians. The respondents to the requirement in subsection (4) will be recipients of SSI payments. We estimate that 60,000 people will provide this information yearly. The total annual burden for both information collections is therefore estimated to be 5,000 hours. If you have any comments or suggestions on this estimate, write to the Social Security Administration, Attn: Reports Clearance Officer, 1-A-21 Operations Building, Baltimore, MD 21235, and to the Office of Management and Budget, Paperwork Reduction Project (0960-NEW), Washington, DC 20503.

Regulatory Flexibility Act

We certify that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354 the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 93.807, Supplemental Security Income Program.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits; Public Assistance programs; Supplemental Security Income.

Dated: December 13, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: March 11, 1992.

Louis W. Sullivan.

Secretary of Health and Human Services.

For the reasons set forth in the preamble, subparts B, D, F, K, and T of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended to read as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart B—Eligibility

1. The authority citation for part 416, subpart B is revised to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c.

2. Section 416.211 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 416.211 You are a resident of a public institution.

(1) *General rule.* (1) Subject to the exceptions described in paragraphs (b), (c), and (d) of this section and § 416.212 of this subpart, you are not eligible for SSI benefits for any month throughout which you are a resident of a public institution as defined in § 416.201. In addition, if you are a resident of a public institution when you apply for SSI benefits and meet all other eligibility requirements, you cannot be eligible for benefits until the day of your release from the institution. The amount of your SSI benefits for the month of your release will be prorated (see subpart D) beginning with the date of your release.

* * * * *

(b) *Exception—SSI benefits payable at a reduced rate.* (1) You may be eligible for SSI benefits at a reduced rate described in § 416.414, if—

(i) The public institution in which you reside throughout a month is a medical care facility for which Medicaid (title XIX of the Act) pays a substantial part (more than 50 percent) of the cost of your care; or

(ii) You reside for part of a month in a public institution and the rest of the month in a public institution or private medical facility where Medicaid pays more than 50 percent of the cost of your care; and,

(iii) You are ineligible in that month for a benefit described in § 416.212 of this subpart that is payable to a person temporarily confined in a medical facility.

§§ 416.212 through 416.214 [Redesignated as §§ 416.213 through 416.215]

3. Sections 416.212 through 416.214 are redesignated as §§ 416.213 through 416.215 respectively and a new § 416.212 is added to read as follows:

§ 416.212 Continution of full benefits in certain cases of medical confinement.

(a) *Benefits payable under section 1611(e)(1)(E) of the Social Security Act.* Subject to eligibility and regular computation rules (see Subparts B and D of this Part), you are eligible for the benefits payable under section 1611(e)(1)(E) of the Social Security Act for up to 2 full months of medical confinement during which your benefits would otherwise be suspended because of residence in a public institution or reduced because of residence in a public or private institution where Medicaid

pays over 50 percent of the cost of your care if—

(1) You were eligible for benefits based on either section 1619(a) or section 1619(b) of the Social Security Act in the month before the first full month of residence in an institution;

(2) The institution agrees that no portion of these benefits will be paid to or retained by the institution excepting nominal sums for reimbursement of the institution for any outlay for a recipient's personal needs (e.g., personal hygiene items, snacks, candy); and,

(3) The month of your institutionalization is one of the first 2 full months of a continuous period of confinement.

(b) *Benefits payable under section 1611(e)(1)(G) of the Social Security Act.* Subject to eligibility and regular computation rules (see subparts B and D of this part), you are eligible for the benefits payable under section 1611(e)(1)(G) of the Social Security Act for up to 3 full months of medical confinement during which your benefits would otherwise be suspended because of residence in a public institution or reduced because of residence in a public or private institution where Medicaid pays over 50 percent of the cost if—

(1) You were eligible for SSI cash benefits and/or Federally-administered State supplementary payments for the month immediately prior to the first full month you were a resident in such institution;

(2) The month of your institutionalization is one of the first 3 full months of a continuous period of confinement;

(3) A physician certifies, in writing, that you are not likely to be confined for longer than 90 full consecutive days following the day you entered the institution, and the certification is submitted to SSA no later than the day of discharge or the 90th full day of confinement, whichever is earlier; and,

(4) You need to pay expenses to maintain the home or living arrangement to which you intend to return after institutionalization and evidence regarding your need to pay these expenses is submitted to SSA no later than the day of discharge or the 90th full day of confinement, whichever is earlier.

We will determine the date of submission of the evidence required in paragraphs (b) (3) and (4) of this section to be the date we receive it or, if mailed, the date of the postmark.

(c) *Prohibition against using benefits for current maintenance.* If the recipient is a resident in an institution, the recipient or his or her representative payee will not be permitted to pay the institution any portion of benefits payable under section 1611(e)(1)(G) excepting nominal sums for reimbursement of the institution for any outlay for the recipient's personal needs (e.g., personal hygiene items, snacks, candy). If the institution is the representative payee, it will not be permitted to retain any portion of these benefits for the cost of the recipient's current maintenance excepting nominal sums for reimbursement for outlays for the recipient's personal needs.

Subpart D—Amount of Benefits

4. The authority citation for part 416, subpart D continues to read as follows:

Authority: Secs. 1102, 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383.

5. Section 416.410 is revised to read as follows:

§ 416.410 Amount of benefits; eligible individual.

The benefit under this part for an eligible individual (including the eligible individual receiving benefits payable under the § 416.212 provisions) who does not have an eligible spouse, who is not subject to either benefit suspension under § 416.1325 or benefit reduction under § 416.414, and who is not a qualified individual (as defined in § 416.221) shall be payable at the rate of $4,884 per year ($407 per month) effective for the period beginning January 1, 1991. This rate is the result of a 5.4 percent cost-of-living adjustment (see § 416.405) to the December 1990 rate. For the period January 1, through December 31, 1990, the rate payable, as increased by the 4.7 percent cost-of-living adjustment, was $4,632 per year ($386 per month). For the period January 1, through December 31, 1989, the rate payable, as increased by the 4 percent cost-of-living adjustment, was $4,416 per year ($368 per month). For the period January 1, through December 31, 1988, the rate payable, as increased by the 4.2 percent cost-of-living adjustment, was $4,248 per year ($354 per month). For the period January 1, through December 31, 1987, the rate payable, as increased by the 1.3 percent cost-of-living adjustment, was $4,080 per year ($340 per month). For the period of January 1, through December 31, 1986, the rate payable, as increased by the 3.1 percent cost-of-living adjustment, was $4,032 per year ($336 per month). For the period January 1, through December 31, 1985, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $3,900 ($325 per month). For the period January 1, through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $3,768 per year ($314 per month). For the period of July 1, through December 31, 1983, the rate payable was $3,561.60 per year ($304.30 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, section 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $3,411.60 yearly ($284.30 monthly). The monthly rate is reduced by the amount of the individual's income which is not excluded pursuant to subpart K of this part.

6. Section 416.412 is revised to read as follows:

§ 416.412 Amount of benefits; eligible couple.

The benefit under this part for an eligible couple (including couples where one or both members of the couple are receiving benefits payable under the § 416.212 provisions), neither of whom is subject to suspension of benefits based on § 416.1325 or reduction or benefits based on § 416.414 nor is a qualified individual (as defined in § 416.221) shall be payable at the rate of $7,320 per year ($610 per month), effective for the period beginning January 1, 1991. This rate is the result of a 5.4 percent cost-of-living adjustment (see § 416.405) to the December 1990 rate. For the period January 1, through December 31, 1990, the rate payable, as increased by the 4.7 percent cost-of-living adjustment, was $6,948 per year ($579 per month). For the period January 1, through December 31, 1989, the rate payable, as increased by the 4 percent cost-of-living adjustment, was $6,636 per year ($553 per month). For the period January 1, through December 31, 1988, the rate payable, as increased by the 4.2 percent cost-of-living adjustment, was $6,384 ($532 per month). For the period January 1, through December 31, 1987, the rate payable, as increased by the 1.3 percent cost-of-living adjustment, was $6,120 ($510 per month). For the period January 1, through December 31, 1986, the rate payable, as increased by the 3.1 percent cost-of-living adjustment, was $6,048 ($504 per month). For the period January 1, through December 31, 1985, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $5,856 ($488 per month). For the period January 1, through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $5,664 per year ($472 per month). For the period July 1, through December 31, 1983, the rate payable was $5,476.80 per year ($456.40 per month), as provided by the

Social Security Amendments of 1983 (Pub. L. 98–21, section 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $5,116.80 yearly ($426.40 monthly). The monthly rate is reduced by the amount of the couple's income which is not excluded pursuant to subpart K of this part.

7. Section 416.413 is revised to read as follows:

§ 416.413 Amount of benefits; qualified individual.

The benefit under this part for a qualified individual (defined in § 416.221) is payable at the rate for an eligible individual or eligible couple plus an increment for each essential person (defined in § 416.222) in the household, reduced by the amount of countable income of the eligible individual or eligible couple as explained in § 416.420. A qualified individual will receive an increment of $2,448 per year ($204 per month), effective for the period beginning January 1, 1991. This rate is the result of the 5.4 percent cost-of-living adjustment (see § 416.405) to the December 1990 rate, and is for each essential person (as defined in § 416.222) living in the household of a qualified individual. (See § 416.532.) For the period January 1, through December 31, 1990, the rate payable, as increased by the 4.7 percent cost-of-living adjustment, was $2,316 per year ($193 per month). For the period January 1, through December 31, 1989, the rate payable, as increased by the 4 percent cost-of-living adjustment, was $2,208 per year ($184 per month). For the period January 1, through December 31, 1988, the rate payable, as increased by the 4.2 percent cost-of-living adjustment, was $2,124 ($177 per month). For the period January 1, through December 31, 1987, the rate payable, as increased by the 1.3 percent cost-of-living adjustment, was $2,040 ($170 per month). For the period January 1, through December 31, 1986, the rate payable, as increased by the 3.1 percent cost-of-living adjustment, was $2,016 ($168 per month). For the period January 1, through December 31, 1985, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $1,956 ($163 per month). For the period January 1, through December 31, 1984, the rate payable, as increased by the 3.5 percent cost-of-living adjustment, was $1,884 per year ($157 per month). For the period July 1, through December 31, 1983, the rate was $1,830 per year ($152.50 per month), as provided by the Social Security Amendments of 1983 (Pub. L. 98–21, section 401). For the period July 1, 1982, through June 30, 1983, the rate, as increased by the 7.4 percent cost-of-living adjustment, was $1,710 yearly ($142.50 monthly). The total benefit rate, including the increment, is reduced by the amount of the individual's or couple's income that is not excluded pursuant to subpart K of this part.

8. Section 416.414 is amended by revising the introductory statement of paragraph (a) to read as follows:

§ 416.414 Amount of benefits; eligible individual or eligible couple in a medical care facility.

(a) *General rule.* Except where the § 416.212 provisions provide for payment of benefits at the rates specified under §§ 416.410 and 416.412, reduced SSI benefits are payable to persons and couples who are in medical care facilities where more than 50 percent of the cost of their care is paid by a State plan under title XIX of the Social Security Act (Medicaid). Persons and couples to whom these reduced benefits apply are—

* * * * *

Subpart F—Representative Payment

9. The authority citation for part 416, subpart F continues to read as follows:

Authority: Secs. 1102 and 1631(a)(2) and (d)(1) of the Social Security Act; 42 U.S.C. 1302 and 1383(a)(2) and (d)(1).

10. Section 416.640 is amended by revising paragraph (B) to read as follows:

§ 416.640 Use of benefit payments.

* * * * *

(b) *Institution not receiving Medicaid funds on beneficiary's behalf.* If a beneficiary is receiving care in a Federal, State, or private institution because of mental or physical incapacity, current maintenance will include the customary charges for the care and services provided by an institution, expenditures for those items which will aid in the beneficiary's recovery or release from the institution, and nominal expenses for personal needs (e.g., personal hygiene items, snacks, candy) which will improve the beneficiary's condition. Except for the benefits payable under the § 416.212 provisions which are intended to be used for maintaining a home or living arrangement outside the institution to which the individual intends to go after confinement and which the institution cannot use for a beneficiary's current maintenance, excepting nominal sums for the recipient's personal needs, there is no restriction in using SSI benefits for a beneficiary's current maintenance in an institution. Any payments remaining from SSI benefits may be used for a temporary period to maintain the beneficiary's residence outside of the institution unless a physician has certified that the beneficiary is not likely to return home.

Example: A hospitalized disabled beneficiary is entitled to a monthly benefit of $264. The beneficiary, who resides in a boarding home, has resided there for over 6 years. It is doubtful the beneficiary will leave the boarding home in the near future. The boarding home charges $215 per month for the beneficiary's room and board.

The beneficiary's representative payee pays the boarding home $215 (assuming an unsuccessful effort was made to negotiate a lower rate during the beneficiary's absence) and uses the balance to purchase miscellaneous personal items for the beneficiary. There are no benefits remaining which can be conserved on behalf of the beneficiary. The payee's use of the benefits is consistent with our guidelines.

(c) *Institution receiving Medicaid funds on beneficiary's behalf.* Except in the case of a beneficiary receiving benefits payable under § 416.212, if a beneficiary resides throughout a month in an institution that receives more than 50 percent of the cost of care on behalf of the beneficiary from Medicaid, any payments due shall be used only for the personal needs of the beneficiary and not for other items of current maintenance.

Example: A disabled beneficiary resides in a hospital. The superintendent of the hospital receives $30 per month as the beneficiary's payee. The benefit payment is disbursed in the following manner, which would be consistent with our guidelines:

Miscellaneous canteen items	$10
Clothing	12
Conserved for future needs of the beneficiary	8

For a beneficiary receiving benefits payable under § 416.212, benefits must be available for expenses of maintaining a home or living arrangement to which the beneficiary intends to go after medical confinement.

Subpart K—Income

11. The authority citation for part 416, subpart K is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383.

12. Section 416.1147 is amended by revising paragraphs (c) and (f) to read as follows:

§ 416.1147 How we value in-kind support and maintenance for a couple.

* * * * *

(c) *One member of a couple lives in another person's household and*

receives food and shelter from that person and the other member of the couple is in a medical institution. (1) If one of you is living in the household of another person who provides you with both food and shelter and the other is in a medical institution that receives substantial Medicaid payments for his or her care (§ 416.211(b)) and is ineligible in the month for either benefit payable under § 416.212, we compute your benefits as if you were separately eligible individuals. This begins with the first full calendar month that one of you is in the medical institution. The one living in another person's household is eligible at an eligible individual's Federal benefit rate and one-third of that rate is counted as income not subject to any income exclusions. The one in the medical institution cannot receive more than the reduced benefit described in § 416.414(b)(1).

(2) If the one member of the couple in the institution is eligible for one of the benefits payable under the § 416.212 provisions, we compute benefits as a couple at the rate specified under § 416.412. However, if that one member remains in the institution for a full month after expiration of the period benefits based on § 416.212 can be paid, benefits will be computed as if each person were separately eligible as described under paragraph (c)(1) of this section. This begins with the first calendar month after expiration of the period benefits based on § 416.212 can be paid.

* * * * *

(f) *One member of a couple is subject to the presumed value rule and the other member is in a medical institution.* (1) If one of you is subject to the presumed value rule and the other is in a medical institution that receives substantial Medicaid payments for his or her care (see § 416.211(b)) and is ineligible in that month for either benefit payable under § 416.212, we compute your benefits as if both members of the couple are separately eligible individuals. This begins with the first full calendar month that one of you is in the medical institution. We value any food, clothing, or shelter received by the one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(12)), unless you can show that their value is less as described in § 416.1140(a)(2). The member of the couple in the medical institution cannot receive more than the reduced benefit described in § 416.414(b)(1).

(2) If one of you is subject to the presumed value rule and the other in the institution is eligible for one of the benefits payable under § 416.212, we compute the benefits as a couple at the rate specified under § 416.412. However, if the one in the institution remains in the institution after the period benefits based on § 416.212 can be paid, we will compute benefits as if each member of the couple were separately eligible as described in paragraph (f)(1) of this section.

13. Section 416.1149 is amended by revising paragraphs (a) and (c)(1) to read as follows:

§ 416.1149 What is a temporary absence from your living arrangement.

(a) *General.* A temporary absence may be due to employment, hospitalization, vacations, or visits. The length of time an absence can be temporary varies depending on the reason for your absence. For purposes of valuing in-kind support and maintenance under §§ 416.1130 through 416.1148, we apply the rules in this section. In general we will find a temporary absence from your permanent living arrangement if you (or you and your eligible spouse)—

(1) Become a resident of a public institution, or a public or private medical care facility where over 50 percent of the cost of care is paid by Medicaid, and are eligible for the benefits payable under § 416.212; or,

(2) Were in your permanent living arrangement for at least 1 full calendar month prior to the absence and intend to, and do, return to your permanent living arrangement in the same calendar month in which you (or you and your spouse) leave, or in the next month.

* * * * *

(c) *Rules for temporary absence in certain circumstances.*

(1)(i) If you enter a medical care facility that receives substantial Medicaid payments for your care (as described in § 416.211(b)) and you are not eligible for either benefit payable under § 416.212 (and you have not received such benefits during your current period of confinement) and you intend to return to your prior living arrangement (and you are eligible for the reduced benefits payable under § 416.414 for full months in the facility), we consider this a temporary absence regardless of the length of your stay in the facility. We use the rules that apply to your permanent living arrangement to value any food, clothing, or shelter you receive during the month (for which reduced benefits under § 416.414 are not payable) you enter or leave the facility. During any full calendar month you are in the medical care facility, you cannot receive more than the Federal benefit rate described in § 416.414(b)(1). We do not consider food or shelter provided during a medical confinement to be income.

(ii) If you enter a medical care facility and you are eligible for either benefit payable under § 416.212, we also consider this a temporary absence from your permanent living arrangement. We use the rules that apply to your permanent living arrangement to value any food, clothing, or shelter you receive during the month you enter the facility and throughout the period you are eligible for these benefits. We consider your absence to be temporary through the last month benefits under § 416.212 are paid unless you are discharged from the facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

* * * * *

14. Section 416.1167 is amended by revising paragraph (a) to read as follows:

§ 416.1167 Temporary absences and deeming rules.

(a) *General.* During a temporary absence, we continue to consider the absent person a member of the household. A temporary absence occurs when—

(1) You, your ineligible spouse, parent, or an ineligible child leaves the household but intends to and does return in the same month or the month immediately following; or

(2) You enter a medical care facility and are eligible for either benefit payable under § 416.212. We consider your absence to be temporary though the last month benefits under § 416.212 were paid unless you were discharged from the facility in the following month. In that case, we consider your absence to be temporary through the date of discharge.

* * * * *

Subpart T—State Supplementation Provisions; Agreements; Payments

15. The authority citation for part 416, subpart T is revised to read as follows:

Authority: Secs. 1102, 1616, 1618, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382e, 1382g, and 1383.

16. Section 416.2040 is amended by revising paragraph (a) and adding a new paragraph (d) to read as follows:

§ 416.2040 Limitations on eligibility.

* * * * *

(a) *Inmate of public institution.* A person who is a resident in a public institution for a month, is ineligible for a

Federal benefit for that month under the provision of § 416.211(a), and does not meet the requirements for any of the exceptions in § 416.211 (b), (c), or (d), or § 416.212, also shall be ineligible for a Federally-administered State supplementary payment for that month.

* * * * *

(d) *Recipient eligible for benefits under § 416.212.* A recipient who is institutionalized and is eligible for either benefit payable under § 416.212 for a month or months may also receive Federally-administered State supplementation for that month. Additionally, a recipient who would be eligible for benefits under § 416.212 but for countable income which reduces his or her Federal SSI benefit to zero, may still be eligible to receive Federally-administered State supplementation.

[FR Doc. 92-23267 Filed 9-25-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 25

[Notice No. 755; 92F-047P]

Change in the Frequency of Filing Brewer's Reports of Operations and Additional Listing of Case and Keg Sizes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to reduce administrative burdens on the brewing industry by allowing certain small brewers to submit reports of operations quarterly instead of monthly. Also, ATF is proposing to revise the conversion table used to calculate the tax liability on removals in containers to include more sizes commonly used in the brewing industry. The table will also be reorganized for ease of use.

These proposed changes should result in fewer forms being filed by brewers and fewer documents being processed by the government, and ease the tax computation process. ATF expects that this will result in cost savings both for the brewing industry and for the government. This proposal will reduce the regulatory burden on small brewers.

DATES: Written comments must be received by October 28, 1992.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221; Notice No. 755.

Copies of written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Public Affairs and Disclosure, room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon or Marjorie Ruhf, Wine and Beer Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927-8230.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1992, President Bush announced a regulatory initiative. This initiative called for a review of all existing regulations and programs to identify and which impose substantial costs on the economy. As part of this review, ATF is proposing regulations which will reduce the regulatory burden on small brewers.

Brewer's Report of Operations, Form 5130.9

ATF proposes to allow small brewers to file the Brewer's Report of Operations, Form 5130.9, quarterly instead of monthly. The criterion proposed in § 25.297(b) for a brewer to file a quarterly report is based on the size of the brewing operations the previous year. A brewer may file a quarterly report if, during the previous calendar year, the brewer produced less than 10,000 barrels of beer. Production is defined in § 25.297(b) as the total of beer brewed, liquids added to beer, and beer received from other breweries of the same ownerhip in the previous year.

To begin the quarterly filing of a Brewer's Report of Operations, a brewer would state such intent in the "Remarks" section when filing the last monthly Form 5130.9 before commencing the quarterly filing of these reports. Reports will be filed within 15 days after the close of the calendar quarter; i.e., by January 15th, for October through December reports, and by April 15th, July 15th, and October 15th for other calendar quarter reports. A definition of "calendar quarter" would be added to § 25.5.

If a brewer determines that the 10,000 barrel quantity will be exceeded in any year, a Form 5130.9 will be filed for the month in which that limitation is exceeded and for all subsequent months of that calendar year.

Brewers should note that the criterion for filing quarterly reports is different than the criteria for a small brewer to be eligible to pay the reduced rate of beer tax under 26 U.S.C. 5051. Furthermore, the criterion for filing the operational report quarterly applies to production at individual brewing locations and not to the overall size of the brewer. Thus, even a very large brewer may file quarterly reports for small brewing locations where the brewer's production does not exceed 10,000 barrels annually.

Under § 25.297(b), the regional director (compliance) may require any brewer filing reports of brewery operations quarterly to file such reports monthly if there is a jeopardy to the revenue.

The major reason for requiring a report of operations is for ATF to determine compliance with Internal Revenue Code brewery regulations and specifically, beer excise tax payments. Nearly 99 percent of beer excise tax is paid by breweries producing more than 10,000 barrels of beer per year.

A secondary reason for the report of operations is to provide monthly statistical data to the brewing industry and ATF. If small brewers file their reports of operations quarterly instead of monthly, the monthly reports received from large breweries would still provide most of the data furnished to ATF (nearly 99 percent). Under the proposed criterion in § 25.297(b), more than 280 of the approximately 345 qualified brewers would be eligible to file a quarterly report of operations instead of a monthly report. This would reduce the number of reports filed by over 54%, and reduce the number of burden hours in preparing and sending monthly reports of operations. Brewers operating near the maximum operational level for quarterly reporting may need to spend time each month to ensure they have not exceeded the 10,000 barrel level.

If this proposal becomes a final rule, Form 5130.9 will be revised. Further, if Form 5130.9 is revised, ATF plans to remove the shading from column (a), line 15, indicating direct cellar operation removals for consumption or sale. This change would allow brewpubs to show removals of tanks or from tanks in the brewery cellar, to a tavern operated on the brewery premises. When the form was originally designed, no provision was made for this activity, and brewpubs have reported such removals on a line which does not accurately describe the disposition. Therefore, this proposal does not require any new information, but simply changes the location on the form where the information will be reported. ATF welcomes suggestions for other revisions to the form.

This notice also proposes conforming changes to all sections of regulations which refer to the existing form title, Brewer's Monthly Report of Operations, or to the monthly reporting requirement.

Authorized Keg Sizes

Prescribed sizes for kegs are listed in § 25.156. All of these sizes are fractional parts of the beer barrel, which is defined by law as not more than 31 gallons. These sizes are used in making tax liability computations.

With the growth of the microbrewing industry, other keg sizes have come into common use; many of these are European in origin and reflect net contents in metric measure. As a result, individual brewers have requested permission to use keg sizes not prescribed by this section.

ATF proposes to add 5 gallon, 30 liter and 50 liter kegs as authorized fractional keg sizes in § 25.156. Additionally, this section will prescribe the barrelage equivalent for these kegs for the purpose of taxpayment and recordkeeping. Comments are solicited from brewers regarding other keg sizes which are in widespread use. If this proposal is adopted, the existing individual brewery authorizations to use these size kegs under the alternate method regulations will become obsolete.

Bottle and Case Sizes

Section 25.158 lists case sizes by number of bottles per case and the bottle size, and provides a barrelage equivalent for these various case sizes. This table is used for calculating the tax liability.

With the growth of the microbrewing industry, and the introduction of innovative packaging by many brewers, ATF finds that additional bottle and cases sizes have come into common use. Therefore, ATF proposes to add a number of bottles and cases to the table in § 25.158. Additionally, a separate table is proposed for bottles which are produced in metric sizes, including 500 and 750 milliliter bottles, and 1 liter, 2 liter, and 5 liter bottles. Barrelage equivalents are prescribed for all case sizes.

These tables are also reorganized, with the bottle size being listed first, followed by the number of bottles per case and the barrelage equivalent. ATF believes this organization will make the tables easier to use.

ATF solicits comment from brewers regarding other bottle sizes or case sizes which may be in common usage.

Executive Order 12291

In compliance with Executive Order 12291 issued February 17, 1981, ATF has determined that any regulation resulting from this notice of proposed rulemaking would not constitute a "major rule" since it would not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this notice of proposed rulemaking because a final rule would not have a significant economic impact on a substantial number of small entities. Any final rule would not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

The final rule, if adopted, is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law No. 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this proposed rule because it does not impose any new reporting requirements. This proposal, if implemented, will eliminate some of the reporting requirements applicable to small brewers.

Public Participation

ATF requests comments from all interested persons. Comments received no later than the closing date of the comment period will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action. ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is public information. During the comment period, any person may submit a request to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to determine whether a public hearing would be necessary.

Other Regulations for Small Brewers

In addition to the specific proposals contained in this notice, ATF seeks comments on other changes in regulations which would benefit small brewers. ATF is seeking proposals or suggestions which would relieve the regulatory burden on microbrewers and pubbrewers in the area of qualification of the brewery, recordkeeping and reporting requirements, and in brewery operational requirements. Respondents should submit comments or suggestions of this nature to the address indicated above. ATF will consider these comments and suggestions in formulating future regulatory changes to brewery regulations.

Disclosure

Copies of this notice and written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Drafting Information

The principal authors of this document are Charles N. Bacon and Marjorie Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 25

Administrative practice and procedure, Authority delegations (Government agencies), Beer, Claims, Electronic fund transfers, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds, Transportation.

Authority and Issuance

Accordingly, it is proposed to amend 27 CFR part 25, Beer, as follows:

Paragraph 1. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c, 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

Par. 2. The table of contents for part 25 is amended by revising the heading of § 25.297 to read as follows:

Sec.

* * * * *

§ 25.297 Brewer's Report of Operations, Form 5130.9.

* * * * *

Par. 3. Section 25.11 is amended by revising the definition of the term *barrel* and by adding a definition of the term *calendar quarter* in alphabetical order to read as follows:

§ 25.11 Meaning of terms.

* * * * *

Barrel. When used as a unit of measure, the quantity equal to 31 U.S. gallons. When used as a container, a consumer package or keg containing a quantity of beer listed in § 25.156, or other size authorized by the regional director (compliance).

* * * * *

Calendar quarter. A three-month period during the year as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

* * * * *

§ 25.152 [Amended]

Par. 4. Section 25.152(b)(2) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

Par. 5. Section 25.156 is revised to read as follows:

§ 25.156 Determination of tax on keg beer.

(a) In determining the tax on beer removed in kegs, a barrel is regarded as a quantity of not more than 31 gallons. The authorized fractional parts of a barrel are whole barrels, halves, thirds, quarters, sixths, and eights, and beer may be removed in kegs rated at those capacities. The following keg sizes are also authorized at the stated barrel equivalents:

Size of keg	Barrel equivalent
5 gallons	0.16129
30 liter	0.25565
50 liter	0.42608

(b) If any barrel or authorized size keg contains a quantity of beer more than two percent in excess of its rated capacity, tax will be determined and paid on the actual quantity of beer (without benefit of any tolerance) contained in the keg.

(c) The quantities of keg beer removed subject to tax will be computed to 5 decimal places. The sum of the quantities computed for any one day will be rounded to 2 decimal places and the tax will be calculated and paid on the rounded sum.

(26 U.S.C. 5051)

Par. 6. Section 25.158 is revised to read as follows:

§ 25.158 Tax computation for bottled beer.

Barrel equivalents for various case sizes are as follows:

(a) *For U.S. measure bottles.*

Bottle size (net contents in fluid ounces)	Number of bottles per case	Barrel equivalent
6	12	0.01815
6	24	0.03629
7	12	0.02117
7	24	0.04234
7	32	0.05645
7	35	0.06174
7	36	0.06351
7	40	0.07056
7	48	0.08468
8	12	0.02419
8	24	0.04839
8	36	0.07258
10	12	0.03024
10	24	0.06048
10	48	0.12097
11	12	0.03327
11	24	0.06653
11.5	24	0.06956
12	12	0.03629
12	15	0.04536
12	20	0.06048
12	24	0.07258
12	30	0.09073
12	48	0.14516
12	50	0.15121
14	12	0.04234
14	24	0.08468
16 (1 pint)	12	0.04839
16 (1 pint)	24	0.09677
22	12	0.06653
22	24	0.13306
24	12	0.07258
30	12	0.09073
32 (1 quart)	12	0.09677
40	12	0.12097
64	1	0.01613
64	4	0.06452
64	6	0.09677
128 (1 gallon)	1	0.03226
288	1	0.07258

(b) *For metric measure bottles.*

Bottle size (metric net contents)	Number of bottles per case	Barrel equivalent
500 milliliters	24	0.10226
750 milliliters	12	0.07670
1 liter	12	0.10226
2 liters	6	0.10226
5 liters	1	0.04261

(c) *For other case sizes.* If beer is to be removed in cases or bottles of sizes other than those listed in the above tables, the brewer shall notify the regional director (compliance) in advance and request to be advised of the fractional barrel equivalent applicable to the proposed case size.

(26 U.S.C. 5412)

§ 25.186 [Amended]

Par. 7. Section 25.186(d) is amended by removing the words "monthly report" wherever they appear, and replacing them with the words "Brewer's Report of Operations."

§ 25.192 [Amended]

Par. 8. Section 25.192(c) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

§ 25.195 [Amended]

Par. 9. Section 25.195 is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

§ 25.196 [Amended]

Par. 10. Section 25.196(c) is amended by removing the words "monthly report" and replacing them with the words "Brewer's Report of Operations."

§ 25.276 [Amended]

Par. 11. Section 25.276(b) is amended by removing the words "monthly reports" and replacing them with the words "the Brewer's Report of Operations, Form 5130.9."

Par. 12. Section 25.286 is amended by revising paragraph (a) and the informational cite at the end of the section to read as follows:

§ 25.286 Claims for remission of tax on beer lost in transit between breweries.

(a) *Filing of claim.* Claims for remission of tax on beer lost in transit between breweries of the same ownership shall be prepared on Form 2635 (ATF F 5620.8) by the brewer or the brewer's authorized agent and submitted with Form 5130.9 of the receiving brewery for the reporting period in which the shipment is received. When the loss is by casualty, the claim will be submitted with the Form 5130.9 for the reporting period in which the loss is discovered. When, for valid reasons, the required claim cannot be submitted with Form 5130.9, the brewer shall attach a statement to Form 5130.9 stating the reason why the claim cannot be filed at the time and stating when it will be filed. A claim will not be allowed unless filed with the regional director (compliance) within 6 months of the date of the loss.

* * * * *

(26 U.S.C. 5056, 5414)

Par. 13. Section 25.296 is amended by revising paragraphs (b) introductory text, (b)(1) and (b)(2) and the informational cite at the end of the section to read as follows:

§ 25.296 Record of beer concentrate.

* * * * *

(b) *Summary report of operations.* A brewer who produces concentrate or reconstitutes beer shall report by specific entries on Form 5130.9, the quantity of beer entered into the concentration process, and the quantity of beer reconstituted from concentrate. In addition, the brewer shall prepare on Form 5130.9, a summary accounting of all concentrate operations at the brewery for the reporting period. This summary accounting will show, in barrels of 31 gallons with fractions rounded to 2 decimal places:

(1) Concentrate on hand beginning of the reporting period;

(2) Concentrate on hand end of the reporting period;

* * * * *

(26 U.S.C. 5415)

Par. 14. Section 25.297 is revised to read as follows:

§ 25.297 Brewer's Report of Operations, Form 5130.9.

(a) *Monthly report of operations.* Except as provided in paragraph (b) of this section, each brewer shall prepare and submit a monthly report of brewery operations on Form 5130.9 to the regional director (compliance) not later than the 15th day of the month following the close of the month for which prepared.

(b) *Quarterly report of operations.* (1) A brewer who produces less than 10,000 barrels of beer per calendar year may file the report of brewery operations quarterly. The report will be filed on Form 5130.9 with the regional director (compliance) not later than the 15th day of the month following the close of the calendar quarter for which prepared. For the purpose of establishing whether a quarterly report may be filed, the brewer will determine annual production of beer by totalling lines 2, 3, and 5, column (f), of Forms 5130.9 for all months of the previous calendar year.

(2) To begin the quarterly filing of a Brewer's Report of Operations, a brewer will state such intent in the "Remarks" section when filing the last monthly Form 5130.9 before the calendar quarter during which the brewer will commence the quarterly filings. A brewer beginning business may file Form 5130.9 quarterly if the brewer states in the "Remarks" section of the form that the annual production of beer is not likely to exceed 10,000 barrels.

(3) If a brewer determines that the 10,000 barrel quantity for a calendar year will be exceeded in any month, the brewer shall file a Form 5130.9 for that month and for all subsequent months of the calendar year.

(4) The regional director (compliance) may at any time require a brewer who is filing a Brewer's Report of Operations quarterly to file such report monthly if there is a jeopardy to the revenue.

(c) *Retention.* The brewer shall retain a copy of the Form 5130.9 as part of the brewery records.

(26 U.S.C. 5415, 5555)

Signed: August 20, 1992.

Stephen E. Higgins,

Director.

Approved: August 26, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-23269 Filed 9-25-92; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 11-12-5592, FRL-4512-4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (BAAQMD) on August 2, 1989, and September 20, 1989. The California Air Resources Board submitted these revisions to EPA on December 31, 1990. The revisions concern the BAAQMD's Regulation 8, Rule 11 (Rule 8-11), Metal Container, Closure and Coil Coating, which controls the emission of volatile organic compounds (VOCs) from can and coil coating operations, and Regulation 8, Rule 16 (Rule 8-16), Solvent Cleaning Operations, which controls the emissions of VOCs from degreasing operations. EPA has evaluated the revisions to Rules 8-11 and 8-16 and is proposing a limited approval under sections 110(k)(3) and 301(a) of the Clean Air Act, as amended in 1990, (CAA or the Act) because these revisions strengthen the SIP. At the same time, EPA is proposing a limited disapproval under sections 110(k)(3) and 301(a) of the CAA because the rules do not meet the Part D, section 182(a)(2)(A) requirement of the CAA.

DATES: Comments must be received on or before October 28, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Northern California, Nevada, and Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

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

FOR FURTHER INFORMATION CONTACT: Denise Odenwalder, Southern California and Arizona Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1200.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included the San Francisco Bay Area Air Basin. 43 FR 8964; 40 CFR 81.305. Because the Bay Area was unable to reach attainment by the statutory attainment date of December 31, 1982, California requested under pre-amended section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. The Bay Area did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California that the BAAQMD's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established

a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to preamended section 172(b) as interpreted in EPA's pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Bay Area is classified as moderate [2]; therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on December 31, 1990, including the rules being acted on in this notice. This notice addresses EPA's proposed action for BAAQMD Rule 8-11, Metal Container, Closure and Coil Coating, and Rule 8-16, Solvent Cleaning Operations. These submitted rules were found to be complete on February 28, 1991, pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51, appendix V [3] and are being proposed for limited approval and limited disapproval.

Rule 8-11 controls the emission of volatile organic compounds (VOCs) from can and coil coating operations and Rule 8-16 controls the emission of VOCs from degreasing operations. VOCs contribute to the production of ground level ozone and smog. The BAAQMD's Rules 8-11 and 8-16 were originally adopted as part of BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for BAAQMD's Rules 8-11 and 8-16.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The BAAQMD retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the Amendments. See 56 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991).

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among the provisions of the CAA is the requirement that a VOC rule must, at a minimum, provide for the implementation of PACT for stationary sources of VOC emissions. This requirement was carried forth from the preamended Act.

For the purpose of assisting state and local agencies in developing PACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 8-11, Metal Container, Closure and Coil Coating, is entitled Control of Volatile Organic Emissions from Existing Stationary Sources Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, EPA document # EPA-450/2-77-008. The CTG applicable to Rule 8-16, Solvent Cleaning Operations, is entitled Control of Volatile Organic Emissions from Solvent Metal Cleaning, EPA document # EPA-450/2-77-022. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD's submitted Rule 8-11, Metal Container, Closure and Coil Coating, includes the following revisions from the current SIP rule:

- Deletes an exemption for used containers
- Includes additional definitions
- Deletes references to effective dates that have passed
- Limits the VOC content of exterior body spray, reconditioned drums, pails, and lids coatings, and inks
- Requires that surface preparation or cleanup solvent and cloth or paper used with the solvent be stored in closed containers
- Clarifies the requirements for use of abatement devices
- Updates the compliance schedule
- Adds requirements for operation and maintenance plans, recordkeeping, and test methods

BAAQMD's submitted Rule 8-16, Solvent Cleaning Operations, includes the following revisions from the current SIP rule:

- Changes the word "degreasing" to "solvent cleaning"
- Includes additional exemptions
- Includes additional definitions
- Distinguishes between the requirements for vapor solvent cleaners, conveyorized solvent cleaners, and cold cleaners
- Deletes a reference to carbon adsorption as one of several possible control systems for large degreasers
- Prohibits the solvent cleaning of porous or absorbent materials
- Adds sections on recordkeeping and test methods

EPA has evaluated BAAQMD's submitted Rules 8-11 and 8-16 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in clearer, more enforceable rules. Furthermore, the addition of more stringent limits for exterior body spray and reconditioned drums, pails, and lids coatings in submitted Rule 8-11 should lead to more emission reductions.

Although the approval of BAAQMD's Rules 8-11 and 8-16 will strengthen the SIP, these rules still contain deficiencies which were required to be corrected pursuant to the section 182(a) (2) (A) requirement of Part D of the CAA. The main deficiency of Rule 8-11 is that it allows the use of a test method, BAAQMD Method 30, that EPA has determined unacceptable. In addition, Rule 8-11 includes BAAQMD Methods 21 and 22, which EPA has not approved, and BAAQMD Method ST-7, which has not been approved for incinerators or other combustion devices. The main deficiency of Rule 8-16 is that it includes BAAQMD Methods 21, 22, and 31, which EPA has not approved. BAAQMD Methods 21, 22, 31, and ST-7 have been submitted to EPA for review. Since the sources regulated by Rule 8-16 do not use incinerators or other combustion devices, Method ST-7 is acceptable for use in the context of this rule. If Methods 21, 22, and 31 are all approved, then Rule 8-16 will not be deficient and EPA will take action to fully approve the rule. However, if any of Methods 21, 22, or 31 are disapproved, then Rule 8-16

will need to be revised. A detailed discussion of rule deficiencies can be found in the Technical Support Documents for Rules 8–11 (September 8, 1992) and 8–16 (September 8, 1992), which are available from the U.S. EPA, Region 9 office. Because of these deficiencies, the rules are not approvable pursuant to section 182 (a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems. If Methods 21, 22, and 31 are approved, EPA would grant approval to Rule 8–16 in the final rulemaking process.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rules do not meet the section 182(a)(2)(A) requirement of part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of BAAQMD's submitted Rules 8–11 and 8–16 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18-month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

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

Regulatory Process

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

Limited approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

EPA's limited disapproval of the State request under §§ 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirements.

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

List of Subjects in 40 CFR Part 52

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

Authority: U.S.C. 7401–7671q

Dated: September 18, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23451 Filed 9–25–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[WA2–2–5568; FRL–4512–8]

Approval and Promulgation of Implementation Plans; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA invites public comment on its proposal to approve in part, disapprove in part, and take no action in part, on numerous revisions to the State of Washington Implementation Plan which were submitted by the Washington Department of Ecology (WDOE) on January 23, 1989 and May 14, 1991. These revisions are essentially administrative in nature and were made to improve the clarity, effectiveness, and enforceability of the state's regulations. The revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act (hereinafter the Act). EPA is also proposing to take no action on a number of provisions which are unrelated to the purposes of the implementation plan.

DATES: Comments must be postmarked on or before October 28, 1992.

ADDRESSES: Comments should be addressed to: Laurie M. Kral, Environmental Protection Agency, Air & Radiation Branch, Docket # WA2–2–5568, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours at:

Air & Radiation Branch, Docket # WA2–2–5568, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101,

or

State of Washington, Department of Ecology, 4550 Third Ave. SE, Lacey, Washington 985047.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, Telephone: (206) 553-4253.

SUPPLEMENTARY INFORMATION:

I. Background

In response to EPA's promulgation of revised ambient air quality standards for particulate matter (PM-10) on July 1, 1987, the State of Washington Department of Ecology (WDOE) revised many of its regulations. On January 23, 1989 WDOE submitted new regulations for Solid Fuel Burning Device Standards (WAC 173-433), Solid Waste Incinerator Facilities (WAC 173-434) and Ambient Air Quality Standards for Particulate Matter (WAC 173-470), as well as revisions to existing regulations for General Regulations for Air Pollution Sources (WAC 173-400), Implementation of Regulations for Air Contaminant Sources (WAC 173-403), Kraft Pulping Mills (WAC 173-405), Sulfite Pulping Mills (WAC 173-410), Primary Aluminum Plants (WAC 173-415), Open Burning (WAC 173-425), and Emergency Episode Plan (WAC 173-435).

In the spring of 1989, WDOE undertook a project to improve the overall quality, consistency, and enforceability of its regulations. On May 14, 1991 WDOE submitted revised regulations for General Regulations for Air Pollution Sources (WAC 173-400), Kraft Pulping Mills (WAC 173-405), Sulfite Pulping Mills (WAC 173-410), Primary Aluminum Plants (WAC 173-415), Open Burning (WAC 173-425), Burning of Field and Forage and Turf Grasses Grown for Seed (WAC 173-430), Solid Fuel Burning Device Standards (WAC 173-433), Solid Waste Incinerator Facilities (WAC 173-434), Sensitive Areas (WAC 173-440), Emission Standards and Controls for Sources Emitting Volatile Compounds (WAC 173-490) and Weather Modification (WAC 173-495). In addition, the regulation for Implementation of Regulations for Air Contaminant Sources (WAC 173-403) was repealed. Many of the regulations and revisions in the January 23, 1989 submittal were superseded by completely revised and updated regulations in the May 14, 1991 submittal.

II. Plan Revisions

EPA is today proposing to approve in part, disapprove in part, and take no action in part, 12 of the 14 revised regulations submitted on January 23, 1989 and May 14, 1991. Action on the revised Emission Standards and Controls for Sources Emitting Volatile Compounds (WAC 173-490) is being proposed under separate rulemaking. The regulation for Weather Modification (WAC 173-495) is not related to the purposes of the Act and, therefore, EPA is taking no action on the submittal of this regulation. The following is a discussion of the revisions to each of the 12 regulations and EPA's proposed actions thereon:

General Regulations for Air Pollution Sources (WAC 173-400)

These regulations were extensively revised by incorporating all of the provisions of WAC 173-403, Implementation of Regulations for Air Contaminant Sources, into the existing WAC 173-400. The regulations were further revised by deleting duplicative and out-dated provisions, and clarifying emission limits and other requirements. EPA is proposing to approve the revisions to WAC 173-400 with the exceptions noted below. EPA is also proposing to approve the updated WDOE "Source Test Manual—Procedures for Compliance Testing," dated July 12, 1990, which is referenced in WAC 173-400-050, WAC 173-400-060, and WAC 173-400-105.

Note that EPA is proposing to approve WAC 173-400-110, New Source Review (NSR), even though it has not been revised to conform to the new requirements of the Clean Air Act Amendments of 1990. Under the provisions of the Act, revisions to Title I, Part D (nonattainment area) NSR rules are required to be submitted by June 30, 1992 for PM-10 nonattainment areas and by November 15, 1992 for most ozone and carbon monoxide nonattainment areas. The February 19, 1991 revisions to WAC 173-400-110 were made to comply with the requirements of EPA regulations (40 CFR part 51, subpart I) in effect at that time. EPA is, therefore, proposing to approve these revised regulations under the provision of its "grandfathering policy", since they meet the requirements of the regulations in effect at the time they were adopted and submitted by the state.

Director's Discretion Provisions

EPA is proposing to disapprove WAC 173-400-040(1) (c) and (d) which allow for the establishment of alternative opacity limits. While it is entirely appropriate for state regulations to contain procedures for establishing alternative opacity limits (i.e., a director's discretion provision), the state cannot unilaterally change the provisions of the EPA-approved SIP (see section 110(i) of the Act). In general, EPA does not approve "director's discretion" provisions for incorporation into the SIP, because the existence of such provisions in the SIP would create the misimpression that the state can change SIP requirements without EPA approval. Furthermore, WAC 173-400-040(1) (c) and (d) do not ensure that all of the requirements of the Act will be met prior to the approval of an alternative opacity limit.

EPA is proposing to disapprove the second paragraph of WAC 173-400-040(6). The second paragraph provides an exception to the sulfur dioxide emission limitation but does not ensure that all of the requirements of the Act will be met. Nor does it ensure that a replacement emission limit will be established for a source which is granted an exception under WAC 173-400-040(6).

EPA is proposing to disapprove the exception provision in WAC 173-400-050(3) which allows for the establishment of an alternative oxygen correction factor for combustion and incineration sources. Changes to the oxygen correction factor effectively change the emission limits. However, this provision does not ensure that all of the requirements of the Act will be met for emissions under an alternative oxygen correction factor.

EPA is proposing to disapprove WAC 173-400-180 Variance which allows the WDOE to grant a variance to the requirements governing the quality, nature, duration, or extent, of discharges of air contaminants. Again, this "director's discretion" provision does not ensure that all of the requirements of the Act will be met prior to the granting of a variance. Although WAC 173-400-180 recognizes that a variance granted by the WDOE does not set aside or delay any requirements of the Federal Clean Air Act, it does not indicate that provisions of the SIP remain in effect until the variance is approved by EPA as a SIP revision.

Emissions Trading Provisions

EPA is proposing to disapprove WAC 173-400-120 Bubble Rules, WAC 173-400-131 Issuance of Emission Reduction Credits, and WAC 173-400-136 Use of Emission Reduction Credits as these regulations do not comply with the requirements of EPA's Final Emissions Trading Policy Statement (51 FR 43814, December 4, 1986). These provisions were originally adopted by WDOE on August 26, 1983 as WAC 173-403-060, -070, and -075, respectively, and were

relocated unchanged to WAC 173-400. However, the provisions were not revised to meet the requirements of EPA's Emissions Trading Policy Statement and are, therefore, not approvable as revisions to the Washington SIP. Note that there is no requirement for the SIP to contain such emissions trading provisions. As with director's discretion provisions, WDOE is still free to approve bubbles and grant emission reduction credits. However, such actions do not change the requirements of the federally-approved SIP until such time as they are submitted to, and approved by, EPA as revisions to the SIP. Sources may still create and use emission reduction credits in "offsetting" and "netting" transactions so long as they comply with the provisions of the EPA-approved and/or promulgated new source review and prevention of significant deterioration regulations.

Prevention of Significant Deterioration

EPA is proposing to disapprove WAC 173-400-141 Prevention of Significant Deterioration (PSD) as it does not meet the requirements of 40 CFR 51.166. WDOE has adopted by reference, EPA's PSD regulations (40 CFR 52.21) as in effect on July 1, 1989. However, significant changes to EPA's regulations became effective on November 19, 1990. Note that the PSD provisions of the Washington SIP are currently disapproved and EPA's PSD regulations have been promulgated into the Washington SIP (see 40 CFR 52.2497). Until WAC 173-400-141 is revised to meet current EPA requirements and is approved by EPA, WDOE will continue to issue PSD permits under a partial delegation of the EPA PSD permit program.

Provisions Unrelated to the SIP

EPA is proposing to take no action on WAC 173-400-040(2) Fallout; WAC 173-400-040(4) Odors; WAC 173-400-070(7) Sulfuric Acid Plants; WAC 173-400-075 Emission Standards for Sources Emitting Hazardous Air Pollutants; and WAC 173-400-115 Standards of Performance for New Sources, as these provisions are not related to the criteria pollutants regulated under the SIP.

Implementation of Regulations for Air Contaminant Sources (WAC 173-403)—These regulations were repealed and their provisions incorporated into the General Regulations for Air Pollution Sources (WAC 173-400) as discussed above. EPA is proposing to approve the repeal of these regulations, thereby removing them from the Washington SIP.

Kraft Pulping Mills (WAC 173-405)—In general, these regulations were revised by cross-referencing WAC 173-400 for generally applicable provisions, deleting duplicative and out-dated provisions, and clarifying emission limits (e.g., averaging times, test methods). EPA is proposing to approve these regulations with the following exceptions: WAC 173-405-033 "Standards of Performance;" WAC 173-405-035 "Emission Standards for Sources Emitting Hazardous Air Pollutants;" WAC 173-405-040(1)(b), (1)(c), (3)(b), (3)(c), and (4) which are emission standards for total reduced sulfur (TRS); WAC 173-405-040(7), (8) and (9) which are provisions for alternative opacity limits; and WAC 173-405-072(2) which contains monitoring requirements for TRS emissions. EPA is proposing to take no action on WAC 173-405-033; -035; -040(1)(b), (1)(c), (3)(b), (3)(c), and (4); and -072(2) since these are not related to the criteria pollutants regulated under the SIP. However, EPA is proposing to disapprove WAC 173-405-040(7), (8), and (9) as these "director discretion" provisions do not ensure that all of the requirements of the Act will be met prior to the approval of an alternative opacity limit.

Sulfite Pulping Mills (WAC 173-410)—In general, these regulations were revised by cross-referencing WAC 173-400 for generally applicable provisions, deleting duplicative and out-dated provisions, and clarifying emission limits (e.g., averaging times, test methods). EPA is proposing to approve these regulations with the following exceptions; WAC 173-410-0-35 "Emission Standards for Sources Emitting Hazardous Air Pollutants;" the exception provision in WAC 173-410-040(3), and WAC 173-410-040(5) which is an emission standard for total reduced sulfur (TRS). EPA is proposing to take no action on WAC 173-410-035 and -040(5) since these are not related to the criteria pollutants regulated under the SIP. EPA is proposing to disapprove the exception provision in WAC 173-410-040(3) as this "director discretion" provision does not ensure that all of the requirements of the Act will be met prior to the approval of an alternative opacity limit.

Primary Aluminum Plants (WAC 173-415)—In general, these regulations were revised by cross-referencing WAC 173-400 for generally applicable provisions, deleting duplicative and out-dated provisions, and clarifying emission limits (e.g., averaging times, test methods). EPA is proposing to approve these regulations with the following exceptions: WAC 173-415-020(1) and (2) relating to emissions of fluorides; WAC 173-415-030(1) which contains emission standards for fluorides; WAC 173-415-030(3)(b) which is a provision for alternative opacity limits; WAC 173-415-040 "Standards of Performance;" and WAC 173-415-060(1)(a), (b), and (d) which are monitoring provisions for fluorides. EPA is proposing to take no action on WAC 173-415-020(1) and (2); -030(1); -040; and -060(1)(a), (b), and (d) since these are not related to the criteria pollutants regulated under the SIP. However, EPA is proposing to disapprove WAC 173-415-030(3)(b) as this "director discretion" provision does not ensure that all of the requirements of the Act will be met prior to the approval of an alternative opacity limit.

Open Burning (WAC 173-425)—In general, these regulations were revised by cross-referencing WAC 173-400 for generally applicable provisions, deleting duplicative and out-dated provisions, and clarifying requirements. EPA is proposing to approve these regulations in their entirety.

Burning of Field and Forage and Turf Grasses Grown for Seed (WAC 173-430)—In general, these regulations were revised by cross-referencing WAC 173-400 for generally applicable provisions, deleting duplicative and out-dated provisions, and clarifying requirements. EPA is proposing to approve these regulations in their entirety.

Solid Fuel Burning Device Standards (WAC 173-433)—These new regulations establish emission standards, certification standards and procedures, curtailment rules, and fuel restrictions for solid fuel burning devices. The regulations apply to any device that burns wood, coal, or any other nongaseous or nonliquid fuels and includes devices which are used for aesthetic or space-heating purposes in private residences or commercial establishments. The regulations establish performance standards for new woodstoves are well as appropriate certification procedures (WAC 173-433-100); establish a uniform statewide opacity standard (WAC 173-433-110); prohibit the burning of certain types of fuels (WAC 173-433-120); establish general emission standards (WAC 173-433-130); prohibit the use of solid fuel burning devices during air pollution episodes or periods of impaired air quality (WAC 173-433-150); and set a retail sales fee on the sale of all new and used solid fuel burning devices (WAC 173-433-170). EPA is proposing to approve WAC 173-433 in its entirety.

Solid Waste Incinerator Facilities (WAC 173-434)—These new regulations

establish emission standards, design standards, and performance standards for solid waste incinerator facilities. The regulations apply to all solid waste or solid waste derived fuel incinerator facilities that burn 12 or more tons per day. The regulations require the owner or operator of an incinerator to have an approved operation and maintenance plan (WAC 173-434-090); require new incinerators to use the best available control technology (WAC 173-434-100); establish emission standards (WAC 173-434-130); establish design and operation requirements (WAC 173-434-160); set monitoring and reporting requirements (WAC 173-434-170); and establish requirements for startup, shutdown, breakdown, or upset conditions (WAC 173-434-190). EPA is proposing to approve WAC 173-434 except for WAC 173-434-110 Standards of Performance, WAC 173-434-120 Emission Standards for Hazardous Air Pollutants, and WAC 173-434-130(2) which contains emission standards for hydrogen chloride. EPA is proposing to take no action on these sections since they are not related to the criteria pollutants regulated under the SIP.

Emergency Episode Plan (WAC 173-435)—In general, these regulations were revised to replace the episode levels for total suspended particulates with levels for PM-10 and to delete the combined levels for sulfur dioxide and particulate matter. Other revisions were made to improve the clarity and effectiveness of the regulations. EPA is proposing to approve WAC 173-435 with the exception of WAC 173-435-070(1). EPA is proposing to disapprove WAC 173-435-070(1) because it fails to meet the requirement of 40 CFR 51.151 to ensure that ambient concentrations at any location (including any validly sited monitoring station) do not reach significant harm levels.

Sensitive Areas (WAC 173-440)—These new regulations designate certain geographical areas of the state as sensitive areas and provide for the imposition of more stringent standards and compliance requirements for certain stationary source categories. The regulations designate the sensitive areas (WAC 173-440-040) and establish more stringent emission standards for wigwam burners located within any sensitive area (WAC 173-440-100). EPA is proposing to approve WAC 173-440, in its entirety.

Ambient Air Quality Standards for Particulate Matter (WAC 173-470)—These new regulations establish ambient air quality standards for total suspended particulates and PM-10, as well as particle fallout standards. EPA is proposing to approve WAC 173-470 with the exception of WAC 173-470-110 Particle Fallout, and WAC 173-470-150 Method of Measurement. EPA is proposing to take no action on WAC 173-470-110 since it is not related to the criteria pollutants regulated under the SIP. EPA is proposing to disapprove WAC 173-470-150 since this "director discretion" provision is inconsistent with the requirements for use of reference or equivalent methods in 40 CFR parts 50 and 53.

III. Summary of Action

EPA is today soliciting public comment on its proposal to approve in part and disapprove in part numerous revisions to the State of Washington Implementation Plan. Specifically, EPA is proposing to approve the following as revisions to the Washington SIP:

(1) WAC 173-400 (except for -040(1) (c) and (d); -040(2); -040(4); the second paragraph of -040(6); the exception provision in -050(3); -070(7); -075; -115; -120; -131; -136; -141; and -181), as in effect on March 22, 1991.
(2) WAC 173-405 (except for -033; -035; -040(1)(b), (1)(c), (3)(b), (3)(c), and (4); -040(7), (8), and (9); and -072(2)), as in effect on March 22, 1991.
(3) WAC 173-410 (except for 035; the exception provision in -040(3); and -040(5)), as in effect on March 22, 1991.
(4) WAC 173-415 (except for -020 (1) and (2); -030(1); -030(3)(b); -040; and -060(1) (a), (b), and (d)), as in effect on March 22, 1991.
(5) WAC 173-425, as in effect on October 18, 1990.
(6) WAC 173-430, as in effect on October 18, 1990.
(7) WAC 173-433, as in effect on October 18, 1990.
(8) WAC 173-434 (except for -110, -120, and -130(2)), as in effect on October 18, 1990.
(9) WAC 173-435 (except for -070(1)), as in effect on January 3, 1989.
(10) WAC 173-440, as in effect on October 18, 1990.
(11) WAC 173-470 (except for -110 and -150), as in effect on January 3, 1989.

EPA is also proposing to approve the repeal of WAC 173-403.

EPA is proposing to disapprove the following:

(1) WAC 173-400-040(1) (c) and (d), the second paragraph of -040(6), the exception provision in -050(3), -120, -131, -136, -141, and -180.
(2) WAC 173-405-040 (7), (8), and (9).
(3) the exception provision in WAC 173-410-040(3).
(4) WAC 173-415-030(3)(b).
(5) WAC 173-435-070(1).
(6) WAC 173-470-150.

EPA is proposing to take no action on the following:

(1) WAC 173-400-040(2), -040(4), -070(7), -075, and -115.
(2) WAC 173-405-033; -035, -040(1)(b), (1)(c), (3)(b), (3)(c), and (4); and -072(2).
(3) WAC 173-410-035 and -040(5).
(4) WAC 173-415-020 (1) and (2); -030(1); -040; and -060(1) (a), (b), and (d).
(5) WAC 173-434-110, -120, and -130(2).
(6) WAC 173-470-110.
(7) WAC 173-495.

Interested parties are invited to comment on all aspects of this proposed action. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by October 28, 1992 will be considered in the final rulemaking action taken by EPA.

IV. Administrative Review

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

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

SIP approvals under sections 110 and 301, and subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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

does it impose any new federal requirements.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401–7671(q).

Dated: September 10, 1992.

Dana A. Ramussen,

Regional Administrator.

[FR Doc. 92–23452 Filed 9–25–92; 8:45 am]

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40 CFR Part 52

[FRL-4512-1]

Criteria for Exercising Discretionary Sanctions Under Title I of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal sets forth criteria that the EPA Administrator must consider when exercising his discretionary authority to apply sanctions on a statewide basis pursuant to section 110(m) of the Clean Air Act as amended in 1990 (amended Act). If EPA makes one of the findings of State implementation plan (SIP) deficiencies described in section 179(a), EPA may apply any of the sanctions listed in section 179(b) to any portion of the State that the Administrator determines is reasonable and appropriate for the purpose of ensuring that the requirements of the amended Act relating to plans are met. This proposal establishes the criteria EPA shall use in exercising its discretionary authority during the 24–month period following a finding of a plan deficiency to ensure that the sanctions listed in section 179(b) are not applied on a statewide basis when one or more political subdivisions are principally responsible for such deficiency. In addition, EPA describes the section 110(m) sanctions provision and EPA's anticipated application of these sanctions "at any time" after the Agency makes a finding.

The EPA anticipates that it will use its authority to apply sanctions earlier than 18 months after a finding only in limited cases and only after notice and an opportunity for comment.

DATES: Written comments on the proposed EPA action must be received by EPA at the address below on or before November 27, 1992.

ADDRESSES: Written comments may be submitted to the public docket. The public docket for this action, A–91–66, is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at EPA's Central Docket Section, South Conference Center, room 4, 401 M Street SW., Washington, DC. A reasonable fee for copying may be charged.

FOR FURTHER INFORMATION CONTACT: A. Ted Creekmore, U.S. EPA, MD–15, Research Triangle Park, North Carolina 27711, telephone (919) 541–5699.

SUPPLEMENTARY INFORMATION:

I. Overview

Section 110(m) of the Clean Air Act specifically requires the promulgation of criteria to ensure that, during the 24–month period following a finding, disapproval, or determination (hereinafter "finding") referred to in section 179(a), sanctions pursuant to section 110(m) are not applied on a statewide basis where one or more political subdivisions are principally responsible for such deficiency. Thus, these criteria apply only in the limited circumstance in which EPA is considering the imposition of statewide sanctions within 24 months after the Agency makes a section 179(a) finding.

Today's proposal provides five criteria that EPA will use to determine if sanctions imposed pursuant to section 110(m) may be applied statewide [see § 52.30(c) of the proposed regulatory text]. If at least one political subdivision meets all five of the criteria, then that political subdivision will be considered principally responsible, and EPA will not impose sanctions on a statewide basis. Rather, EPA will impose sanctions only on the areas of the States for which EPA determines it is reasonable and appropriate to impose sanctions. If all of the criteria are not met by at least one political subdivision, then no political subdivision is principally responsible, and EPA will use its discretion to determine whether to apply statewide sanctions. However, if EPA, using its discretion, initially determines that less-than-statewide sanctions should be applied, EPA will not be bound by the criteria and will impose sanctions on those political subdivisions found to be principally responsible, and possibly on others as reasonable and appropriate. Again, sanctions will only be applied on the geographic area of the State that the Administrator determines to be "reasonable and appropriate," and decisions will be made on a case-by-case basis.

II. Background

On November 15, 1990, the President signed into law the Clean Air Act Amendments (Amendments) of 1990.[1] These Amendments retained several of the types of sanctions provided for in the pre-amended Act, but substantially altered the mechanism for imposition of sanctions. The Amendments include two new sanctions provisions. First, section 110(m),[2] provides the Administrator with discretion to impose sanctions on any portion of the State that he determines is reasonable and appropriate. Second, section 179(a),[3] requires the Administrator to impose sanctions after specific timeframes if the deficiencies on which the sanctions are based are not corrected.[4] Although section 110(m) does not provide a specific timeframe for application of section 110(m) sanctions, EPA anticipates that it will impose sanctions earlier than 18 months only in limited circumstances, after notice-and-comment rulemaking. The specific types of sanctions which may be applied under section 110(m), or must be applied under section 179(a), are listed in section 179(b).

This rulemaking considers the application of sanctions under section 110(m). However, because section 110(m) and section 179 are interrelated, this preamble also will discuss sanctions under section 179(a) and (b) in order to clarify what is required by section 110(m).

III. Section 110(m)

Section 110(m) provides that:

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[1] Pub Law No. 101–549, 104 Stat. 2399, codified at 42 U.S.C. sections 7401–7671q (1991).

[2] 42 U.S.C. 7410(m).

[3] 42 U.S.C. 7509(a).

[4] It is necessary, for clarity's sake, to understand that section 179(a) performs two very distinct functions: it defines several types of findings, and it requires EPA to impose sanctions if one of these findings has been made. Section 179(a)(1) through (4) sets forth the four types of findings which may lead to the imposition of a sanction. The introduction and latter part of section 179(a) mandate the EPA impose at least one sanction 18 months after a finding has been made with respect to certain types of plans if the deficiency is not corrected.

The Administrator may apply any of the sanctions listed in section 179(b) any time (or at any time after) the Administrator makes a finding, disapproval, or determination [under section 179(a)(1) through (4)] in relation to any plan or plan item * * * required under this Act, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this Act * * * are met. The Administrator shall, by rule, establish criteria for exercising his authority * * * to ensure that, during the 24-month period following a finding, disapproval, or determination referred to in section 179(a), such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

In order to fully understand this section, it is necessary to recognize that section 110(m) may be divided into two distinct parts. The first part sets forth the following:

1. The timing of the application of section 110(m) sanctions.
2. The availability under section 110(m) of the sanctions listed in section 179(b).
3. The reference to a finding, disapproval, or determination under section 179(a).
4. The geographical scope of application of sanctions under section 110(m).

The second part requires the Administrator to propose criteria to be used when he is considering applying section 179(b) sanctions on a statewide basis under section 110(m) within 24 months of a section 179(a) finding.

Although the main purpose of this proposal is to set forth the criteria which EPA is required to establish under this second part, it is first necessary to address the three elements referred to above to ensure that the criteria can be fully understood.

IV. Available Sanctions, Findings Under Section 179(a), and the Scope of Sanctions

A. Timing of Section 110(m) Sanctions

Under section 110(m), EPA may apply either of the sanctions provided in section 179(b) at any time or at any time after the Agency makes a finding under section 179(a) (1) through (4). Section 110(m) provides EPA with discretion to apply these sanctions earlier than the 18-month mandatory period for application of sanctions under section 179(a). However, EPA anticipates that it will exercise this discretion to impose section 110(m) sanctions earlier than 18 months following a finding only in unusual circumstances where the State has indicated an explicit resistance to working to resolve a plan deficiency. As a matter or policy, EPA will provide notice and opportunity for comment prior to imposing sanctions earlier than 18 months after the finding pursuant to section 110(m).

B. Sanctions Available Under Section 110(m)

Section 179(b) establishes the two types of sanctions that the Administrator may impose pursuant to section 110(m): A highway funding sanction and a 2-to-1 offset sanction.[5]

1. Highway funding sanction. Under the highway funding sanction provision [section 179(b)(1)], the Administrator may impose a prohibition on the approval by the Secretary of Transportation of certain projects, or the awarding of certain grants under title 23 of the United States Code.

2. Emission offset sanction. Under the emissions offset sanction provision [section 179(b)(2)], a ratio of at least 2-to-1 will be required for emissions reductions from existing sources within the nonattainment area to offset emissions from major new or modified facilities. The offset requirement, established in section 173,[6] refers to reductions in emissions that major new and modified sources must get from existing sources before they may begin construction. [For comparison, for ozone, the pre-sanction ratio for volatile organic compounds (VOC) emissions ranges from greater than 1.0 to 1.5, depending upon the classification of the area.]

C. Finding Pursuant to Section 179(a)

Section 179(b) sanctions may be applied pursuant to section 110(m) when the Administrator makes a finding under section 179(a) (1) through (4), provided that the Agency has followed all procedural requirements (i.e., rulemaking requirements, such as notice and comment) for imposing a sanction. The Administrator has no authority under section 110(m), nor any mandatory duty under section 179(a), to impose sanctions until a finding has been made.

Section 179(a) sets forth the four types of findings which may lead to the imposition of a sanction:

1. That a State has failed to submit a SIP for a nonattainment area or an element of a SIP, or the SIP or SIP element fails to meet the completeness criteria issued pursuant to section 110(k).

2. That EPA disapproves a SIP submission for a nonattainment area based on its failure to meet one or more plan elements required by the amended Act.

3. That the State has not made any other submission, or has not made a complete submission, as required by the amended Act, or that EPA disapproves such a submission.

4. That a requirement of an approved plan is not being implemented.

D. Scope of Application of Section 110(m) Sanctions

When a finding under section 179(a) has been made, the Administrator may, under section 110(m), apply section 179(b) highway sanctions and offset sanctions to any area of the State which is determined to be reasonable and appropriate. The determination of where it would be reasonable and appropriate to apply sanctions, although important to the understanding of section 110(m) sanctions, is secondary to the discussion of the required criteria—the focus of this rulemaking. A further discussion of this issue is found in section V of this notice.

V. Development of Criteria

The second sentence of section 110(m) requires the Agency to establish criteria that EPA must apply if the Agency considers applying sanctions under section 110(m) on a statewide basis within 24 months of a section 179(a) finding. These criteria should enable EPA to determine when a political subdivision,[7] rather than the entire State, is principally responsible for a section 179(a) deficiency.

A. Principal Responsibility

The EPA recognized that an understanding of the term "principal responsibility" was integral to the development of the criteria. In this regard, the Agency faced a dilemma in trying to determine when a political subdivision would be principally responsible for a section 179(a) failure. The EPA recognizes that the States have primary responsibility for meeting the requirements of the amended Act. However, EPA also recognizes that the States may delegate principal responsibility for developing a plan or

[5] Other sanctions are also provided for under the amended Act; however, they will not be discussed in this rulemaking since they are not applicable under section 110(m).

[6] 42 U.S.C. 7503.

[7] EPA interprets the term "political subdivision" to refer to the representative body that is responsible for adopting and implementing air pollution controls for one, or any combination of one or more of the following: city, town, borough, county, parish, district, or any other geographical subdivision created by or pursuant to Federal or State law. This will include any agency designated under section 174, 42 U.S.C., section 7504, by the State to carry out the air planning responsibilities under part D.

plan element to one or more political subdivisions.

The EPA has attempted to draft criteria that would clearly indicate when the political subdivision carries the principal burden of carrying out an activity. The EPA recognizes that, in many instances, a State may retain the authority to perform an activity that it has delegated to a political subdivision upon the failure of the political subdivision to perform that activity.[8] However, the State's decision to retain authority should not preclude the conclusion that the political subdivision is principally responsible for the activity. Even if the State retains some authority to perform an activity, the political subdivision may still be principally responsible.

In addition, EPA believes that it is particularly necessary to focus on the interrelationship between a State and a political subdivision because of the wording of section 179(a) (1) and (3). The first and third findings under section 179(a), the finding of failure to submit a SIP or SIP element, and the finding of failure to make any submittal under the amended Act, specifically reference the State's failure to take an action. The EPA believes that this reference to a finding regarding a State does not preclude EPA from finding that the State's failure is primarily a result of a political subdivision's failure to carry out an activity. Although the Act references the State, the political subdivision may have had principal responsibility to carry out that activity. For example, under section 110 and part D of title I, the State is generally responsible for submitting SIP revisions to EPA. However, States frequently delegate the task of preparing new and revised rules to political subdivisions. If the political subdivision fails to submit the rules to the State, the State may then fail to submit the rules to EPA. If EPA finds, according to the criteria in today's rulemaking, that the political subdivision had principal responsibility to develop the new or revised rules and failed to do so, EPA will not impose sanctions on the entire State. Although the Agency makes the finding as to the State, EPA is obligated to examine the sources of the failure and determine what party is principally responsible.

B. Criteria

The EPA has developed five proposed criteria (summarized below) that it believes will enable a determination of when a State has relinquished its primary control over an activity, when it has delegated that control to a political subdivision, and whether the political subdivision has failed to perform that required activity. The EPA believes that this delegation is established when a political subdivision:

1. Has the legal authority to perform the required activity.

2. Has traditionally performed, or has been delegated the responsibility to perform, the required activity.

3. Has received, where appropriate, adequate funding, or authority to obtain funding, from the State to perform the required activity.

4. Has agreed to perform (and has not revoked that agreement) or is required to accept responsibility for performing the required activity.

5. Has failed to perform the required activity. If one or more political subdivisions each meet all five of the criteria, EPA will consider those subdivisions principally responsible, and hence, EPA may impose sanctions only on those political subdivisions and on other areas (short of the entire State) for which the Agency determines it is reasonable and appropriate.[9] The EPA would not impose sanctions statewide. However, if all of the criteria have not been met by at least one political subdivision,[10] EPA will use its discretion to determine whether to apply sanctions on a statewide basis.

These five criteria are intended to be applicable to SIP failures relating to stationary, area, and mobile sources. The EPA believes that the criteria developed here will enable it to successfully determine when a political subdivision is principally responsible.

VI. Scope of Application of Section 110(m) Sanctions

As stated earlier, once a finding under section 179(a) has been made, the Administrator may, pursuant to section 110(m), apply the section 179(b) sanctions to any portion of the State (consistent with the criteria established through this rulemaking). The language of section 110(m) indicates that sanctions may be applied on a broader basis than sanctions imposed pursuant to section 179(a). While section 110(m) indicates that sanctions may be applied to any area of the State, section 179(b) appears to limit, for the most part, the application of sanctions to nonattainment areas. Section 179(b)(1) contains a specific geographic limitation: "[t]he Administrator may impose a prohibition, applicable to a nonattainment area" on the approval by the Secretary of Transportation of certain projects or the awarding of certain grants under Title 23 of the U.S. Code.

The offset sanction, section 179(b)(2), is limited by the terms of the sanction itself. Under section 179(b)(2), the emissions offset requirement under section 173 (the nonattainment area new source review provisions) must be applied at a ratio of at least 2-to-1 for sources "for which a permit is required under Part D." While Part D generally applies to nonattainment areas, some requirements extend to other areas. Moreover, sources in those areas may be subject to the offset requirements of section 173.[11]

Section 110(m) establishes its own geographic scope for application of sanctions. Although section 110(m) refers to the sanctions established in section 179(b), there is no language stating that the same geographical limitations must apply. Section 110(m) refers only to the sanctions themselves, not the accompanying limitations. The language of section 110(m) sets forth its own, broader limitations by expressly providing that sanctions may be imposed on an entire State or any portion of a State. A portion of the section 110(m) language states, "The Administrator may apply any of the sanctions listed in section 179(b) * * * with respect to any portion of the State the Administrator determines reasonable and appropriate * * *." Moreover, this issue is addressed in the legislative history. In the House Conference Report on the amended Act, 136 Cong. Rec. H12854 (daily ed. October 26, 1990), Congressman Glenn Anderson stated, "The past failure of State legislatures to improve inspection and maintenance programs required by

[8] In fact, at least one provision of the Act specifically requires the State to retain some type of final responsibility to take action. Section 110(a)(2)(E)(iii) requires the State to make assurances that in instances where the State relies on a political subdivision to implement a plan provision, the State holds responsibility for ensuring adequate implementation of the plan provision.

[9] If EPA does not impose sanctions statewide, then it is not required to consider the criteria listed in this rulemaking. Consequently, EPA could impose sanctions on any area or political subdivision for which EPA deems reasonable and appropriate, provided that the requirements of section 110(m) are satisfied.

[10] It is important to note that all five criteria must be met through the action or inaction of the same political subdivision.

[11] For example, under section 184(b)(2), any stationary source that is located within an ozone transport region, and that emits, or has the potential to emit, 50 tons per year of VOC's is considered a major source and is subject to the requirements applicable to major sources located in a moderate nonattainment area. Therefore, at least within transport regions, some sources located in areas not designated nonattainment may be subject to section 173 offset requirements and, hence, may become subject to the offset sanction of section 179(b)(2).

a SIP can be cited as an appropriate circumstance where sanctions may be appropriate beyond the nonattainment area." Therefore, although the Administrator may impose section 110(m) sanctions on any area of the State, the offset sanction may only affect nonattainment areas or attainment areas that are otherwise subject to section 173. The highway sanction is not limited in such a manner and could be effective in all areas of a State.

VII. Request for Public Comments

The EPA would particularly like to solicit comments on three major portions of today's proposal. They are:

1. The selection and design of the five criteria.

2. The EPA's interpretation of the statutory requirements of section 110(m).

3. The use of EPA discretion [§ 52.30(d)(2)] to determine the appropriate area to apply sanctions if not all of the five criteria are met by a political subdivision of the State.

VIII. Limits of This Rulemaking

Nothing in the Act precludes EPA from applying sanctions pursuant to section 110(m), without examining the criteria, if the Agency elects to impose a sanction on a less-than-statewide basis or where EPA imposes statewide sanctions more than 24 months after a finding. Furthermore, this rulemaking does not affect the situation where a group of political subdivisions, whose combined area comprises the entire State, each suffers a deficiency. The EPA could impose a sanction on each of those political subdivisions as an independent area without applying the criteria, even though this may appear to be a statewide sanction. All decisions to impose sanctions will be made on a case-by-case basis.

This rule is not intended to identify which sanction EPA will apply in a particular circumstance, nor the type of deficiency for which EPA might use its discretion to apply sanctions. It is not intended to describe the notice and comment procedures EPA will ultimately use to impose a sanction pursuant to section 110(m).

IX. Miscellaneous

A. Relationship To Permit Program

The amended Act includes specific sanctions provisions for permitting requirements in section 502 (d) and (i), 42 U.S.C., and section 7661a (d) and (i). The finding regarding the permit program is not a finding under section 179(a); thus section 110(m) does not apply to the use of sanctions for addressing permit-related failures.

B. Executive Order 12291

Under Executive Order 12291, EPA must decide whether a rule is "major" and, therefore, subject to the requirement of a regulatory impact analysis (RIA). The proposed rule is intended to limit the circumstances under which EPA may impose sanctions on an entire State when one or more political subdivisions of that State are principally responsible for the action or lack of action that prompted the Administrator to make a section 179(a) finding. Moreover, this rule does not, of itself, apply any sanctions; thus any impacts would only be felt if and when sanctions were actually applied. The Administrator finds that this proposed rule will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation will result in no significant environmental or energy impacts.

Although impacts may result in the future when EPA applies sanctions, the impacts are impossible to gauge since it is not known which States will, in fact, fail to meet requirements of the Act. However, this action potentially should reduce the number of statewide sanctions applied under section 110(m) of the Act, and thereby reduce the geographical area subject to sanctions. Thus, this proposed rule does not qualify as a major rule and is, therefore, not subject to the requirement of an RIA.

The EPA has submitted this regulation to the Office of Management and Budget (OMB) for review under Executive Order 12291, and their written comments and any EPA responses have been placed in the docket for this proceeding.

C. Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. section 605(b), I hereby certify that the attached proposed rule will not have a significant impact on a substantial number of small entities. Since the rule requires EPA to consider criteria before applying sanctions on a statewide basis, it could potentially result in a reduced burden on small entities.

D. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. section 3501, et seq.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 19, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble part 52, title 40 of the Code of Federal Regulations is proposed to be amended as follows.

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

Authority: 42 U.S.C. 7401–7671q.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart A—[Amended]

2. Part 52 is proposed to be amended by adding a new § 52.30 to subpart A to read as follows:

§ 52.30 Criteria for limiting application of sanctions under section 110(m) of the Clean Air Act on a statewide basis.

(a) *Definitions.* For the purpose of this section:

(1) The term *political subdivision* refers to the representative body that is responsible for adopting and implementing air pollution controls for one, or any combination of one or more of the following: City, town, borough, county, parish, district, or any other geographical subdivision created by, or pursuant to, Federal or State law. This will include any agency designated under section 174, 42 U.S.C. section 7504, by the State to carry out the air planning responsibilities under part D.

(2) The term *required activity* may include, but is not limited to, the submission of an adequate SIP or SIP element, or the implementation of a SIP or SIP element.

(3) The term *deficiency* means the failure to perform a required activity as defined above.

(b) *Sanctions.* During the 24 months after a finding, determination, or disapproval under section 179(a) of the Clean Air Act is made, EPA will not impose sanctions under section 110(m) of the Clean Air Act on a statewide basis if the Administrator finds that one or more political subdivisions of the State are principally responsible for the deficiency on which the finding, disapproval, or determination, as

provided under section 179(a) (1) through (4), is based.

(c) *Criteria.* The EPA will use the following criteria to determine whether a political subdivision is principally responsible for the deficiency.

(1) The State has provided adequate legal authority to a political subdivision to perform the required activity.

(2) The required activity is one which has traditionally been performed by the local political subdivision, or the responsibility for performing the required activity has been delegated to the political subdivision.

(3) The State has provided adequate funding or authority to obtain funding (when funding is necessary to carry out the required activity) to the political subdivision to perform the required activity.

(4) The political subdivision has agreed to perform (and has not revoked that agreement), or is required by State law to accept responsibility for performing, the required activity.

(5) The political subdivision has failed to perform the required activity.

(d) *Imposition of Sanctions.*

(1) If all of the criteria in paragraph (c) of this section have been met, through the action or inaction of the same political subdivision, EPA will not impose sanctions on a statewide basis.

(2) If not all of the criteria in paragraph (c) of this section have been met, through the action or inaction of the same political subdivision, EPA will determine the area for which it is reasonable and appropriate to apply sanctions.

[FR Doc. 92-23449 Filed 9-25-92; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 52

[AZ4-1-5262; FRL-4512-5]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision; Maricopa County Bureau of Air Pollution Control

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to disapprove two revised rules controlling volatile organic compounds (VOCs) adopted on July 13, 1988 by the Maricopa County Bureau of Air Pollution Control (the Bureau) for inclusion in the Arizona State Implementation Plan (SIP). The Arizona Department of Environmental Quality (DEQ) submitted these revisions to EPA on January 4, 1990. The revisions concern Rule 330, Volatile Organic Compounds, and Rule 336, Surface Coating Operations. EPA has evaluated the revisions to these rules and is proposing a disapproval under sections 110(k)(3) and 110(l) of the Clean Air Act, as amended in 1990 (CAA or the Act), because the rules do not meet the requirements of section 110 and Part D of the CAA.

DATES: Comments must be received on or before October 28, 1992.

ADDRESSES: Comments may be mailed to: Esther J. Hill, Rulemaking Section I (A-5-4), Air and Toxics Division, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

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

Arizona Department of Environmental Quality, Air Quality Planning Office, 2005 N. Central Avenue, Phoenix, AZ 85004

Maricopa County Air Pollution Control, 2406 S. 24th Street, Suite E214, Phoenix, AZ 85034.

FOR FURTHER INFORMATION CONTACT: William E. Davis, Jr., Rulemaking Section I (A-5-4), Air and Toxics Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included Maricopa County. 43 FR 8964. On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area of Maricopa County to the Maricopa Association of Governments (MAG) Urban Planning Area. 44 FR 16391, 40 CFR 81.303. On February 24, 1984, EPA notified the Governor of Arizona that the Bureau's portion of the Arizona SIP was inadequate to attain and maintain the National Ambient Air Quality Standard (NAAQS) for ozone and requested that the State submit curative SIP revisions to EPA for approval (EPA's SIP-Call, 49 FR 18827, May 3, 1984). On May 26, 1988, EPA again notified the Governor of Arizona that the Bureau's portion of the Arizona SIP was inadequate to meet the ozone NAAQS and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, 53 FR 34500, September 7, 1988). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101-594, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas correct their deficient RACT rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in EPA's pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The MAG Urban Planning Area is classified as a moderate nonattainment area;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline. The Bureau adopted the two VOC-controlling rules being proposed for disapproval in this notice in July of 1988, and the Arizona DEQ, acting as the Governor's designee, submitted them to EPA on January 4, 1990, in response to the SIP-Calls. Although this submittal predates the amendments to the CAA, it also serves as a submittal under section 182(a)(2)(A).[3]

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation, Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice (Appendix D or the Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control techniques guidelines (CTGs).

[2] Upon enactment of the CAA, the MAG Urban Planning Area continued as nonattainment for ozone pursuant to section 107(d) and was classified as moderate by operation of law pursuant to section 181(a). See 56 FR 56694 (November 6, 1991).

[3] The Agency has examined the issue of whether this action should be reviewed under the provisions of the pre-amended Act or whether EPA should review the submittal under amended Part D. As a general rule, where a newly enacted statute directly speaks to an issue, the new Act must apply to pending actions. *Kaiser Aluminum & Chem. Corp.* v. *Bonjorno*, 494 U.S. 827, 110 S.Ct. 1570, 1576-77. EPA believes that in the present case, the amended Act directly speaks to the issue by providing that States must correct their RACT rules as required under pre-amended section 172 as interpreted by EPA's pre-amendment guidance. Therefore, EPA has reviewed this submittal for conformance with the amended Act.

The State of Arizona submitted several revised rules to EPA for incorporation into its SIP on January 4, 1990, including the rules proposed for action in this notice. This notice addresses EPA's proposed action for Rule 330, Volatile Organic Compounds, and Rule 336, Surface Coating Operations. The submitted rules were found to be complete on May 25, 1990 pursuant to EPA's completeness criteria adopted on February 16, 1990 and set forth in 40 CFR part 51 appendix V,[4] and are being proposed for disapproval.

Both Rules 330 and 336 are rules that control volatile organic compounds (VOCs) from the generalized cleaning (degreasing) of parts and from the coating of metal parts, aerospace equipment, paper, films, plastic and flexible parts, respectively. VOCs contribute to the production of ground level ozone and smog. Rules 330 and 336 were originally adopted as part of the Bureau's effort to achieve the NAAQS for ozone in the MAG Urban Planning Area and have been revised in response to EPA's SIP-Calls and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for the Bureau's Rule 330 and Rule 336.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Techniques Guideline (CTG) documents that, based on the underlying requirements of the Act, specified the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). There is no CTG applicable to Rule 330 which controls VOC emissions from operations not covered by other Bureau rules. The CTGs that apply to the Rule 336 are: (1) Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, EPA-450/2-77-008, Vol. II; (2) Summary of Group I Control Technique Guideline Documents for Control of Volatile Organic Emissions from Existing Stationary Sources, EPA-450/3-78-120; (3) Surface Coating of Large Appliances, EPA-450/3-78-120; (3) Surface Coating of Large Appliances, EPA-450/2-77-034; and (4) Surface Coating of Miscellaneous Metal Parts and Products, EPA-450/2-77-015. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The rules discussed below are being proposed for disapproval because they do not meet the requirements of section 110 and Part D of the CAA.

Rule 330, Volatile Organic Compounds

This rule applies to VOC emitting sources, such as wood furniture coating facilities, not regulated by other Bureau rules. While there are some strengthening provisions, there are several appendix D deficiencies that cannot be approved under section 110 and Part D of the Act. These deficiencies include lack of test methods with which to determine compliance and a lack of adequate recordkeeping, which can lead to enforceability problems.

Rule 336, Surface Coating Operations

This rule applies to a variety of coating operations including the coating of cans, coils, metal furniture, large appliances, aerospace assemblies and components, and paper, film, fabric, vinyl, plastics, and flexible parts. VOC emission control is accomplished by setting limits on the amount of VOC that can be contained in the coating materials or by the use of emission control equipment. Despite certain strengthening provisions, this rule contains a number of appendix D deficiencies that cannot be approved under section 110 and Part D of the Act. For example, the rule does not specify adequate recordkeeping which can lead to enforceability problems. The rule also allows exemptions which are not provided in the CTG and have not been justified by the Bureau. In addition, a two-year compliance date extension for metal parts and products and a four-year compliance date for aerospace component coating have been set. Under sections 193 and 110(1) of the amended Act, SIP revisions may not provide for increased emissions over those required in the pre-amendment SIP nor may they interfere with applicable attainment and reasonable further progress (RFP) requirements. EPA believes that an extension of the compliance date would cause emissions in excess of what would occur under the presently approved SIP and, as a result, could interfere with attainment of the standard and RFP, as defined in section 171 of the Act. The State has not made any demonstration that there would be no excess emissions or no interference with RFP and attainment.

EPA has evaluated the Bureau's Rules 330 and 336 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions contain deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. A detailed discussion of the rule deficiencies can be found in the Technical Support Document for each rule which is available from the U.S. EPA's Region 9 office. Because of the deficiencies, the rules are not approvable pursuant to the section 182(a)(2)(A) of the CAA because they are not consistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book.

Section 193 of the amended Act provides that a State may not relax a control requirement in effect prior to amendment of the CAA in 1990 unless the State provides for equivalent or greater emission reduction elsewhere. Under Rule 336, Arizona has extended the compliance date for certain surface coating operations without providing how equivalent or greater reductions will be achieved during the time of extended compliance. In addition, section 110(1) of the CAA stipulates that EPA cannot approve rule revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the Act) or any other applicable requirements of the Act. The state has not demonstrated that the changes to Rule 336 will not interfere with reasonable further progress. Rule 336 allows for an unjustified and lengthy compliance period for regulation of aerospace product coatings and metal parts and product coatings. Thus, Rule 336 is proposed for disapproval under sections 110(1) and 193 of the CAA.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more

[4] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the amended Act. See 56 FR 42216 (August 26, 1991) to be codified at 40 CFR part 51, appendix V.

of the elements required by the CAA, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to issues a finding of disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

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

Regulatory Process

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

EPA's disapproval of the State request under sections 110 and 301 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any preexisting federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it impose any new federal requirement.

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

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: September 18, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23455 Filed 9–25–92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR PART 52

[CA 14-11-5591; FRL-4512-9]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District, Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) adopted by the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and the Kern County Air Pollution Control District (KCAPCD) on April 11, 1991 and May 6, 1991, respectively. The California Air Resources Board submitted these revisions to EPA on May 30, 1991. The revisions concern SJVUAPCD's Rule 463.4, Wastewater Separators, and KCAPCD's Rule 414, Wastewater Separators. These rules control the emission of volatile organic compounds (VOCs) from wastewater separators. EPA has evaluated these rules and is proposing to approve them under Section 110(k)(3) as meeting the requirements of Section 110(a) and Part D of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Comments must be received on or before October 28, 1992.

ADDRESSES: Comments may be mailed to: John Ungvarsky, Acting Chief, Northern California, Nevada, and Hawaii Rulemaking Section (A–5–4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814.

San Joaquin Valley Unified, Air Pollution Control District, 1745 West Shaw, suite 104, Fresno, CA 93711.

Kern Country Air Pollution Control District, 2700 M Street, suite 275, Bakersfield, CA 93301.

FOR FURTHER INFORMATION CONTACT: Denise Odenwalder, Southern California and Arizona Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA), that included the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County APCD,[1] Kings County APCD, Madera County APCD, Merced County APCD, San Joaquin County APCD, Stanislaus County APCD, and Tulare County APCD. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under Section 172(a)(2), and EPA approved, and extension of the attainment date to December 31, 1987.[2] On May 26, 1988, EPA notified the Governor of California that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

On March 20, 1991, the San Joaquin Valley Unified Air Pollution Control

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[1] At that time, Kern County included portions of two air basins: the San Joaquin Valley Air Basin and the Southeast Desert Air Basin. The San Joaquin Valley Air Basin portion of Kern County was designated as nonattainment, and the Southeast Desert Air Basin portion of Kern County was designated as unclassified. See 40 CFR 81.305 (1991).

[2] This extension was not requested for Kern County. Thus, Kern County's attainment date remained December 31, 1982

District (SJVUAPCD) was formed. The SJVUAPCD has authority over the San Joaquin Valley Basin which includes all of the above eight counties except for the Southeast Desert Air Basin portion of Kern County. Thus, Kern County Air Pollution Control District (KCAPCD) still exists, but only has authority over the Southeast Desert Air Basin portion of Kern County.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amendment section 172(b) as interpreted in pre-amendment guidance.[3] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. APCDs found in the San Joaquin Valley Air Basin (now collectively known as the SJVUAPCD) were subject to the RACT fix-up requirement and the May 15, 1991 deadline.[4] KCAPCD was subject to EPA's SIP-Call, but was not subject to the RACT fix-up requirement and the May 15, 1991 deadline.[5] Kern County is subject to the RACT requirement of section 182(b)(2) of the amended Act.

The State of California submitted many revised RACT rules for incorporation into its SIP on May 30, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for SJVUAPCD's Rule 463.4, Wastewater Separators, and KCAPCD's Rule 414, Wastewater Separators. These submitted rules were found to be complete on July 10, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51 Appendix V [6] and are being proposed for approval into the SIP.

Both rules control the emission of VOCs from wastewater separators. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182 RACT requirements. The Following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule of consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 3. Among the provisions of the CAA is the requirement that a VOC rule must, in a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, of requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to these rules is entitled, "Control of Refinery Vacuum Producing Systems, Wastewater Separators and Process Unit Turnarounds," EPA document # EPA-450/2-77-025. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 3. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SJVUAPCD'S submitted Rule 463.4 is a revision of existing SIP approved rules from the eight districts that combined to form SJVUAPCD.[7] KCAPCD's submitted Rule 414 is a revision of the current SIP Rule 414, Wastewater Separators.

SJVUAPCD'S submitted Rule 463.4 and KCAPCD's submitted Rule 414 are essentially identical rules. The rules reduced the emission of VOCs by setting equipment specifications and operating procedures for wastewater separators. The rules include the following significant changes from the SIP approved rules:

- Clarifies the applicability of the rules;
- Includes additional definitions and revises existing definitions;
- Revises the rules' exemptions;
- Deletes sections giving discretion to the Control Officer to approve control equipment other than that required by the rules;
- Adds requirements for handling the oil or tar removed from wastewater separating devices;
- Adds sections on test methods; and
- Adds and updates compliance schedules.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD's Rule 463.4 and KCAPCD's Rule 414 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issue Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The San Joaquin Valley Air Basin was redesignated nonattainment and classified as serious by operation of law pursuant to section 107(d) and section 181(a) upon the date of enactment of the Clean Air Act Amendments of 1990. See 56 FR 56694 (November 6, 1991).

[5] KCAPCD was not subject to the RACT fix-up requirement and the May 15, 1991 deadline because the Southeast Desert Air Basin portion of Kern County was not a pre-enactment nonattainment area, and thus, was not automatically designated nonattainment on the date of enactment of the Clean Air Act Amendments of 1990. (See section 107(d) and section 182(a)(2)(A) of the Clean Air Act Amendments of 1990.) However, the KCAPCD is still subject to the requirements of EPA's SIP-Call because the SIP-Call included all of Kern County. The substantive requirements of the SIP—Call are the same as those of the statutory RACT fix-up requirement.

[6] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991).

[7] The SIP approved rules are San Joaquin County APCD's Rule 413, Refinery Oil-Water Separators; Fresno County APCD's Rule 413, Effluent Oil-Water Separators; Madera County APCD's Rule 420, Effluent Oil-Water Separators; Merced County APCD's Rule 413, Effluent Oil-Water Separators; Stanislaus County APCD's Rule 413, Effluent Oil-Water Separators; Tulare County APCD's Rule 414, Effluent Oil-Water Separators; KCAPCD's Rule 414, Wastewater Separators; and Kings County APCD's Rule 414, Wastewater Separators.

businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozones, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 18, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–23454 Filed 9–25–92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[CA-12-6-5267; FRL-4512-7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) adopted by the Bay Area Air Quality Management District (BAAQMD) on September 5, 1990. The California Air Resources Board (CARB) submitted these revisions to EPA on April 5, 1991. The revisions concern the adoption of BAAQMD Regulation 8, Rule 17, Petroleum Dry Cleaning Operations and Regulation 8, Rule 27, Synthetic Solvent Dry Cleaning Operations. Both of these rules control the emissions of volatile organic compounds (VOCs) from their respective operations. EPA has evaluated each of these rules and is proposing to approve them under section 110(k)(3) as meeting the requirements of section 110(a) and Part D of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Comments must be received on or before October 28, 1992.

ADDRESSES: Comments may be mailed to: Esther Hill, Rulemaking Section I (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 "K" Street, Sacramento, CA 95814

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Wendy Colombo, Rulemaking Section I (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1190.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Bay Area. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under preamended Section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238, 52.222. On May 26, 1988, EPA notified the Governor of California that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101-549, 104 Stat. 2399, codified at 42 U.S.C. section 7401-7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The BAAQMD was subject to the RACT fix-up requirement and the May 15, 1991 deadline.[2]

The State of California submitted many revised RACT rules for incorporation into its SIP on May 30, 1991, including the rules being acted on in this notice. This notice addresses EPA's proposed action for two BAAQMD Rules: Regulation 8, Rule 17, Petroleum Dry Cleaning Operations and Regulation 8, Rule 27, Synthetic Solvent Dry Cleaning Operations. These submitted rules were found to be complete on May 21, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51 Appendix V [3] and are being proposed for approval into the SIP.

Both rules control the emission of VOCs, which contribute to the production of ground level ozone and smog. The rules were adopted as part of the district's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to EPA's SIP-Call and the section

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Bay Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the amendments.

[3] EPA has since adopted completeness criteria pursuant to § 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991).

182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among the CAA provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norm for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 8-17 is entitled, Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners, EPA Document No. EPA 450/3-82-009. The CTG applicable to Rule 8-27 is entitled, Control of Volatile Organic Emissions from Perchloroethylene Dry Cleaning Systems, EPA Document No. EPA 450/2-78-050. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

BAAQMD Regulation 8, Rule 17, Petroleum Dry Cleaning Operations includes the following significant changes from the current SIP:

- Adds definitions;
- Changes the medium user exemption to a small user exemption;
- Adds operating requirements;
- Adds emission control requirements for solvent recovery dryers;
- Adds solvent filtration requirements; and
- Adds recordkeeping and test method requirements.

BAAQMD Regulation 8, Rule 27, Synthetic Solvent Dry Cleaning Operations includes the following significant changes from the current SIP:

- Adds a provision for future elimination of the small-user exemption;
- Expands the scope of the rule to include cleaning with all synthetic (halogenated) solvents;
- Adds definitions;
- Expands the operating requirements;
- Expands the emission control requirements;
- Expands the space limitation exemption requirements; and
- Adds recordkeeping and test method requirements.

EPA Region IX's technical support documents provide a more detailed discussion of the revisions to each rule.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, BAAQMD's Regulation 8, Rule 17, Petroleum Dry Cleaning Operations and Regulation 8, Rule 27, Synthetic Solvent Dry Cleaning Operations are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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

Regulatory Process

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

SIP approvals under sections 110 and 301 and subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

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

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401-7671q.

Dated: September 18, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92-23457 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 250

[FRL-4513-5]

Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials

AGENCY: U.S. Environmental Protection Agency.

ACTION: Advance notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) plans to conduct a public meeting to provide an opportunity for interested parties to express their views on issues pertaining to its "Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials" (40 CFR part 250). The Agency anticipates inviting principals from industry, environmental organizations, state and Federal procuring agencies, and state and local solid waste and recycling agencies. The meeting will be open to all interested parties.

EPA plans to hold this meeting to ensure that the positions of all interested parties are known as the Agency considers possible revisions to

the existing paper procurement guideline. The issues to be discussed at the meeting will be determined by meeting participants. A tentative list of discussion topics will be prepared by EPA and announced in a future **Federal Register** notice to assist meeting participants as they develop the meeting agenda.

DATES: It is anticipated that the meeting will be held in early December of this year. The exact date and time of the meeting will be announced in a future **Federal Register** notice.

ADDRESSES: The meeting location will be announced in a future **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: For additional information, please contact Terry Grist of the Municipal and Industrial Solid Waste Division, U.S. Environmental Protection Agency (Mail Stop OS-301), 401 M Street, SW., Washington, DC 20460, 202-260-9718.

SUPPLEMENTARY INFORMATION: Section 6002 of the Resource Conservation and Recovery Act requires "procuring agencies" to procure paper products composed of the highest percentage of post-consumer recovered materials practicable. The statute also requires EPA to prepare guidelines to assist procuring agencies in fulfilling their obligations under the statute. Procuring agencies are Federal, State and local agencies (and their contractors), and those receiving grants, loans, and cooperative agreements that use appropriated Federal funds when purchasing designated items, including many paper products.

EPA issued its "Guideline for the Federal Procurement of Paper and Paper Products Containing Recovered Materials" on June 22, 1988 (see 40 CFR part 250). These guidelines became effective in June of 1989. The statute also establishes a $10,000 threshold to determine whether a procuring agency must comply with the guidelines and requires EPA to periodically revise its guidelines.

In general, EPA issued minimum content purchasing specifications (with a recommended percentage of post-consumer recovered material) for Newsprint, Tissue Products, Unbleached Packaging and Recycled Paperboard. In addition, we issued minimum content purchasing specifications for Printing & Writing papers. However, at the time the guidelines were issued, insufficient quantities of Printing & Writing papers were being produced with post-consumer content to satisfy the Federal government's demand for these products. Thus, EPA issued "waste paper" specifications for Printing & Writing papers, which include some pre-consumer wastes, such as converting scrap and printers' waste, as well as post-consumer fiber. Many individuals and representatives of public interest groups have complained that principally pre-consumer wastes, not post-consumer wastes, are being used to produce Printing & Writing papers purchased by the Federal government.

EPA has been monitoring developments in the marketplace since our guidelines were issued. There has been increasing evidence that Printing & Writing papers are being made with post-consumer recovered paper. On October 3, 1990, we published a **Federal Register** notice requesting information on the extent to which post-consumer materials were being used in making Printing & Writing papers and whether or not it was possible to issue post-consumer content specifications for these grades (see 55 FR 40384). We also suggest that, if a post-consumer standard was not practical, perhaps an alternative, "deinked fiber" specification could be established. "Deinked fiber" is a broader category than post-consumer that would include all printed material, whether pre- or post-consumer. We received some 65 sets of comments on this notice from paper mills, wholesalers, trade associations, government agencies, and public interest groups. We intend to make use of the information obtained from those comments as we consider revisions to the guidelines for Printing & Writing papers.

Over the last couple of years, a number of organizations have been evaluating the EPA paper procurement guidelines and their effectiveness in stimulating recycling. These groups have been evaluating the definitions and recycled content levels contained in our guidelines, and have made numerous suggestions on possible revisions. Among others, we have received recommendations from the Recycling Advisory Council, the Paper Definitions Working Group, and the Paper Recycling Coalition. There is a growing misconception by many, maybe even a fear, that EPA is going to adopt one of these recommended approaches without first notifying the public of any proposed revisions and taking comment on them. This is not the case. We intend to follow our standard process of first proposing revisions, taking comments, and subsequently finalizing any changes to the existing guidelines.

Over the last six months, we have received numerous inquiries concerning revisions to our guidelines. We have encouraged those who have contacted us to provide whatever information they believe is relevant to the EPA's deliberations on if and how the existing paper procurement guidelines should be revised. We are concerned that we have not necessarily heard from all interested parties. As a consequence, we have decided that it would be prudent to conduct a public meeting to provide all interested parties an opportunity to make their views known to EPA. We expect to hold this meeting in early December; it will most likely be a two day meeting. The exact dates, times and location of this meeting will be announced in a future **Federal Register** notice.

It is our intention that the issues to be discussed at the public meeting will be determined by the meeting participants. We will prepare a tentative list of discussion topics for consideration by the participants, to assist them as they develop the meeting agenda. This list will include, but not be limited to, the following topics:

- Should EPA focus only on the Printing & Writing papers as outlined in the October 1990 notice, or should we reconsider all of the paper grades included in our guideline?
- What approach should EPA take if it decides to revise its minimum recovered material content specifications—post-consumer only, deinked wastepaper, a combination of total recycled content and post-consumer or deinked wastepaper?
- How should recycled content be measured—fiber only? total weight of the product?
- Should measurements be based on specific production runs or should they be averaged over time?
- Should EPA also develop guidance for use by private sector purchasers of recycled paper?

The complete tentative list of topics will be included in the future **Federal Register** notice announcing the dates, times, and location of the meeting. EPA intends to use the information gained from the public meeting to supplement our own research and contribute to our efforts in considering possible revisions to the existing paper procurement guidelines.

Dated: September 17, 1992.

Don R. Clay,

Assistant Administrator.

[FR Doc. 92-23460 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 268 and 271

[FRL-4514-3]

Land Disposal Restrictions "No Migration" Variances

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and notice of availability; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is extending the comment period on the proposed land disposal restrictions "no migration" variances rule, which appeared in the **Federal Register** on August 11, 1992 (see 57 FR 35940). This extension of the comment period is provided to allow commenters an opportunity to complete their review and responses to the Agency's proposed rule.

DATES: EPA will accept public comments on the proposed rule and notice of availability until October 23, 1992. Comments postmarked after the close of the extended comment period will be stamped "late."

ADDRESSES: Comments should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (Room 2427) (OS-305), 401 M Street, SW., Washington, DC 20460. One original and two copies should be sent and identified at the top by regulatory docket reference number F-92-NMVP-FFFFF. The Docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials, and should call the docket clerk at (202) 260-9327 for appointments. The public may copy, at no cost, a maximum of hundred pages of material from any one regulatory docket. Additional copies are $0.15 per page.

Copies of the guidance manual for no migration petitioners can be obtained from the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, at (703) 487-4600: No Migration Guidance (NTIS PB92-207 695).

FOR FURTHER INFORMATION CONTACT: For general information about this proposed rulemaking, contact the RCRA Hotline, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (800) 424-9346 (tollfree) or (703) 920-9810 in the Washington, DC, metropolitan area.

For information on aspects of this proposed rule pertaining to No Migration, contact Dave Reeves, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-4692.

For information on aspects of this proposed rule pertaining to control of organic air emissions from no migration units under RCRA Section 3004(n), contact Kent C. Hustvedt, Office of Air Quality Planning and Standards (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, (919) 541-5395.

SUPPLEMENTARY INFORMATION: On August 11, 1992, EPA proposed its interpretation of the "no migration" variance to the Congressional mandated restrictions on land disposal of hazardous waste. In addition, EPA proposed procedural and substantive requirements for petitioning the Agency and demonstrating that there will be "no migration" from a land disposal unit. Also, the Agency proposed standards that would limit organic air emissions from land treatment, landfill, and waste pile units for those petitioners that have successfully demonstrated "no migration" and have received a variance from restrictions on land disposal of hazardous waste. Finally, in this proposed notice, the Agency announced the availability of a draft guidance manual for petitioners seeking to make no migration demonstration, entitled No Migration Variances to the Hazardous Waste Land Disposal Prohibitions: A Guidance Manual for Petitioners (U.S. EPA, Draft, July 1992). These actions are in response to amendments to the Resource Conservation and Recovery Act (RCRA), enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA). See 57 FR 35940 for a more detailed explanation of the Agency's proposal.

Since publication, the Agency has received a request from several commenters to extend the comment period because additional time is needed to review the proposed rule and the guidance document. The Agency considered the request and has decided to extend the comment period for 30 days to allow the commenters additional time to review the proposed rule. The public comment period for the proposed rule was originally scheduled to end on September 25, 1992. Today's notice extends the public comment period for the proposed rule to allow commenters an opportunity to finalize their review and responses to the Agency's proposed rulemaking.

Dated: September 23, 1992.

Richard J. Guimond,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER).

[FR Doc. 92-23600 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 300

[FRL-4512-3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Suffern Village Well Field Site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Suffern Village Well Field site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the State have determined that CERCLA activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning this Site may be submitted on or before October 30, 1992.

ADDRESSES: Comments may be mailed to: Ms. Kathleen C. Callahan, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 737, New York, New York 10278.

Comprehensive information on this Site is contained in the EPA Region II public docket, which is located at EPA's Region II office, and is available for viewing, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday, excluding holidays. To request an appointment to review the public docket, please contact: Mr. Richard Kaplan, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 2930, New York, New York 10278, (212) 264-3819.

Background information from the Regional public docket is also available for viewing at the Site's Administrative Record repositories located at: Suffern Free Library, Maple and Washington, Suffern, New York 10901 and Suffern Village Town Hall, 61 Washington Avenue, Suffern, New York 10901.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Kaplan at (212) 264-3819.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region II announces its intent to delete the Site from the NPL and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (FUND). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at the Site warrant such action.

EPA will accept comments concerning this Site for thirty (30) days (or until October 30, 1992) after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. EPA Region II has recommended deletion and has prepared the relevant documents. EPA has also made all relevant documents available in the Regional office and local site information repositories.
2. The State of New York has concurred with the deletion decision.
3. Concurrent with this national Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate Federal, State and local officials, and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on September 30, 1992 and concluding on October 30, 1992.

The comments received during the comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary which will address the comments received during the public comment period.

If after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The Suffern Village Well Field Site is located in the Town of Ramapo, approximately 0.25 miles north of the New York-New Jersey border in Rockland County, New York. The Site includes a municipal water supply well field operated by the Village of Suffern, and a facility (Tempcon Corp.), approximately 2500 feet from the Well Field, from which hazardous substances were released or threatened to be released.

The Village operates four production wells that supply water at an average of approximately 1.8 million gallons per day. Recharge to the wells is derived principally from induced infiltration of water from the Ramapo River. Volatile organic contamination of the Well Field was first detected in tap water collected from the municipal distribution system in September 1978. Subsequent monitoring activities by the village, the Rockland County Department of Health (RCDOH) and the New York State Department of Environmental Conservation (NYSDEC), confirmed that ground water had become contaminated with 1,1,1-trichloroethane (TCEA), a volatile organic compound (VOC). Three of the Village's wells, with TCEA levels ranging from 90 to 114 parts per billion (ppb), were shut down in December 1978. Water supply requirements were provided by the remaining well which had TCEA levels significantly below the New York State Department of Health (NYSDOH) guideline of 50 ppb. (This guideline was revised to a standard of 5 ppb in January 1989).

In December 1978, RCDOH tentatively identified Tempcon Corp., a small oil burner reconditioning business, as a user of TCEA and a potential source of the TCEA contamination. In January 1979, Tempcon Corp. ceased disposing of TCEA into a seepage disposal pit located on its property and stopped using TCEA-based cleaning products. In March 1979, at the direction of RCDOH, Tempcon Corp. performed remedial measures including the removal of waste materials from its disposal pit and the excavation and devolatilization of contaminated soils. The Village constructed a spray aeration treatment system later that year to remove TCEA from the municipal water supply.

The system was operated until early 1985, when monitoring results indicated that TCEA levels were within the NYSDOH guideline of 50 ppb;

subsequently, TCEA concentrations remained below the guideline with only occasional excursions.

The Site was proposed for the NPL on October 10, 1984, and placed on the NPL on June 1, 1986. In March 1985, EPA entered into a cooperative agreement with New York State, which provided for the performance of an RI/FS by NYSDEC at the Site. In April 1986, DEC retained ERM-Northeast to perform this work.

The scope of the RI field work included extensive sampling of ground water, surface water, sediment, surface soil and ambient air. Analyses for metals, other inorganic, semivolatiles, and VOCs other than TCEA indicated that these substances were not a threat to human health or the environment. The only pathway of concern was ground water, bearing TCEA and degradation products, migrating southward from the Tempcon Facility and the E-well location (a monitoring well approximately 700 ft. southeast of Tempcon.)

A Feasibility Study was conducted during which a solute transport model (the "Suffern Aquifer Model") was developed to predict contaminant concentration profiles as a function of time.

The EPA community relations activities at the Site included a public meeting on August 19, 1987 to present the results of the RI/FS, and the preferred alternative. Public comments were received and addressed.

The Record of Decision (ROD) dated September 25, 1987 selected a "No Action" alternative based on the conclusion that contaminant levels had been naturally attenuating and the Suffern Aquifer Model predicted continued decreases in contaminant level down to approximately 1 ppb within 10 years and below 5 ppb within 4 years. A two-year monitoring program was planned to confirm the validity of the No Action alternative and to verify the predicted results of the Suffern Aquifer Model, as well as to ensure that the remedy was protective of human health and the environment.

Suffern Village installed a granular activated carbon adsorption unit and a maganese filtration unit to its existing water system, which as been in operation since the spring of 1990. This was necessitated by the revised January 1989 NYSDOH standard for TCEA concentrations in public water supplies of 5 ppb.

The first-year monitoring program was concluded in October 1990, and a report was issued in May 1991. After thorough review of the results, NYSDEC and EPA determined that the magnitude of the ROD monitoring program was not warranted, and decided to modify the program. This determination was based on the fact that the contaminant plume is attenuating, and the GAC system installed by Suffern Village has virtually eliminated the population's exposure to the low concentrations of TCEA present in the groundwater. NYSDEC prepared a Long-Term Monitoring Plan, dated October 9, 1991 with which EPA concurs.

The first-year ground water monitoring program has met the objectives set forth in the ROD. Water analyses indicate that the contaminant plume is attenuating, and support the conclusions of the Suffern Aquifer Model predictions. Further, the low levels of contamination in the production wells are below State drinking-water standards due to the recently installed GAC treatment system.

Having met the deletion criteria, EPA proposes to delete this site from the NPL. EPA and the State have determined that the response actions are protective of human health and the environment.

Dated: September 11, 1992.

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 92-23453 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO-610-4111-02-24 1A]

RIN 1004-AB72

Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 1, Approval of Operations; Reopening of Public Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; Reopening of public comment period.

SUMMARY: A proposed rule that would revise Onshore Oil and Gas Order No. 1 was published on July 23, 1992 (57 FR 32756). The public comment period expired on September 21, 1992. The Order provides the requirements necessary for the approval of all proposed oil and gas exploratory, development, or service wells on all Federal and Indian (except the Osage Tribe) onshore oil and gas leases. It also covers most approvals necessary for subsequent well operations, including abandonment. These approvals are granted by the Bureau of Land Management (BLM). The comment period is being reopened to provide the public additional time to comment on this important Order, which is fundamental to all oil and gas exploration and development.

DATES: Comments should be submitted by October 28, 1992. Comments received or postmarked after this date may not be considered in the decision process of the final rulemaking.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday (excepting Federal holidays).

FOR FURTHER INFORMATION CONTACT: Lynn E. Rust, (307) 772-2293, or Erick Kaarlela, (202) 653-2127.

Richard Roldan,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92-23487 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-214, RM-8062]

Radio Broadcasting Services; Columbia and Bourbon, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by The Greenfield Group proposing the substitution of Channel 244C1 for Channel 244C3 at Columbia, Missouri, and modification of the construction permit for Station KCMQ(FM) to specify operation on Channel 244C1. The coordinates for Channel 244C1 are 38-37-40 and 92-07-00. To accommodate Channel 244C1 at Columbia, we shall propose to substitute Channel 297A for vacant Channel 244A at Bourbon, Missouri, or in the alternative, delete the channel at Bourbon if no applications are filed for Channel 244A and no interest is expressed in Channel 297A during the comment cycle in this proceeding. The coordinates for Channel 297A at Bourbon are 38-08-30 and 91-16-00. There is a site restriction 2.6

kilometers (1.6 miles) southwest of the community.

DATES: Comments must be filed on or before November 13, 1992, and reply comments on or before November 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036–0847.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–214, adopted August 24, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92–23406 Filed 9–25–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–215, RM–8063]

Radio Broadcasting Services; Preston, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by KFIL Inc. proposing the substitution of Channel 276C3 for Channel 276A and modification of the license for Station KFIL–FM to specify operation on the higher class channel at Preston, Minnesota. The coordinates for Channel 276C3, Preston, are 43–44–38 and 91–54–04.

DATES: Comments must be filed on or before November 13, 1992, and reply comments on or before November 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Michael Borgen, President, KFIL, Inc., Box 377, Preston, Minnesota 55965.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–215, adopted August 24, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should not that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Lists of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92–23405 Filed 9–25–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 92–212, RM–8064]

Radio Broadcasting Services; Rudolph, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Wizard Communications, Inc., proposing the substitution of Channel 260C3 for Channel 260A at Rudolph, Wisconsin, and modification of the license for Station WIZD, Channel 260A, to specify operation on Channel 260C3. The coordinates for Channel 260C3 are 44–21–31 and 89–39–23.

DATES: Comments must be filed on or before November 13, 1992, and reply comments on or before November 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jerrold Miller, Miller & Miller, P.C., PO Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92–212, adopted August 24, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-23403 Filed 9-25-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-213, RM-8060]

Radio Broadcasting Services; Canton and Louisiana, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Foxfire Communications, Inc., proposing the substitution of Channel 271C3 for Channel 271A at Louisiana, Missouri, and modification of the license for Station KJFM(FM) to specify operation on Channel 271C3. The coordinates for Channel 271C3 are 39-21-57 and 91-16-30. To accommodate the upgrade at Louisiana, we shall also propose to substitute Channel 265C3 for Channel 272C3 at Canton, Missouri, and modify the construction permit for Station KBXB to specify operation on Channel 265C3. The coordinates for Channel 265C3 are 40-07-33 and 91-31-42. We shall propose to modify the license for Station KJFM(FM) for Channel 271A in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before November 13, 1992, and reply comments on or before November 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Thom T. Sanders, President, Foxfire Communications, Inc., P.O. Box 438, Louisiana, Missouri 63353.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-213, adopted August 24, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-23404 Filed 9-25-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-211, RM-8061]

Radio Broadcasting Services; Lumberton, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Stone-Lamar Broadcast Services Corporation proposing the substitution of Channel 237C1 for Channel 237C2 and modification of the license for Station WLUN to specify operation on Channel 237C1 at Lumberton, Mississippi. The coordinates for Channel 237C1 are 30-39-34 and 89-09-59.

DATES: Comments must be filed on or before November 13, 1992, and reply comments on or before November 30, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John S. Neely, Miller & Miller, P.C., P.O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-211, adopted August 24, 1992, and released September 22, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 92-23401 Filed 9-25-92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 57, No. 188
Monday, September 28, 1992

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication; Meeting

AGENCY: Administrative Conference of the United States.

ACTION: Committee on Adjudication; Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States.

The Committee will continue its discussion on the project on the federal administrative judiciary. The project was returned to the Committee for further consideration at the Conference's September 9, 1992 Plenary Session.

Copies of the draft report are available from the Conference.

DATES: Thursday, October 29, 1992 at 1 p.m.

LOCATION: Library of the Administrative Conference, 2120 L Street, NW., suite 500, Washington, DC.

PUBLIC PARTICIPATION; The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meetings. 35 copies of the statement should be submitted. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254-7020.

Dated: September 21, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92-23439 Filed 9-25-92; 8:45 am]

BILLING CODE 6110-01-M

COMMISSION ON CIVIL RIGHTS

Public Meeting Cancellation of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission which was to have convened at 1 p.m. and adjourned at 5 p.m. on Thursday, October 8, 1992 and to have reconvened at 9 a.m. and adjourned at 2 p.m. on Friday, October 9, 1992, at the Federal Building Courthouse, 2d Floor, room 209, 310 Bern Avenue, Raleigh, North Carolina 27601, has been canceled.

The original notice for the October 8-9, 1992 meeting was announced in the **Federal Register** on September 22, 1992 (57 FR 43691), FR Doc. 92-22852.

Persons desiring additional information should contact Bobby D. Doctor, Director of the Southern Regional Office, at (404) 730-2476.

Dated at Washington, DC, September 22, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-23427 Filed 9-25-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1993 Annual Demographic Survey-Supplement to the Current Population Survey.

Form Number(s): CPS-1, CPS-665, CPS-575, CPS-580, CPS-580(SP), CPS-676, CPS-676(SP), CPS-676(A).

Agency Approval Number: 0607-0354.

Type of Request: Reinstatement of a previously approved collection for which approval has expired.

Burden: 29,100 hours.

Number of Respondents: 72,000.

Avg Hours Per Response: 24.25 minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Demographic Survey (ADS) every year in March as a supplement to the Current Population Survey (CPS). The Bureau of the Census, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement. In the ADS, we collect information in the areas of work experience, migration, personal and household income and noncash benefits, and race. The Bureau of Labor Statistics and the Department of Health and Human Services use data gathered in the ADS to determine the official Government poverty statistics. We are also requesting clearance for these supplemental questions to be asked of the sample of CPS respondents participating in the CATI/CAPI Overlap (CCO) Test, sponsored by the Bureau of Labor Statistics, during the March 1993 CCO Test collection. We have included the additional reporting hours associated with the supplemental questions for the CCO Test in this clearance.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 22, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-23502 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-07-F

Economic Development Administration

Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economic Development Administration Senior Executive Service (SES) Performance Appraisal System:

Edward G. Jeep
John E. Corrigan
Charles E. Oxley
George Muller
Kathleen W. Lawrence
Richard S. Seline

James M. Moses,

Executive Secretary, Economic Development Administration, Performance Review Board.

[FR Doc. 92-23438 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-BS-M

International Trade Administration

[A-588-055]

Acrylic Sheet From Japan; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on acrylic sheet from Japan.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes or Thomas F. Futtner, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-8120/3814.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 34115) its intent to revoke the antidumping finding on acrylic sheet from Japan (41 FR 36497, August 30, 1976). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties. We did not receive a request for administrative review of the finding for the last five consecutive annual anniversary months, and therefore published a notice of intent to revoke the finding pursuant to 19 CFR 353.25(d)(4).

On August 19 and 20, 1992, Cyro Industries and E.I. DuPont de Nemours & Co., Inc., respectively, both domestic manufacturers of acrylic sheet, objected to our intent to revoke the finding. Therefore, we no longer intend to revoke the finding.

Dated: September 17, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance

[FR Doc. 92-23494 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with August anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Roland L MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and contervailing duty orders, findings, and suspension agreements, with August anniversary dates.

Initiation of Reviews

In accordance with § 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings and suspension agreements. We intend to issue the final results of these reviews not later than August 31, 1993.

Antidumping duty proceedings and firms	Periods to be reviewed
Israel:	
Industrial Phosphoric Acid—A-508-604	
Rotem Fertilizers Ltd.	8/1/91-7/31/92
Haifa Chemicals Ltd.	
Italy:	
Granular Polytetrafluoroethylene (PTFE) Resin—A-475-703	
Ausimont Spa	8/1/91-7/31/92
Japan:	
Granular Ploytetrafluoroethylene (PTFE) Resin—A-588-707	
Diakin Industries, Ltd.	8/1/91-7/31/92
Mexico:	
Gray Portland Cement and Clinker—A-201-802	
Cemex, S.A.	8/1/91-7/31/92
Turkey:	
Acetylsalicylic Acid (Aspirin)—A-489-602	
Atabay Pharmaceutical Fine Chemicals Inc.	8/1/91-7/31/92
Countervailing Duty Proceedings	
Canada:	
Live Swine—C-122-404	4/1/91-3/31/92
Israel:	
Industrial Phosphoric Acid—C-506-605	1/1/91-12/31/91
Thailand:	
Certain Circular Welded Steel Pipes and Tubes— C-549-501	1/1/91-12/31/91

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c) (1989).

Dated: September 18, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92-23493 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-05-M

[A-428-811]

Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-8498.

PRELIMINARY DETERMINATION: We preliminarily determine that certain hot-

rolled lead and bismuth carbon steel products from Germany are being, or are 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). The estimated dumping margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 4, 1992 (57 FR 19881, May 8, 1992), the following events have occurred.

On May 18, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On June 16, 1992, the Department of Commerce (the Department) presented its questionnaire to Saarstahl AG (SAG), the sole respondent in this investigation. At the request of SAG, the Department extended the deadline for submission of responses until July 1, 1992, for Section A; July 20, 1992, for Sections B and C; July 24, 1992, for the computer tapes; and July 28, 1992, for Section D. With the exception of Section A, which was filed on July 2, 1992, SAG's responses were received on the above dates. SAG resubmitted its public version of Section A on July 12, 1992. Petitioners' comments on SAG's response to Section A were received on July 17, 1992, and those on sections B, C, and D on August 7, 1992. We issued a deficiency letter on August 12, 1992, for Sections A, B and C, and on August 13, 1992, for Section D. We received SAG's deficiency responses on August 26, 1992, for Sections A, B and C, and on August 27, 1992, for Section D. Petitioner's remarks on the deficiency responses were received September 9, 1992.

Scope of Investigation

The products covered by this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the Harmonized Tariff Schedule of the United States (HTS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTS. Small quantities of the products may also enter the United States under the following HTS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is November 1, 1991, through April 30, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. There were no sales of identical merchandise in the home market to compare to U.S. sales; therefore, we made similar comparisons on the basis of: (1) Chemical composition; (2) shape; (3) cut (coil or cut length); (4) size; and (5) grade. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of the subject merchandise from Germany to the Untied 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.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sale price (ESP) methodology was not otherwise indicated. We calculated purchase price based on either packed, delivered or packed, landed CIF prices to customers in the United States. We made deductions, where appropriate, for foreign inland freight expenses incurred in both Germany and Belgium, ocean freight, marine insurance, U.S. duty, U.S. brokerage, U.S. inland freight, and U.S. trucking expenses.

In accordance with section 772(d)(1)(C) of the Act, we included in USP the amount of the German value-added tax (VAT) that would have been collected on the export sale had it been subject to the tax. Because SAG did not identify the tax base on which the VAT is calculated, we computed the hypothetical amount of the VAT based on the lowest possible tax base (*i.e.*, the ex-factory U.S. price) as the best information available (BIA) in accordance with 19 CFR 353.37.

Since SAG reported that its parent company, Usinor Sacilor, has access to U.S. dollar-denominated financing at the reported U.S. interest rate, we used SAG's reported U.S. interest rate in the calculation of U.S. credit expenses. See, Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Mexico, 57 FR 42953 (September 17, 1992).

SAG reported that it paid commissions on its U.S. sales to related selling agents. We found the existence of a profit/loss transfer agreement between SAG and its related selling agents to be sufficient evidence that the commissions were not paid at arm's length; therefore, we did not adjust for related-party commissions incurred on U.S. sales.

SAG did not sufficiently describe and report its warranty/technical service expenses incurred in either the home or U.S. markets. Without sufficient information regarding the nature of these expenses, we assumed that they were directly related to U.S. sales, but not to home market sales. We used the per-unit amount of total selling expenses reported in the cost of production (COP) response for each product as BIA for the warranty/technical service expenses on U.S. sales. For those products sold in the U.S. for which there was no COP information, we used the highest per-unit amount of total expenses reported for all products in the COP response.

Foreign Market Value

In order to determine whether there were sufficient sales of similar merchandise in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales in accordance with section 773(a)(1)(B) of the Act. We found that SAG's home market was viable.

In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales at the same level of trade.

Cost of Production

Based on petitioners' allegation, and in accordance with section 773(b) of the Act, we investigated whether SAG had home market sales that were made at less than its COP.

If over 90 percent of a respondent's sales of a given model were at prices above the COP, we do not disregard any below-cost sales because we determine that the below-cost sales were not made

in substantial quantities over an extended period of time. If between 10 and 90 percent of a respondent's sales of a given model are at prices above the COP, we disregard only the below-cost sales if made over an extended period of time. Where we find that more than 90 percent of a respondent's sales of a given model were at prices below the COP over an extended period of time, we disregard all sales of that model and calculate FMV based on constructed value (CV). In such cases, we determine that the respondent's below-cost sales were made in substantial quantities over an extended period of time.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of the cost of materials, fabrication, general expenses, and home market packing. We recalculated SAG's reported COP with regard to material costs, general and administrative expenses (G&A), and interest expenses. We increased material costs because SAG's related supplier of pig iron had understated its actual production costs by not including an accrual for future blast furnace relining as recorded in the 1991 consolidated financial statement of Usinor Sacilor, the consolidated parent company. We recalculated SAG's G&A by including a portion of Usinor Sacilor's corporate G&A for such expenses as research and development, restructuring costs, and employee profit sharing. Since SAG did not report the interest expense of Usinor Sacilor, we recomputed interest expense based on the consolidated company's reported interest expenses.

We compared home market selling prices—plus surcharges, and inland freight reimbursed to SAG by the customer, less discounts, rebates, and movement charges—to each product's COP. We found that over 90 percent of home market sales were above cost for some products; all sales of these products were used for comparison to U.S. products. For other products, between 10 and 90 percent of SAG's home market sales were below cost; therefore, we disregarded those below-cost sales and used the remaining sales of that product for comparison purposes. For some products, more than 90 percent of the sales were below cost. We disregarded all sales of those products and based FMV on CV, as described in the "Constructed Value" section of this notice.

Price-to-Price Comparisons

For those products for which we have an adequate number of sales at prices above the COP, we based FMV on home market prices. We calculated foreign market value based on ex-factory, ex-basis point, or delivered prices, inclusive of packing, to unrelated customers.

SAG requested that the Department include its sales to related parties in the home market in the FMV calculation. In our deficiency letter of August 12, 1992, we requested SAG to demonstrate that its sales to related parties were at prices comparable to those to unrelated parties. Since SAG made no such showing, we have no basis on which to conclude that its sales to related parties in the home market were at arm's length. Accordingly, for purposes of the preliminary determination, we have disregarded SAG's home market sales to related parties in our calculation of FMV.

We added quantity and other surcharges, and amounts for inland freight charges reimbursed to SAG by its customers and deducted rebates, discounts, and foreign inland freight and rail expenses paid by SAG.

Pursuant to section 773(a)(4)(B) of the Act and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for differences in credit, warranty/technical services, post-sale warehousing, and unrelated-party commission expenses. Because SAG did not report U.S. indirect selling expenses to offset unrelated party commissions, we used the amount of the unrelated party commissions, themselves, to offset the commissions as BIA. As discussed in the "United States Price" section of this notice, we assumed that SAG did not directly incur warranty/technical services expenses in the home market. We also deducted an amount for home market packing expenses and added an amount for export packing to the United States in accordance with 19 CFR 353.46(a)(1). Because home market prices were reported net of VAT, we added the hypothetical tax calculated for the U.S. sale to both USP and FMV as discussed in the "United States Price" section of this notice.

SAG paid commissions to both a related selling agent and an unrelated trading house on sales in the home market. We determined that the profit/loss transfer agreement between SAG and its related selling agent, according to which the sales agent made a year-end adjustment to its books to transfer its profits/losses to SAG, and the absence of any evidence of arm's length dealing was sufficient evidence to find that related-party commissions were not paid on an arm's length basis. Accordingly, we did not adjust for them.

Because SAG reported that it had DM-denominated financing in the home market, we used its reported home market interest rate to compute credit expenses. We recalculated SAG's reported home market credit expenses according to Department methodology. We based the calculation on a 365-day year since SAG has used a 365-day year to compute U.S. credit expenses and has not stated that it utilized a 360-day year in the normal course of business.

Constructed Value

For those products without an adequate number of sales at prices above the COP, we based FMV on CV. SAG supplied the Department with CV information for only two of the products sold in the United States. As BIA for the remaining U.S. products for which we were required to use FMV on CV, we used the highest margin calculated in the CV comparisons to USP for the two products with reported CV information, or the highest CV margin in the petition, whichever was found to be greater, as the applicable dumping margin for these sales.

We calculated CV for the two products for which SAG supplied CV information based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing. We recalculated SAG's reported CV as described above in the "Cost of Production" section of this notice. In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of the company's reported general expenses or the statutory minimum of ten percent of the cost of manufacture. For profit, we used the statutory minimum of eight percent since SAG did not report profit. (See, section 773(e)(1)(B)(ii) of the Act.)

For CV comparisons to USP, we made circumstance of sale adjustments for unrelated-party commissions, credit, post-sale warehousing, and warranty/technical service expenses (see, section on "Price-to-Price Comparisons" for discussion of commissions; *see*, section on "United States Price" for the calculation of warranty/technical service expenses).

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.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of lead and bismuth carbon steel products subject to this investigation from Germany that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Weighted-average margin percentage
Saarstahl AG	49.30
All Others	49.30

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 3, 1992. Rebuttal briefs must be submitted no later than November 10, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 12, 1992, at 1 p.m. at the U.S. Department of Commerce, room 1617 M4, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 21, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-23492 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-412-810]

Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Ready, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2613.

PRELIMINARY DETERMINATION: We preliminarily determine that certain hot-rolled lead and bismuth carbon steel products from the United Kingdom are being, or are 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). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 4, 1992, (57 FR 19881, May 8, 1992), the following events have occurred.

On May 18, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On June 16, 1992, the Department presented a questionnaire to United Engineering Steels Limited (UES), the company accounting for the overwhelming majority of exports of the subject merchandise from the United Kingdom during the period of investigation (POI). Responses to the questionnaire were originally due on June 30 and July 14, 1992. At the request of UES, the Department granted extensions of time until July 7, 1992, for Section A and July 28, 1992, for the Section B, C, and D. UES submitted its questionnaire responses on the specified dates. We issued supplemental questionnaires on August 12 and 14, 1992, and received responses to the supplemental questionnaires on August 31, 1992.

In a submission dated September 11, 1992, petitioner raised a number of serious questions concerning, among other things, UES's model matching, difference in merchandise adjustments, and cost of production calculations. Given the late date of petitioner's submission and the complexity of the matters raised, we have not addressed petitioner's concerns in this preliminary determination. We will, however, carefully examine these and other issues at verification, and will address these concerns in our final determination.

Scope of Investigation

The products covered by this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products.

Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTS. Small quantities of the following products may also enter the United States under the following HTS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The POI is November 1, 1991, through April 30, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales,

we made comparisons on the basis of the following criteria listed in order of importance: (1) Chemical composition; (2) shape; (3) cut (coil or cut length); (4) size; and (5) grade. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom 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.

UES requested that we make comparisons between U.S. sales with a total order quantity of 25 metric tons or more with home market sales of 25 metric tons or more, and between U.S. sales with a total order quantity of less than 25 metric tons with home market sales of less than 25 metric tons. However, given that (1) UES presented no analysis showing that there was any correlation between order quantity and price, and (2) petitioner raised credible objections to this claim, we have denied UES's request.

Related Party Issue

UES disclosed in a footnote to its response to Section A of the questionnaire that it "understands that a company called Allied Steel and Wire (ASW), which is a 20 percent subsidiary of British Steel, plc, may have made sales of the subject merchandise in the POI." British Steel and GKN, plc, each own 50 percent of the common stock in UES. ASW was not served a questionnaire at the outset of the investigation because (1) we were able to capture more than 60 percent of the exports of the subject merchandise, (see 19 CFR 353.42(b)) by serving UES only, and (2) we were unaware of the possible relationship between UES and ASW.

On August 12, 1992, the Department requested that UES supplement its responses to the questionnaire to include the sales of all related entities, including sales made by other units or subsidiaries of British Steel, plc, or GKN, plc, such as sales by ASW.

On August 17, 1992, UES requested that the Department amend its August 12, 1992, letter to exclude ASW sales because UES has no relationship with or control over ASW and cannot obtain ASW sales information. On August 19, 1992, petitioner submitted a letter arguing that evidence of coordination of the production, supply and sale of hot-rolled leaded steel products between British Steel, UES, and ASW exists and requested that the UES request be denied.

The Department has preliminarily determined, based on the information currently available, to accept UES's contention that a sufficient relationship between UES and ASW does not exist to warrant the reporting of ASW sales information by the respondent. However, we will examine this issue further at verification and consider it again at the final determination.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sale price (ESP) methodology was not indicated by other circumstances.

We calculated purchase price based on packed, delivered prices to customers in the United States. We made deductions, where appropriate, for invoice corrections, cash discounts, rebates, foreign inland freight, FOB charges in the United Kingdom, ocean freight, marine insurance, U.S. customs duty and merchandise processing fee, harbor maintenance fee, and handling, brokerage, and inland freight charges in the United States. While UES's shipments to the United States are transported by a related carrier, British Steel Shipping Service, UES failed to establish that the related carrier charges UES arm's length rates or to provide actual cost of such services, as requested in the Department's August 12, 1992, deficiency letter. Therefore, as best information available (BIA), we have deducted for ocean freight an amount equal to the ocean freight rate alleged in the petition, except in those instances where UES's reported rate exceeded the petition rate. In accordance with section 772(d)(1)(C) of the Act, U.S. price was increased to include the amount of the British value-added tax (VAT) that would have been collected on the export sale had it been subject to the tax. We computed the hypothetical amount of the tax by applying the home market tax rate to the delivered price to the United States customer, because in the home market, the tax is applied to the delivered price.

Foreign Market Value

In order to determine whether there were sufficient sales of the subject merchandise in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales by UES.

In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible.

Cost of Production

Based on petitioner's allegation, and in accordance with section 773(b) of the Act, we investigated whether UES had home market sales that were made at less than their cost of production (COP).

If over 90 percent of a respondent's sales of a given model are at prices above the COP, we do not disregard any below-cost sales because we determine that the below-cost sales were not made in substantial quantities over an extended period of time. If between ten and 90 percent of a respondent's sales of a given model are at prices above the COP, we disregard only the below-cost sales, if we find that these have been made over an extended period of time. Where we find that more than 90 percent of a respondent's sales are at prices below the COP over an extended period of time, we disregard all sales for that model and calculate FMV based on constructed value (CV). In such cases, we determine that the respondent's below-cost sales were made in substantial quantities over an extended period of time and at prices that would not permit recovery of all costs within a reasonable period of time in the normal course of trade.

In order to determine whether home market prices were above the COP, we calculated the COP as described below. Given that UES did not provide sufficient reasons supporting a departure from its normal cost accounting system in providing COP data in its response, we adjusted the submitted COM data to reflect UES's costs as recorded in its normal accounting system as of December 31, 1991. We then added general expenses and foreign market packing cost.

We compared home market selling prices, net of movement charges, rebates, and invoice corrections, to each product's COP. We found that for some products, more than 90 percent of the sales were at prices above the COP. For other products, there were fewer than 10 percent of sales at prices above the COP. For the remainder of the products, between 10 and 90 percent of the sales were at prices above the COP.

Price-To-Price Comparisons

For those products for which we have an adequate number of sales at prices

above the COP, we based FMV on home market prices. We calculated foreign market value based on packed, delivered prices to unrelated purchasers. UES requested that we include sales to related parties in calculating foreign market value. However, UES presented no analysis showing that sales to related parties were at arm's length prices. Therefore, we calculated foreign market value based on sales to unrelated parties only. We made deductions, where appropriate, for rebates, inland freight, and for invoice corrections. Pursuant to section 773(a)(4)(B) of the Act, and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for differences in credit expenses, warranty expenses, warehousing expenses, and commissions. Credit expenses for both markets were calculated using the interest rates used by UES in each of the two respective markets. *See*, Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Mexico, 57 FR 42953 (September 17, 1992).

We recalculated credit expense for the U.S. market to account for the number of days between the time the goods left the factory and the time of shipment from the port, and to correct a minor error made by UES in calculating its weighted average U.S. interest rate. UES reported the date that the goods left the port as shipment date instead of the date that the goods left the factory, and that goods were shipped from the port on a monthly basis. As BIA, we assumed that there was a 30 day lag between date of shipment from the factory and shipment from the port. Because the home market prices were reported net of VAT, we adjusted for the VAT by adding the hypothetical tax on the U.S. sale to the foreign market value.

Constructed Value

For those products without an adequate number of sales at prices above the COP, we based FMV on CV. We calculated the CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. We adjusted UES's CV data in the same manner as we adjusted its COP data as discussed above. In accordance with section 773(e)(1)(B)(i) of the Act, we included in CV the greater of the company's reported general expenses or the statutory minimum of ten percent of cost of manufacture (COM). For profit, we used the actual profit earned by UES because the actual figure was higher than the statutory minimum of eight percent of the sum of COM and general expenses, in accordance with section 773(e)(1)(B)(ii) of the Act. We made circumstance of sale adjustments, where appropriate, for differences in direct selling expenses including credit expenses, warranty expenses, and pre-sale warehousing expenses.

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.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain hot-rolled lead and bismuth carbon steel products from the United Kingdom that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice.

Producer/manufacture/exporter	Weighted-average margin percentage
United Engineering Steels, Limited	32.02
All Others	32.02

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after out final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 3, 1992. Rebuttal briefs must be submitted no later than November 10, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 12, 1992, at 10 a.m. at the U.S. Department of Commerce, room 1617 M4, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 21, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-23495 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-427-804]

Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Stephen Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1777, or (202) 377-5288, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain hot-rolled lead and bismuth carbon steel products from France are being, or are 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). Because Usinor Sacilor (Usinor), the sole respondent in this case, failed to provide adequate information in a timely manner, we have based our preliminary determination on the best information otherwise available (BIA). In this instance, because Usinor has been cooperative, we have determined BIA to

be an average of the margins that resulted from the fair value comparisons using constructed values for each of the transactions provided in the petition, as it was amended on April 27, 1992. The BIA margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 4, 1992, (57 FR 19881, May 8, 1992), the following events have occurred.

On May 28, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On June 16, 1992, the Department presented a questionnaire requesting sales and cost information to Usinor Sacilor (Usinor), the manufacturer accounting for at least 60 percent of the exports of the subject merchandise to the United States.

Usinor submitted questionnaire responses in July 1992. On August 12 and 14, 1992, we issued letters citing significant deficiencies in Usinor's sales and cost responses, respectively. On August 26 and 28, 1992, we received responses to our deficiency letters from Usinor. These responses also contained serious deficiencies and errors. Specifically, Usinor failed to provide, among other information, appropriate cost of production information and information concerning differences in the merchandise sold to the United States. Without reliable information concerning the differences in the merchandise, we are unable to insure that we are making appropriate product comparisons. (See, also, September 18, 1992, Memorandum from Richard W. Moreland, Director, Office of Antidumping Investigations, and Marie E. Parker, Director, Office of Accounting, to Francis J. Sailer, Deputy Assistant Secretary for Investigations.)

On September 9, 1992, we informed counsel for Usinor that major problems with Usinor's deficiency responses had to be addressed or we would not be able to use its information in this investigation. We gave Usinor until September 21, 1992, to file an additional supplemental response, with new computer tapes, to correct the numerous deficiencies and errors in its earlier responses. If the deficiencies and errors are corrected, we will consider this supplemental response for our final determination.

Scope of Investigation

The products subject to this investigation are hot-rolled bars and rods of nonalloy or other alloy steel, whether or not descaled, containing by weight 0.03 percent or more of lead or 0.05 percent or more of bismuth, in coils or cut lengths, and in numerous shapes and sizes. Excluded from the scope of this investigation are other alloy steels (as defined by the *Harmonized Tariff Schedule of the United States* (HTSUS) Chapter 72, note 1 (f)), except steels classified as other alloy steels by reason of containing by weight 0.4 percent or more of lead, or 0.1 percent or more of bismuth, tellurium, or selenium. Also excluded are semi-finished steels and flat-rolled products. Most of the products covered in this investigation are provided for under subheadings 7213.20.00.00 and 7214.30.00.00 of the HTSUS. Small quantities of these products may also enter the United States under the following HTSUS subheadings: 7213.31.30.00, 60.00; 7213.39.00.30, 00.60, 00.90; 7214.40.00.10, 00.30, 00.50; 7214.50.00.10, 00.30, 00.50; 7214.60.00.10, 00.30, 00.50; and 7228.30.80.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation (POI) is November 1, 1991, through April 30, 1992.

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise.

Fair Value Comparisons

To determine whether sales of the subject merchandise from France 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. As mentioned above, we used BIA as required by section 776(c) of the Act because Usinor did not provide adequate information in a timely manner for purposes of the preliminary determination. We determined that BIA was information submitted in the petition, as it was amended.

United States Price

We based USP on information provided in the petition. Petitioners provided U.S. prices based on quoted transaction prices for coil and cut-to-length products sold to U.S. customers on an F.O.B. port of entry basis and, for some customers, on a delivered basis. Petitioners adjusted the F.O.B. prices by deducting estimated costs for inland freight, foreign port and loading fees, ocean freight and insurance, customs duties, and U.S. terminal and unloading fees. In the case of the transaction prices quoted on a delivered basis, petitioners also deducted estimated costs for U.S. inland freight.

Foreign Market Value

We based FMV on constructed value information provided in the petition and the April 27, 1992, amendment to the petition. Petitioners alleged that the home-market prices as well as the third-country sales or offers of sales are at prices below the cost of production and, therefore, should be discarded in favor of constructed value. Accordingly, petitioners calculated an FMV on the basis of constructed value for each transaction listed in the amended petition.

Verification

As provided in section 776(b) of the Act, we will verify the information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of the subject merchandise from France that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Percentage [1]
Usinor Sacilor	64.55
All others	64.55

[1] Weighted-average margin percentage.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in

at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 6, 1992, and for rebuttal briefs no later than November 13, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on November 17, 1992, at 9:30 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: September 21, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-23640 Filed 9-25-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments Relating to Certain CME Stock Index Futures Contracts

AGENCY: Commdity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange (CME) has submitted proposed rule amendments for its S&P 500 Stock Price Index and S&P Midcap 400 Stock Price Index futures contracts and its proposed Russell 2000 Stock Price Index futures contract relating to modifications to the existing circuit breakers, which include price limit and trading halt provisions. One proposal would increase, for each affected stock index contract, the overall daily price limit and would establish new, larger price limits on the day after the relevant CME futures market is limit bid or offered. This proposal also would establish a new intermediate price decline limit for these contracts. Another proposal would provide that price limits for these stock index contracts would be based on the "implied settlement price" of the previous day, which is based on the closing value for the underlying index, if such implied settlement price is above or below the settlement price on the relevant CME stock index futures contract by a specified amount. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis (Division) on behalf of the Commission has determined that publication of the proposals is in the public interest and will assist the Commission in considering the views of interested persons. On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comment must be received on or before October 28, 1992.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to circuit breaker provisions of the CME U.S. stock index futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Contact Stephen Sherrod, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202-254-7303.

SUPPLEMENTARY INFORMATION: The Interim Report of the Working Group of Financial Markets dated May 1988 recommended that coordinated trading halts and reopenings be adopted by all domestic markets for U.S. equity and equity-related products as a means of dealing with large, rapid market declines that threaten to create panic conditions.[1] In broad outline, the Working Group recommended: (1) That stock index futures markets set downward price limits [2] at levels comparable to a 250-point Dow Jones Industrial Average (DJIA) decline below its previous day's closing value, (2) that broad-based stock index option markets establish either comparable price limits or procedures under which all trading in the index options will cease at levels comparable to a 250-point DJIA decline, and (3) that all U.S. markets for equity-related products halt trading for a one-hour period if the DJIA declines 250 points from its previous day's closing level. Under the Working Group's recommendations, after reopening from such a trading halt, similar price limit, halt, and reopening procedures would be used for DJIA declines of 400 points below its previous day's closing level, except that the halt would last two hours instead of one.

As noted, Working Group recommendations were for triggers based on 250 and 400 point DJIA declines. The Working Group stated that "the 250 and 400 point triggers and the comparable triggers for the stock index futures and options markets will be reviewed at least quarterly to determine if changes in index levels necessitate changes to these triggers in order to maintain percentages approximately equivalent to 12% and 20% [of the DJIA]."

In October 1988, the Commission approved price limit and trading halt proposals (i.e., circuit breakers) submitted by the futures exchanges in direct response to the recommendation of the Working Group. Coordinated provisions also in direct response to the recommendations of the working Group were approved by the Securities and Exchange Commission (SEC) for equity and equity-related markets under the SEC's jurisdiction. In June and December 1990, the Commission approved amendments to the CME's circuit breaker provisions for the S&P 500 futures contract.

In addition to the circuit breaker provisions noted above, the Commission also has approved for the CME an "initial price decline" limit of 12 points.[3] The initial price decline limit is effective for 30 minutes after the primary futures contract is first limit offered.[4] If trading

[1] On March 18, 1988, the Working Group on Financial Markets was established by Executive Order to provide a coordinating framework for consideration, resolution, recommendation, and action on the complex issues raised by the stock market break in October of 1987. The Working Group was charged with developing effective mechanisms to enhance investor confidence, to protect the quality and fairness of markets for all participants, and to preserve the continued orderliness, integrity, competitiveness, and efficiency of our nation's financial markets.

[2] A downward price limit (or price decline limit) is a price level below which trades cannot be executed while the limit is in effect.

[3] The Exchange also has opening price limits, applicable to both price increases and decreases, which would not be affected by the subject proposals.

[4] However, the initial price decline limit does not apply after 2:30 p.m. Chicago time.

is limit offered 30 minutes after the price decline limit is hit, trading is halted for two minutes and then reopened subject to the overall limit.

The existing limits for the S&P 500 and the other affected stock index futures—the S&P 400 index and the proposed Russell 2000 index—are stated in index points for the index underlying each respective futures market. The circuit breaker levels currently in effect for these contracts along with the proposed changes, in index points, are summarized below.

Futures market	Opening limit	Initial limit	Intermediate limit	Overall limit
Existing Limits				
S&P 500	5	12	NA	20
MidCap 400	2	4	NA	7
Russell 2000	3	6	NA	10
Proposed Limits				
S&P 500:				
Regular	5	12	20	30
Expanded	5	20	30	50
MidCap 400:				
Regular	2	4	8	12
Expanded	2	8	12	20
Russell 2000:				
Regular	3	6	10	15
Expanded	3	10	15	25

Under the CME's proposed amendments to the price limit levels,[5] the "regular" limits shown above would apply on most days; specifically, the initial, intermediate, and overall regular limits would be in effect on each day where the subject futures market was not limit bid or offered at the close on the previous day. The proposed initial, intermediate and overall "expanded" limits would apply only when the subject futures market was limit bid or offered at the close on the previous day. At current index levels, the proposed regular (expanded) price limits generally are comparable to DJIA movements of 40 (40) points for the opening limits, 95 (160) points for the initial limits, 160 (240) points for the intermediate limits, and 240 (400) points for the overall limits.

As with the existing initial limits, the newly proposed, intermediate limits represent price decline limits which would be in effect for a 30-minute period after the limit is hit.[6] If trading is limit offered at the end of the 30-minute period, trading in the affected futures contract will be halted for two minutes, and then trading will reopen subject to the applicable overall limit.

The CME also proposes to change the procedures for determining the base price used for setting the price limits noted above for the subject stock index futures contracts in certain instances. Under current rules, price limits are based on the settlement price on the subject futures for the previous day. Under the proposal, in those cases where on the previous day the subject future was limit bid or offered and the "implied market price" [7] for that prior day, based on the closing cash values of the relevant stock index, was above the limit bid, or below the limit offer, by a specified number of index points,[8] then the base price used for setting price limits on the next day will be such implied market price.

The CME has proposed to make the amendments effective for newly listed and existing contracts at the time of Commission approval. The current proposals do not change the specific procedures for the trading halt provisions of these contracts.[9]

In support of the proposals, the CME noted that:

With the S&P Stock Price Index standing around 415 points, a daily limit of 20 points is less than a 5% move. While other have been few instances of limits being approached in the last two years, it is widely perceived that today's limit has a considerably greater chance of being hit than it did a few years ago * * *.

The most significant risk comes from a cash move well beyond the CME limit. In those instances, firms would have to collect significant variation payments from customers, who may choose to have their positions liquidated instead. In a lock limit situation, such liquidations would not be possible. If the cash market changes by even 10%, it would be necessary to have multiple limit move days before these positions could be liquidated, posing significant financial risks to the clearing firms. By expanding the initial Daily Limit to 30 points and by expanding it further to 50 points after a limit day, the probability of multiple days without trading opportunities is greatly reduced.

Another related feature of the rule changes is to change the Final [Daily] Settlement Price to the Implied [Market] Price whenever the cash index has moved by an extreme amount beyond the limit price * * *. By changing the settlement price from the limit to the implied Market Price, the next day's limits will be based on the cash movement and not the limit price. This is another safeguard to minimize the potential for multiple limit move days without the opportunity to trade.

The changes proposed by the CME are entirely consistent with the Brady Commission guidelines on circuit-breakers. In no instance would open trading be allowed beyond 30 S&P 500 points (approximately equal to 240 Dow Jones Industrial Average points) on the first day, or more than 50 S&P points (400 DJIA points) on subsequent days.

The Commission is requesting comment on the proposed changes to the circuit breaker provisions of the CME. In particular, the Commission requests comment on the following questions:

1. Are the proposed regular and expanded futures price limits appropriate as circuit breakers? It is noted that, at current index levels, the proposed regular (expanded) limits represent movements of about 3 (5) percent for the initial limits, 5(7) percent for the intermediate limits, and 7 (12) percent for the overall limits.

2. Under the proposal on the day after a CME overall limit price movement, once the expanded overall limits are in effect after the initial and intermediate price decline limits have lapsed, the subject CME futures contracts could decline more than a 250-point DJIA equivalent and continue to trade even though (a) the primary securities market has not yet declined by 250 points in the DJIA or (b) the primary securities market has been halted for one hour by a 250-point DJIA decline in that market or (c) the primary securities market has been halted for one hour and has been reopened. In this situation, the CME futures contracts would not halt until the primary securities market is halted (at either a 250 or 400 point DJIA decline) *and* CME futures are limit offered at a decline equivalent to 400 points in the DJIA.[10] The Commission requests comment on whether this expansion provision is acceptable.

3. Is it appropriate to use the implied market price, based on the closing values of the relevant cash index for the previous trading day, as the basis for setting futures price limits on the next day under the proposed conditions?

Copies of each of the proposed amendments will be available for inspection at the Office of the

[5] As shown in the table, for the Midcap 400 futures contact, the CME has proposed to adopt an expanded initial and regular intermediate price decline limit of 8 points, which is at variance with the existing overall limit of 7 points.

[6] As with the existing initial price decline limits, the proposed intermediate price decline limits would not apply after 2:30 p.m. Chicago time.

[7] The implied market price is the closing value of the underlying cash stock index, plus the difference of the futures settlement price less the cash index (not less than zero) on the last day for which the future was not limit bid or offered at the close.

[8] The number of index points specified in the CME's amended rules are 10 for the S&P 500, 3 for the S&P Midcap 400, and 5 for the Russell 2000.

[9] The CME trading halt provisions require the futures contracts to be limit offered before futures trading is halted.

[10] The original circuit breakers approved for the CME's stock index contracts in 1988 included maximum price limits equivalent to 400 points in the DJIA. However, such limits became effective only at the reopening of trading on the CME, which occurred after a one-hour trading halt on the primary securities market.

Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of these proposed price limit and trading halt rules can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

The materials submitted by the CME in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR 145 (1987)). Requests for copies should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interest in submitted written data, views, or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on September 22, 1992.

Gerald D. Gay,

Director.

[FR Doc. 92-23428 Filed 9-25-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to 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 and Contract Clause: Child Annuitant's School Certification, DFAS-DE Form 2089.

Type of Request: New collection.

Average Burden Hours/Minutes Per Response: 12 minutes.

Responses Per Respondent: 1.

Number of Respondents: 1,800.

Annual Responses: 1,800.

Annual Burden Hours: 360.

Needs and Uses: This information is used to determine initial or continued eligibility for a Survivor Benefit Plan (SBP) or Retired Serviceman's Family Protection Plan (RSFPP) annuitant. Once the child annuitant has reached age 18, he/she must attend school full time in order to continue receiving the annuity.

Affected Public: Individuals or households, Non-profit institutions.

Frequency: Submitted after each school semester or other period in which school year is divided.

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 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202-4302.

Dated: September 23, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-23434 Filed 9-25-92; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws; Meeting

AGENCY: Defense Systems Management College.

ACTION: Notice of meeting.

SUMMARY: Open to the public on October 22 and 23, 1992, starting at 8:30 a.m. at the Defense Systems Management College in Building 184 on Fort Belvoir, VA. The panel will hear presentations and recommendations by the various panel working groups on the statutes they have reviewed to date.

FOR FURTHER INFORMATION CONTACT: Linda Snellings at (703) 355-2665.

Dated: September 23, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-23433 Filed 9-25-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Office of the Secretary of the Army; Environmental Assessment for Base Realignment at Fort Carson, CO

AGENCY: United States Army, Department of Defense.

ACTION: Finding of no significant impact.

SUMMARY: The Secretary of Defense's Commission on Base Closure and Realignment recommended the realignment of the 10th Special Forces Group (Airborne) (10SFG(A)) from Fort Devens, Massachusetts, to Fort Carson, Colorado. The Defense Base Closure and Realignment (BRAC) Act of 1990, Public Law 101-510, endorsed the recommendations of the Commission and required implementation of the Commission's recommendations. An Environmental Assessment (EA) discussing possible impacts to the biological, historical, and socioeconomic environment of Fort Carson and the surrounding community has been prepared in accordance with the National Environmental Policy Act (NEPA) and the provisions of Army Regulation 200-2, which implements the Council on Environmental Quality Regulations at 40 CFR 1500. The EA is incorporated herein by reference. The requirements of the Endangered Species Act and the National Historic Preservation Act have been addressed.

The proposed action will involve the relocation of two special forces battalions from Fort Devens in 1995 into permanent facilities constructed at Fort Carson prior to the relocation. In addition to the proposed action, four other alternatives were considered including the temporary use of renovated facilities until permanent facilities can be constructed, permanent use of existing facilities without renovation, renovation of facilities for permanent occupancy, and renovation of facilities supplemented with limited construction. Three sites on Fort Carson were evaluated for construction of permanent facilities.

The construction of permanent facilities will not adversely impact air or water quality, ambient noise levels, sensitive biological resources, or other resources. Surveys were conducted to determine whether there are any archeological resources within the construction project area eligible for the National Register of Historic Places. No such resources were discovered. A report of these findings has been coordinated with the Colorado State Historic Preservation Office. Concurrence of no effect for the construction area was received from that office. In accordance with the BRAC Cultural Resources Programmatic Agreement and current Fort Carson and Pinon Canyon Maneuver Site land management practices, the 10SFG(A) will not conduct ground disturbing

exercises in training areas that have not been surveyed for archeological resources until such surveys have been carried out and the report findings and recommendations have been approved by the Colorado State Historic Preservation Officer.

Impacts on the natural environment will not be significant because of the nature of the 10SFG(A) training. The realignment action will not significantly increase the current amount or intensity of training at Fort Carson or the Pinon Canyon Maneuver Site, nor will it require the expansion of training facilities.

Existing utilities at Fort Carson can adequately support the increase in population associated with the realignment of the 10SFG(A) to Fort Carson. The construction activities will not significantly alter the availability of energy resources on the installation.

The realignment action will have a positive impact on El Paso County with respect to employment, population, business volume, and personal income. However, these increases will not alter the socioeconomic characteristics of the Fort Carson region and are not significant.

Based on an evaluation of the EA, it is determined that the anticipated environmental and socioeconomic impacts of the realignment of the 10SFG(A) to Fort Carson are not significant. An analysis of direct, indirect, and cumulative impacts indicates that the realignment action will not significantly affect the quality of the human environment. Therefore, an environmental impact statement will not be required.

SUPPLEMENTARY INFORMATION: There is a 30-day waiting period for the public prior to implementation.

ADDRESSES: A request for a copy of the EA and comments may be forwarded to Mr. Robert S. Nebel or Mrs. Patsy Freeman, Omaha District, U.S. Army Corps of Engineers, Planning Division, Omaha, Nebraska 68102.

FOR FURTHER INFORMATION CONTACT: Questions concerning this FNSI may be directed to Mr. Robert Nebel, (402) 221-4621 or Mrs. Patsy Freeman, (402) 221-3803.

Dated: September 21, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 92-23383 Filed 9-25-92; 8:45 am]

BILLING CODE 3710-08-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 92-7]

Training and Qualification

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning Training and Qualification. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before October 28, 1992.

ADDRESSES: Send comments, data, views or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 2004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208-6400.

Dated: September 23, 1992.

John T. Conway,

Chairman.

[Recommendation 92-7]

Training and Qualification

Dated: September 22, 1992.

Since its inception, the Defense Nuclear Facilities Safety Board has emphasized that a well constructed and documented program for training and qualifying operations, maintenance, and technical support personnel and supervisors at defense nuclear facilities is an essential foundation of operations and maintenance and, hence, the safety and health of the public, including the facility workers. A substantial portion of the Board's efforts has been devoted to on-site observation and review of personnel and supervisor selection, training, qualification, certification and facility operation.

The Board recognizes and commends DOE's efforts to date to upgrade training programs at its defense facilities. While the Board applauds the effort expended in developing DOE Orders 5480.18A, *Accreditation of Performance-Based Training for Category A Reactors and Nuclear Facilities and 5480.20, Personnel Selection, Qualification, Training and Staffing Requirements at DOE Reactor and Non-Reactor Nuclear Facilities,* implementation of these Orders to date has been slow and the Board continues to find common deficiencies at most facilities it visits. DOE nuclear facility Maintenance and Operations (M&O) Contractors were required by DOE Order 5480.20 to submit implementation plans called Training Implementation Matrices (TIMs) for each nuclear facility by November 8, 1991. The Order does not contain a time requirement for DOE to approve the TIMs and, for the facilities reviewed by the Board and its staff, DOE has not approved the plans they have received to date.

Until the TIMs are approved, training at defense nuclear facilities is governed by more general requirements contained in DOE Orders on safety (DOE Order 5480.5 *Safety of Nuclear Facilities* and DOE Order 5480.6 *Safety of DOE-Owned Reactors)* that have been in effect since September 23, 1986. Despite the long standing requirements of these Orders, the contractors at the many different facilities evaluated by the Board have not yet, in our view, provided management attention and resources for training and qualification commensurate with the health and safety implications of their defense nuclear programs. Indications at each of these sites demonstrate weaknesses in contractor training programs that have potential negative safety consequences. For example:

—A primary measure of an effective training program is the level of knowledge of the personnel and supervisors. At almost all defense nuclear sites, there are numerous technical personnel and supervisors of defense nuclear activities who do not adequately understand many basic fundamentals of engineering, chemistry, nuclear physics, and radiation protection to the extent required to ensure safe operation or maintenance of the facility to which they are assigned.

—Written examinations at many sites often consist of unchallenging multiple choice and short answer questions which do not adequately assess operator knowledge. Additionally, written operator qualification exams do not effectively correlate fundamental engineering principles with job specific knowledge requirements. As a result, management may not have sufficient information to determine if technical personnel in a defense nuclear facility have achieved a level of expertise required to safely conduct their activities.

As stated in DOE Order 5480.20, Program Senior Officials are responsible for assuming "line management responsibility and accountability for reactor and non-reactor nuclear facility personnel qualification programs." The contractors' lack of effective implementation of DOE Orders concerning training is indicative of the need for more emphasis, direction and guidance on training by line management at DOE Headquarters and Field Offices. For example, the Department has been slow to extend the underlying principles of Board Recommendation 90-1 to other defense nuclear facilities. Recommendation 90-1 called for the development of an effective training program at Savannah River Site K-reactor. It is especially disturbing that despite the successful application of Recommendation 90-1 to K-reactor and the Replacement Tritium Facility, DOE has not improved training of corresponding technical personnel at some other Savannah River Site defense nuclear facilities.

Primarily as a result of assessments conducted by the Board's staff at the Hanford

Site, the Pantex Plant, the Savannah River Site non-reactor facilities, the Oak Ridge Y-12 Plant, and the Rocky Flats Plant, but also because of reviews conducted elsewhere in the defense nuclear facilities complex, the Board believes there is a need for DOE to take action to further strengthen training of technical personnel at defense nuclear facilities. While the benefits of training are felt in many ways, the recommendations below are to be seen for their positive effects on assuring public health and safety. Therefore, in keeping with the Board's statutory requirements and recognizing the priority DOE has placed on the facilities listed above, the Board recommends for these sites that:

1. The Department take timely action to expand senior management's involvement in implementing training programs at defense nuclear facilities and to enhance senior management's communication of the importance of effective training and qualification programs to all levels within relevant DOE and contractor defense nuclear facilities organizations, particularly within line organizations. With regard to operations, maintenance, and technical support personnel, the Department should determine what personnel, funding, organizational, or managerial strengthening actions are needed to (a) elevate the priority and importance of training and qualification programs to assure public health and safety; (b) communicate the importance of training and qualification from the highest level of management to all appropriate Department personnel; (c) expand personnel and supervisor training and qualification guidance and increase program resources to facilitate the rapid review, approval, and implementation of training and qualification programs; and (d) make other changes as are warranted.

2. Where it is found to be necessary, the Department strengthen organizational units responsible for training and qualification at the DOE Field Offices, DOE Area Offices, and contractor organizations responsible for defense nuclear facilities at these sites, especially to include the appropriate technical qualifications of the personnel assigned to defense nuclear activities. The infrastructure, responsibilities, and resources of the training and qualification programs of those organizations need to be strengthened to expedite implementation of existing and additional training and qualification requirements issued by DOE.

3. The Department accelerate efforts internal to DOE to improve training and qualification programs of operations, maintenance, and technical support personnel at defense nuclear facilities. An integral part of this effort should be an assessment of the roles and effectiveness of technical oversight groups to ensure that these groups' reviews, at all organizations and levels within the defense nuclear facilities complex, appropriately recognize the importance of training and qualification to public health and safety. The Department's program should also consider restructuring on-site technical oversight groups to ensure that training and qualification are afforded adequate attention and team members possess the technical expertise necessary to effectively evaluate training and qualification programs of operations, maintenance, and technical support personnel.

4. The Department and its contractors establish and implement measures to improve training and qualification programs of operations, maintenance, and technical support personnel at defense nuclear facilities that embody the principles applied at the Savannah River Site K-reactor in response to Board Recommendation 90-1. These measures, adjusted commensurate with the risk associated with operating each specific facility, should include consideration of elements such as:

a. Incorporation of appropriate applicable guidance on training and qualification comparable with trade, professional, and industry standards for reactor and non-reactor nuclear facilities. While the Board does not necessarily endorse all guidance contained in these standards, it believes they are important sources of information which can be productively used by DOE in identifying improvements for DOE's programs.

b. Identification of differences between current requirements and applicable trade, professional, and industry standards and implementation of supplemental measures necessary to compensate for the differences identified until training and qualification programs at defense nuclear facilities achieve a level at least equal to trade, professional and industry standards.

c. Extension of the performance-based training principles described in DOE Order 5480.18A to all defense nuclear facilities. Particularly the requirements to: (1) Determine the current level of knowledge of appropriate personnel, supervisors, and managers of technical activities by means of written, oral, and practical examinations covering job specific process knowledge requirements as well as fundamentals concepts required to perform a job in a manner that protects the safety of the worker and the public; (2) delineate the training necessary to ensure that these personnel achieve and maintain the qualifications of their respective positions; and (3) evaluate individuals' knowledge level and training curriculum to ensure that the training program effectively prepares these personnel to safely operate, maintain, or support the facility to which they are assigned.

d. Extension of current continuing training, retention testing, and periodic requalification programs to require these personnel to demonstrate continued improvement with increasing experience.

e. Maintenance of readily accessible, auditable records to identify required training and objectively verify training received by these personnel and supervisors including the degree of success achieved.

We believe it is essential that the Department and its contractors accomplish the above for each DOE defense nuclear facility. The facilities specifically identified in this Recommendation are those which the Board understands to be among those which have high priority within the Department and on which the Board has focused its attention.

John T. Conway,
Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

Defense Nuclear Facilities Safety Board

625 Indiana Avenue NW, Suite 700, Washington, DC 20004, (202) 208-6400

September 22, 1992.

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585

Dear Mr. Secretary: On September 22, 1992, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 92-7 which is enclosed for your consideration. Recommendation 92-7 deals with Training and Qualification.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161-68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the Federal Register.

Sincerely,

John T. Conway,
Chairman.

Enclosure

[FR Doc. 92-23468 Filed 9-25-92; 8:45 am]
BILLING CODE 6820-KD-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Application Filed With the Commission

September 22, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 11315-001.

c. *Date filed:* September 8, 1992.

d. *Applicant:* BMB Enterprises, Inc.

e. *Name of Project:* Granite Creek.

f. *Location:* Within Granite Ranch, on the ranch's irrigation system which draws water from Granite Creek, in Juab County, Utah, T. 12., R. 17 W., Sections 17.

g. *Filed Pursuant to:* Federal Power Act 16 USC §§ 791(a)-825(r).

h. *Applicant Contact:* Mark. R. Hutchings, Ida-West Energy Company, P.O. Box 7867, Boise Idaho 83703, (208) 336-4254.

i. *FERC Contact:* Héctor M. Pérez at (202) 219-2843.

j. *Comment Date:* November 9, 1992.

k. *Description of Project:* The proposed project would consist of a powerhouse with a 350-megawatt generating unit at the end of the existing pipeline that discharges into the storage reservoir at the ranch. The project would have an estimated average annual generation of 1,485,000 megawatthours.

1. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23398 Filed 9-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-838-000]

Commonwealth Edison Co.; Filing

September 17, 1992.

Take notice that on September 11, 1992, Commonwealth Edison Company (Edison) tendered for filing an Interchange Agreement, dated August 13, 1992, between Edison and Wabash Valley Power Association, Inc. (Wabash Valley). The Interchange Agreement provides for Edison to make Firm Power, Short Term Power, and General Purpose Energy available to Wanash Valley whenever mutually agreed upon.

Copies of this filing were served upon the Illinois Commerce Commission and Wabash Valley.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1992. 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. 92-23400 Filed 9-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-834-000]

Northeast Utilities Service Company; Filing

September 17, 1992.

Take notice that on September 10, 1992, Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P) tendered for filing an agreement for the sale to Braintree Electric Light Department (BELD) of unit capacity and associated energy from CL&P.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule change to become effective October 1, 1992.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the other party.

NUSCO further states that the filing is in accordance with Section 35 of the Commission's regulation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 30, 1992. 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. 92-23399 Filed 9-25-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of August 28 Through September 4, 1992

During the Week of August 28 through September 4, 1992, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 21, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 28 through September 4, 1992]

Date	Name and location of applicant	Case no.	Type of submission
Aug. 31, 1992	Arco/Fair Oil Company, Washington, DC	RR304-47	Request for modification/rescission in the Arco refund proceeding. *If granted:* The May 9, 1989 Decision and Order (RF304-2579) issued to Fair Oil Company would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
Sept 1, 1992	Gulf/Holloway Construction, Woodbridge, Virginia	RR300-199	Request for modification/rescission in the Gulf refund proceeding. *If granted:* The May 10, 1991 Decision and Order (RF300-11405) issued to Holloway Construction would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of August 28 through September 4, 1992]

Date	Name and location of applicant	Case no.	Type of submission
Sept. 1, 1992	Gulf/Maxfield's Garage, Atlantic Beach, Florida	RR300-200	Request for modification/rescission in the Gulf refund proceeding. *If granted:* The July 1, 1992 Dismissal Letter (Case No. RF300-14765) issued to Maxfield's Garage would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Sept. 3, 1992	Shell/Kingman Truck Terminal, Las Vegas, Nevada.	RR315-3	Request for modification/rescission in the Shell refund proceeding. *If granted:* The April 23, 1992 Dismissal Letter (Case No. RF315-9988) issued to Kingman Truck Terminal would be modified regarding the firm's application for refund submitted in the Shell refund proceeding.
Sept. 4, 1992	Skadden, Arps, Slate, Meagher & Flom, Washington, DC.	LFA-0239	Appeal of an information request denial. *If granted:* The September 1, 1992 Freedom of Information Request Denial issued by the Management and Information Systems Office, Economic Regulatory Administration, would be rescinded, and Skadden, Arps, Slate, Meagher & Flom would receive access to 284 documents concerning communications between Chevron U.S.A., Inc. and the DOE, and between Cities Service Oil and Gas Corporation and the DOE.
Sept. 4, 1992	Wayne T. Long, Detroit, Michigan	LFA-0238	Appeal of an information request denial. *If granted:* The July 31, 1992 Freedom of Information Request Denial issued by the Office of Intergovernmental and External Affairs, Albuquerque Field Office, would be rescinded, and Wayne T. Long, President, Local 251, United Plant Guard Workers of America, would receive access to the personnel section of the contract between Allied-Signal Aerospace and the DOE.
Sept. 4, 1992	Reynolds Metals Company, Washington, DC	RR272-98	Request for modification/rescission in the Crude Oil Refund Proceeding. *If granted:* The August 1, 1991 Decision and Order (Case No. RF272-73969 & RF272-92645) issued to Reynolds Metals Company would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

Date received	Name of refund proceeding/name of refund application	Case No.
8/31/92	Walker Oil Co., Inc	RF313-333
8/31/92	Allison Oil Company.	RF304-13265
8/31/92	Ike's Super 100	RF342-307
9/1/92	Finger Lakes ARCO.	RF304-13266
9/1/92	Fauber Construction Co., Inc.	RF304-13267
9/1/92	Horacio J. Espinosa.	RF304-13268
9/1/92	Simmons ARCO	RF304-13269
9/1/92	Lamonts Auto Center.	RF304-13270
9/2/92	Osage Oil Company.	RF326-327
9/2/92	Vickers/Kansas	RQ1-582
9/4/92	Dowdle Butane Gas Co., Inc.	RF304-13271
8/28/92 thru 9/4/92.	Texaco Refund Applications Received.	RF321-19200 thru RF321-19213
8/28/92 thru 9/4/92.	Gulf Oil Refund Applications Received.	RF300-20502 thru RF300-20523
8/28/92 thru 9/4/92.	Crude Oil Applications Received.	RF272-93834 thru RF272-93847

[FR Doc. 92-23486 Filed 9-25-92; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of September 4 Through September 11, 1992

During the Week of September 4 through September 11, 1992, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: September 22, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS

[Week of September 4 to September 11, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 10, 1992	Lawter International, Inc., Northbrook, IL	RR272-99	Request for modification/rescission in the crude oil refund proceeding. *If Granted:* The January 3, 1992 Decision and Order (Case No. RF272-63545) would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS—Continued

[Week of September 4 to September 11, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 11, 1992	Texaco/R.W. Dickman Company, Inc., Washington, DC.	RR321-116	Request for modification/rescission in the Texaco refund proceeding. *If Granted:* The June 10, 1991 Decision and Order (Case No. RF321-1221) issued to R.W. Dickman Co., Inc. would be modified regarding the firm's application for refund submitted in the Texaco Refund Proceeding.

REFUND APPLICATIONS RECEIVED

[Week of September 4 to September 11, 1992]

Date received	Name of refund proceeding/name of refund applicant	Case No.
09/11/92	Time Oil Nevada	RQ334-583
09/09/92	Cloverleaf Texaco	RF321-19214
09/09/92	Holiday Texaco	RF321-19215
09/09/92	Earls Texaco Station.	RF321-19216
09/09/92	Sergeant Bluff-Luton Comm. Sch.	C272-161
09/10/92	Farmers Coop	RF272-93848
09/10/92	Clark Co. Farm Bureau Coop.	RF272-93849
09/10/92	Den's Texaco	RF321-19217
09/11/92	City of North Little Rock.	RF272-93850
09/11/92	Cleveland Cliffs Iron Co.	RF272-93851
09/11/92	Doby Sales	RF272-93852
09/04/92	Gulf Oil	RF300-20524 thru RF300-20538
09/4/92	Atlantic Richfield applications received.	RF304-13272 thru RF304-13279

[FR Doc. 92-23488 Filed 9-25-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4513-7]

Office of Research and Development Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method and Reference Method Designations

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the measurement of ambient concentrations of ozone and another reference method for the measurement of ambient concentrations of carbon monoxide.

The new equivalent method for ozone is an automated method (analyzer) which utilizes the measurement principle based on absorption of ultraviolet radiation by ozone at a wavelength of 254 nm. This new designated method is identified as follows:

EQOA-0992-087, "Advanced Pollution Instrumentation, Inc. Model 400 Ozone Analyzer," operated on any full scale range between 0-100 ppb and 0-1000 ppb, at any temperature in the range of 5 °C to 40 °C, with the dynamic zero and span adjustment features set to OFF, with a 5-micron TFE filter element installed in the rear-panel filter assembly, and with or without any of the following options: Zero/Span Valves, Internal Zero/Span (IZS), IZS Reference Adjustment, Rack-Mount with Slides, RS-232 with Status Outputs.

This method is available from Advanced Pollution Instrumentation Inc., 8815 Production Avenue, San Diego, California 92121-2219. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 57, Number 115, June 15, 1992, page 26660.

The new reference method for carbon monoxide is an automated method (analyzer) which utilizes the measurement principle (non-dispersive infrared photometry) and calibration procedure specified in appendix C of 40 CFR part 50. This new designated method is identified as follows:

RFCA-0992-088, "Lear Siegler Measurement Controls Model ML 9830 Carbon Monoxide Analyzer," operated on the 0-50 ppm range, at any temperature in the range of 15 °C to 35 °C, with a 5-micron Teflon filter element installed in the filter assembly behind the secondary panel, the service switch on the secondary panel set to the IN position, with the following menu choices selected: Calibration: Manual; Filter type: Kalman; Over-ranging: Disabled; Pres/temp/flow/comp: ON; Span comp: Disabled;

with the 50 PIN I/O board installed on the rear panel configured at any of the following output range settings: Voltage, 10 V, 5 V, 1 V, 0.1 V, Current, 0-20 mA, 2-20 mA and 4-20 mA;

and with or without any of the following options: Valve Assembly for External Zero/Span (EZS), Rack Mount Assembly, Internal Floppy Disk Drive.

This method is available from Lear Siegler Measurement Controls Corporation, 74 Inverness Drive East, Englewood, CO 80112-5189. A notice of receipt of application for this method appeared in the **Federal Register**, Volume 57, Number 95, May 15, 1992, page 20824.

A test analyzer representative of each of these methods has been tested by the respective applicant, in accordance with the test procedures specified in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicants, EPA has determined, in accordance with part 53, that these methods should be designated, respectively, as an equivalent method and a reference method. The information submitted by the applicants will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference or equivalent method, either of these methods is acceptable for use by States and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations (e.g., operating temperature range) specified in the applicable designation (see description of the methods above). Vendor modifications of a designated method used for purposes of part 58 are permitted only with prior approval of EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a designation applies to any analyzer which is identical to the analyzer described in the designation. In some cases, similar analyzers manufactured prior to the designation may be upgraded (e.g., by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should

be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B-1 of part 53 for at least one year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with part 53.

(5) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been canceled or if adjustment of the analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR part 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Atmospheric Research and Exposure Assessment Laboratory, Department E (MD-77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these equivalent and reference methods will assist the States in establishing and operating their air quality surveillance systems under part 58. Technical questions concerning either method should be directed to the manufacturer. Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD-77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-2622.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 92-23463 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4513-8]

Notice of Open Meeting of the National Advisory Council for Environmental Policy and Technology's Environmental Measurements and Chemical Accident Prevention Committee, Environmental Statistics Subcommittee

Under Public Law 92563 (The Federal Advisory Committee Act), EPA gives notice of a meeting of the Environmental Statistics Subcommittee of the Environmental Measurement/Chemical Accident Prevention Committee (EM/CAP). The EM/CAP Committee is a standing committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), an advisory committee to the Administrator of the EPA. This meeting of the Environmental Statistics Subcommittee will be held on October 15, 1992 from 9 a.m. to 5 p.m. and October 16, 1992 from 9 a.m. to 3 p.m. at the National Governors' Association offices, 444 North Capitol Street, room 233-235, Washington, DC 20001-1572.The Environmental Statistics Subcommittee will discuss issues related to the development and use of environmental statistics and data. The governance and structure of a Center for Environmental Statistics at EPA will be a primary focus. Specific issues on the agenda include: building an analytical framework, supporting data collection and management, and outreach. EPA representatives will be present to discuss coordination with other governmental agencies, States and other organizations.

Members of the public interested in further information may contact David J. Graham, Designated Federal Official, Office of Cooperative Environmental Management, U.S. EPA (A-101 F6), 401 M Street, SW., Washington, DC 20460, (202) 260-9743.

Dated: September 21, 1992.

Abby J. Pirnie,

Director, Office of Cooperative Environmental Management.

[FR Doc. 92-23462 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL 4514-8]

National Meeting Agendas Subcommittee of the National Enforcement Training Institute (NETI) Advisory Council; Open Meeting

AGENCY: U.S. Environmental Protection Agency, Office of Enforcement.

ACTION: Meeting notice.

SUMMARY: The purpose of the meeting is to develop the Strategic Plan for the National Enforcement Training Institute.

The meeting is open to the public. Limited seating for interested members of the public is available on a first-come, first served basis.

DATES: October 13, 1992 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in room 381 of the Hall of States located at 444 North Capitol Street, NE, in Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen C. Stough, Executive Director of NETI, Office of Enforcement, Mail Code LE-133, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260-8776; telefax: (202) 260-7839.

Dated: September 24, 1992.

Ellen C. Stough,

Executive Director, NETI.

[FR Doc. 92-23598 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4513-2]

Notice of Disclosure of Confidential Business Information Obtained Under the Comprehensive Environmental Response, Compensation and Liability Act to EPA Contractor Labat-Anderson, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for comment.

SUMMARY: EPA hereby complies with the requirements of 40 CFR 2.301(h) for authorization to disclose to its contractor, Labat-Anderson, Inc.

(hereinafter "Labat-Anderson"), of Arlington, Virginia, Superfund confidential business information ("CBI") which has been submitted to EPA Region 9, Hazardous Waste Management Division, Office of Superfund Programs. Labat-Anderson's principal offices are located at 2200 Clarendon Boulevard, suite 900, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: Betsy Curnow, Office of Superfund Programs, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744-2378.

NOTICE OF REQUIRED DETERMINATIONS, CONTRACT PROVISIONS AND OPPORTUNITY TO COMMENT: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, (commonly known as "Superfund") requires the establishment of an administrative record upon which the President shall base the selection of a response action. CERCLA also requires the maintenance of many other records, including those relevant to cost recovery. EPA has entered into a contract, No. 68-W9-0052, with Labat-Anderson, for management of these records. EPA Region 9 has determined that disclosure of CBI to Labat-Anderson employees is necessary in order that Labat-Anderson may carry out the work required by that contract with EPA. The contract complies with all requirements of 40 CFR 2.301(h)(2)(ii). EPA Region 9 will require that each Labat-Anderson employee sign a written agreement that he or she (1) will use the information only for the purpose of carrying out the work required by the contract, (2) shall refrain from disclosing the information to anyone other than EPA without the prior written approval of each affected business or of an EPA legal office, and (3) shall return to EPA all copies of the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information (and any abstracts or extracts therefrom) upon request from the EPA program office, whenever the information is no longer required by Labat-Anderson for performance of the work required by the contract, or upon completion of the contract. These non-disclosure statements shall be maintained on file with the Region 9 Delivery Order Project Officer. Labat-Anderson employees will be trained on Superfund CBI requirements.

EPA hereby advises affected parties that they have ten working days to comment pursuant to 40 CFR 2.301(h)(2)(iii). Comments should be sent to: Environmental Protection Agency, Region 9, Elaine Yee (H-7-4), 75 Hawthorne Street, San Francisco, CA 94105.

Dated: September 16, 1992.

Jeff Zelikson,

Director, Hazardous Waste Management Division, EPA Region 9.

[FR Doc. 92-23458 Filed 9-25-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-957-DR]

Guam; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 17, 1992.

SUMMARY: This notice amends the notice of a major disaster for the Territory of Guam (FEMA-957-DR), dated August 28, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 17, 1992, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), in a letter to Wallace E. Stickney, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage from Typhoon Omar in certain areas of the Territory of Guam which resulted in my declaration of a major disaster on August 28, 1992, is of sufficient severity and magnitude that special conditions are warranted regarding the customary cost-sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"), for the Individual and Family Grant program and Public Assistance.

Therefore, I amend my declaration to authorize Federal funds for Public Assistance at 75 percent of total eligible costs up to $10 per capita. Eligible costs for Public Assistance exceeding $10 per capita will be funded at 95 percent of total eligible costs.

I further amend my declaration to authorize Federal funds for the Individual and Family Grant program at 100 percent of total eligible costs, under the provisions of the Insular Act.

Please notify the Governor of Guam and the Federal Coordinating Officer of this amendment to my major disaster declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-23472 Filed 9-25-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-962-DR]

Indiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 18, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA-962-DR), dated September 18, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 18, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from severe storms, tornadoes, and flooding from June 16, 1992 to July 23, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Individual Assistance may be designated at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management

Agency under Executive Order 12148, I hereby appoint Mr. David Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

The counties of Adams, Dearborn, DeKalb, Delaware, Franklin, Grant, Jefferson, LaPorte, Madison, Marion, Miami, Noble, Ohio, Porter, and Switzerland for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-23474 Filed 9-25-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-3094-EM]

Rhode Island; Notice of an Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 16, 1992.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Rhode Island (FEMA-3094-EM), dated September 16, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 16, 1992, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Rhode Island, resulting from water contamination on August 3, 1992, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under title V, section 501(a), of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Rhode Island.

You are authorized to coordinate all emergency relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under title V of the Stafford Act, to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe in the designated areas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Edward A. Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Rhode Island to have been affected adversely by this declared emergency:

The Counties of Providence and Washington for required emergency measures taken.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director.

[FR Doc. 92-23473 Filed 9-25-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-963-DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: September 18, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA-963-DR), dated September 18, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 18, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistant Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms and tornadoes on June 17, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. David Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Dane County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-23475 Filed 9-25-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Compania Anonima Venezolana de Navegacion et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, on or before October 8, 1992. The

requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011383-002.

Title: Venezuelan Discussion Agreement.

Parties:

Compania Anonima Venezolana de Navegacion

King Ocean Services de Venezuela, S.A.

Ocean Express Lines, Inc.

Venezuela Transport Line, Inc.

Synopsis: The proposed amendment revises the voting provisions of the Agreement to provide that any member line of a conference party to the Agreement may attend the participate in meetings of the Agreement. The parties have requested a shortened review period.

Agreement No.: 224-002810-010.

Title: Tampa Port Authority/ Harborside Refrigerated Services Terminal Agreement.

Parties:

Tampa Port Authority ("Port")

Harborside Refrigerated Services, Inc. ("Harborside").

Synopsis: The modification establishes a revised payment schedule under which Harborside will reimburse the Port for monies due under the Agreement.

Agreement No.: 224-003079-015.

Title: Tampa Port Authority/Eller & Company, Inc., Marine Terminal Agreement.

Parties:

Tampa Port Authority ("Port")

Eller & Company, Inc. ("Eller").

Synopsis: The modification reflects a revised payment schedule in which Eller will reimburse the Authority for monies due as provided for in the basic Agreement.

Agreement No.: 224-200417-003.

Title: Georgia Ports Authority/Hoegh Lines Terminal Agreement.

Parties:

Georgia Ports Authority

Hoegh Lines ("Hoegh").

Synopsis: The amendment modifies the Agreement to state that Hoegh's M-Class vessels are eligible for a dockage refund and that the Agreement's berth guarantee provisions do not apply to the Port of Brunswick.

Dated: September 23, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-23498 Filed 9-25-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 30-July 1, 1992

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 30-July 1, 1992.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting continues to suggest that economic activity is expanding at a moderate pace. Total nonfarm payroll employment increased somewhat further in May, but a surge in job seekers led to a sizable rise in the civilian unemployment rate to 7.5 percent. Industrial production rose appreciably further in May, partly reflecting continued recovery in motor vehicle assemblies. Growth in consumer spending has slackened after a sharp advance earlier this year. Although sales of new homes declined in May, single-family housing starts rebounded to a level close to the first-quarter pace. Recent data on orders and shipments of nondefense capital goods indicate appreciable increases in outlays for business equipment, and the trend of building contracts points to some slowing of the decline in nonresidential construction. The nominal U.S. merchandise trade deficit increased in April and was substantially above its average rate in the first quarter. Incoming data on retail prices and labor costs suggest that inflation is slowing.

Most interest rates have changed little since the Committee meeting on May 19. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined further over the intermeeting period.

M2 and M3 changed little in May and appear to have contracted in June; both retail and large-denomination time deposits continued to run off rapidly. Through June, expansion of the two aggregates was somewhat below the lower ends of the ranges established by the Committee for the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at this meeting the ranges it had established in February for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent respectively, measured from the fourth quarter of 1991 to the fourth quarter of 1992. The Committee anticipated that developments contributing to unusual velocity increases could persist in the second half of the year. The monitoring range for growth of total domestic nonfinancial debt also was maintained at 4-1/2 to 8-1/2 percent for the year. For 1993, the Committee on a tentative basis set the same ranges as in 1992 for growth of the monetary aggregates and debt, measured from the fourth quarter of 1992 to the fourth quarter of 1993. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint might or slightly lesser reserve restraint would be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from June through September at annual rates of about 2 and 1/2 percent, respectively.

By order of the Federal Open Market Committee, August 31, 1992.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 92-23512 Filed 9-25-92; 8:45 am]

BILLING CODE 6210-01-F

[1] Copies of the Record of policy actions of the Committee for the meeting of June 30-July 1, 1992, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

First Union Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than October 23, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire South Carolina Federal Corporation, Columbia, South Carolina, and thereby engage in owning and operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Story County Bancorporation, Jewell, Iowa; to acquire Viking Village Company, L.P., Jewell, Iowa, and thereby engage in providing housing for low and moderate income families pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Redwood Empire Bancorp, Santa Rosa, California; to acquire Lake Savings and Loan Association, Lakeport, California, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23508 Filed 9-25-92; 8:45 am]

BILLING CODE 6210-01-F

J.F. Justiss, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 19, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. J.F. Justiss, III, Trust, to acquire an additional 2.96 percent for a total of 14.83 percent; Amy Williams Trust, to acquire 2.96 percent for a total of 4.74 percent; Adam Williams Trust, to acquire 2.96 percent, for a total of 4.74 percent; and Jennifer J. Williams, to acquire 2.96 percent for a total of 7.12 percent of the voting shares of JBI Financial Corporation, Jena, Louisiana, and thereby indirectly acquire Bank of Jena, Jena, Louisiana. All notificants are from Jena, Louisiana.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Chang Hwi Kim, Palos Verdes, California; to retain 10.98 percent of the voting shares of California Center Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, September 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23509 Filed 9-25-92; 8:45 am]

BILLING CODE 6210-01-F

Omnibank 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 October 23, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Omnibank Corporation, River Rouge, Michigan; to become a bank holding company by acquiring 89.78 percent of the voting shares of Omnibank, River Rouge, Michigan.

2. Peoples Mid-Illinois Corporation, and its wholly owned subsidiary, PMI Acquisition Corporation, both of Bloomington, Illinois; to acquire 100 percent of the voting shares of Lexington Bancshares, Inc., Lexington, Illinois, and thereby indirectly acquire Lexington Bank, Lexington, Illinois. In connection with this application, PMI has applied to become a bank holding company.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. State First Financial Corporation, Texarkana, Arkansas; to acquire at least 90 percent of the voting shares of First National Bank of Nashville, Nashville, Arkansas.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Minnesota Banc Holding Company, Plymouth, Minnesota; to acquire 100 percent of the voting shares of Citizens State Bank of Montgomery, Montgomery, Minnesota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. El Paso Bancshares, Inc., Monument, Colorado; to acquire 100

percent of the voting shares of Western Bank, Taos, New Mexico.

Board of Governors of the Federal Reserve System, September 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23510 Filed 9-25-92; 8:45 am]

BILLING CODE 6210-01-F

U.S. Trust Corporation, et al.; 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 October 23, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. U.S. Trust Corporation, New York, New York; to engage *de novo* through its subsidiary, U.S. Trust Company of New Jersey, Princeton, New Jersey, in trust company activities, including activities of a fiduciary, investment advisory, agency and custodial nature pursuant to § 225.25(b)(3) and (b)(4) of the Board's Regulation Y.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. CoreStates Financial Corp., Philadelphia, Pennsylvania; to acquire 31.01 percent of the voting shares of Electronic Payment Services, Inc., Wilmington, Delaware, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Banc One Corporation, Columbus, Ohio; to acquire 31.01 percent; PNC Financial Corporation, Pittsburgh, Pennsylvania, to acquire 31.01 percent; Society Corporation, Cleveland, Ohio, to acquire 6.97 percentof the voting shares of Electronic Payment Services, Inc., Philadelphia, Pennsylvania, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-23511 Filed 9-25-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3399]

Automatic Data Processing, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey based company that sells computer software programs and its subsidiary from making misrepresentations concerning the advantages of financing purchases, and from selling or licensing software or printed materials the firm knows or should know are likely to be used to misrepresent comparative costs.

DATES: Complaint and Order issued August 27, 1992.[1]

FOR FURTHER INFORMATION CONTACT: John Lefevre, FTC/S-4429, Washington, DC 20580. (202) 326-3209.

SUPPLEMENTARY INFORMATION: On Tuesday, September 10, 1991, there was published in the **Federal Register**, 56 FR 46187, a proposed consent agreement with analysis In the Matter of Automatic Data Processing, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-23469 Filed 9-25-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3401]

BelAge Plastic Surgery Center, P.C., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Virginia-based plastic surgery center and its founder from misrepresenting the likelihood of risks or scarring, the length of the recovery period, the amount of pain, or the need for pain medication, following plastic or cosmetic surgery. In addition, the order requires a risk disclosure any time the respondents state that cosmetic or plastic surgery procedures are safe.

DATES: Complaint and Order issued September 8, 1992.[1]

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael McCarey, FTC/H-200, Washington, DC 20580. (202) 326-3303.

SUPPLEMENTARY INFORMATION: On Tuesday, June 30, 1992, there was published in the **Federal Register**, 57 FR 29081, a proposed consent agreement with analysis In the Matter of BelAge Plastic Surgery Center, P.C., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-23470 Filed 9-25-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3400]

Patricia Wexler, M.D.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York doctor from misrepresenting the efficacy of Omexin, a hair loss treatment, or any similar treatment concerning the curtailment of hair loss or the promotion of hair growth, and from making certain representations unless she possesses competent and reliable scientific evidence to substantiate such representations. The respondent also is prohibited from disseminating or assisting with the dissemination of a program-length advertisement regarding baldness.

DATES: Complaint and Order issued August 31, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Lesley Fair, FTC/S-4002, Washington, DC 20580, (202) 326-3081; or Michael Bloom, New York Regional Office, Federal Trade Commission, 150 William St., Suite 1300, New York, NY 10038, (212) 264-1207.

SUPPLEMENTARY INFORMATION: On Tuesday, June 23, 1992, there was published in the **Federal Register**, 57 FR 27978, a proposed consent agreement with analysis In the Matter of Patricia Wexler, M.D., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed from of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 92-23471 Filed 9-25-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

National Institute of Mental Health; Notice of Meetings

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the advisory committees of the National Institute of Mental Health for November 1992.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9-105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301-443-4333).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Epidemiology Review Committee
Meeting Date: November 4-6, 1992
Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015
Open: November 4, 9—10 a.m.
Closed: Otherwise
Contact: Doris Lee-Robb, room 9C-14, Parklawn Building, Telephone (301) 443-1367

Committee Name: Services Research Review Committee
Meeting Date: November 4-6, 1992
Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015
Open: November 4, 9—10 a.m.
Closed: Otherwise
Contact: Gloria K. Yockelson, room 9C-05, Parklawn Building, Telephone (301) 443-0948

Committee Name: Treatment Assessment Review Committee
Meeting Date: November 5-6, 1992
Place: Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037
Open: November 5, 8:30—9:30 a.m.
Closed: Otherwise
Contact: Barbara W. Campbell, room 9C-02, Parklawn Building, Telephone (301) 443-4868

Committee Name: Behavioral, Clinical, and Psychosocial Subcommittee of the Mental Health AIDS and Immunology Review Committee
Meeting Date: November 5-6, 1992
Place: Omni Georgetown Hotel, 2121 P Street, NW., Washington, DC 20037
Open: November 5, 8:30—9 a.m.
Closed: Otherwise
Contact: Regina M. Thomas, room 9C-15, Parklawn Building, Telephone (301) 443-6470

Committee Name: Psychobiological, Biological, and Neuroscience Subcommittee of the Mental Health AIDS and Immunology Review Committee
Meeting Date: November 5-6, 1992
Place: Omni Georgetown Hotel, 2121 P Street NW., Washington, DC 20037
Open: November 5, 8:30—9 a.m.
Closed: Otherwise
Contact: Rehana A. Chowdhury, room 9C-15, Parklawn Building, Telephone (301) 443-6470

Dated: September 22, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92-23430 Filed 9-25-92; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Advisory Committee for Injury Prevention and Control; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following committee meeting:

NAME: Advisory Committee for Injury Prevention and Control (ACIPC).

TIMES AND DATES:

8 a.m.-5 p.m., October 26, 1992
8 a.m.-12 noon, October 27, 1992

PLACE: Terrace Garden Inn, 3405 Lenox Road, NE., Atlanta, Georgia 30326.

STATUS: Open to the public, limited only by the space available.

PURPOSE: The committee will continue to make recommendations on policy, strategy, objectives, and priorities including the balance and mix of intramural and extramural research; advise on the development of a national plan for injury prevention and control, the development of new technologies and their application; and review progress toward injury prevention and control.

MATTERS TO BE DISCUSSED: The committee will discuss recent grant awards; the extramural research planning process; the reorganization of the Division of Injury Control as the National Center for Injury Prevention and Control; the injury control report to Congress; the World Conference on Injury Control; the development of injury advisories; revision of grant announcements; and guidelines for traumatic brain injury surveillance.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Richard J. Waxweiler, Ph.D., Acting Executive Secretary, ACIPC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Mailstop F-41, Atlanta, Georgia 30341-3724, telephone 404/488-4031.

Dated: September 22, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-23431 Filed 9-25-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92N-0316]

Merck & Co., Inc.; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Merck & Co., Inc. The NADA provides for the use of a penicillin Type A article. The sponsor requested the withdrawal of approval of the NADA.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV-216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8749.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, is the sponsor of NADA 46-598, which provides for the use of Pro-Pen® Type A medicated article (penicillin G procaine). In its letter dated May 8, 1992, the sponsor requested the withdrawal of approval of the NADA.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 46-598 and all supplements and amendments thereto is hereby withdrawn, effective on October 8, 1992.

Dated: September 18, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-23386 Filed 9-25-92; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 88F-0236]

Metrex Research 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 8B4050) proposing that the food additive regulations be amended to provide for the safe use in contact with food of an aqueous sanitizing solution containing sodium, calcium, or potassium hypochlorite; citric acid; sodium citrate; and α-[*para*-(1,1,3,3-tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene), containing 9 to 10 moles of ethylene oxide. The petition was withdrawn by Metrex Research Corp., which purchased Bionox Corp.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 29, 1988 (53 FR 28699), FDA announced that a food additive petition (FAP 8B4050) had been filed by Bionox Corp., 6890 East Loma del Bribon, Tucson, AZ 85715. This petition proposed that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use in contact with food of an aqueous sanitizing solution containing sodium, calcium, or potassium hypochlorite; citric acid; sodium citrate; and α-[*para*-(1,1,3,3-tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene), containing 9 to 10 moles of ethylene oxide. Metrex Research Corp., which purchased Bionox Corp., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: September 10, 1992.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-23445 Filed 9-25-92; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. October 28 and 29, 1992, 8:30 a.m., Holiday Inn Silver Spring, International Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open committee discussion, October 28, 1992, 8:30 a.m. to 5:30 p.m.; open public hearing, 5:30 p.m. to 6 p.m., unless public participation does not last that long; open public hearing, October 29, 1992, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m.; Anna J. Baldwin, Center

for Biologics Evaluation and Research (HFB-5), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8226.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 22, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On October 28, 1992, the committee will discuss two DTP/Haemophilus b combination vaccines (Connaught Laboratories, Lederle Laboratories) and a Haemophilus b conjugate vaccine (Pasteur-Merieux). On October 29, 1992, the committee will discuss a vaccine for the prevention of typhoid fever (Pasteur-Merieux).

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: September 18, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92-23387 Filed 9-25-92; 8:45 am]

BILLING CODE 4160-01-F

HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Hearing; Reconsideration of Disapproval of Tennessee State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 4, 1992, in room 510, 101 Marietta Street, Atlanta, Georgia to reconsider our decision to disapprove Tennessee SPA 91-42.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, 1849 Gwynn Oak Avenue, Meadowwood East Building, Groundfloor, Baltimore, Maryland 21207, Telephone: (410) 597-3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Tennessee State plan amendment (SPA) number 91-42.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Tennessee SPA 91-42 proposes to change the method for providing orthodontia services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program. Tennessee specifically proposes to cover orthodontia services for individuals age 21 and over who received prior approval for the orthodontia services under EPSDT before the age of 20 and ½. Tennessee does not cover orthodontia services for any other individuals age 21 or over.

The issue in this matter is whether the plan amendment meets the statutory requirements of sections 1902(a)(10)(B) and (c)(i)(II) of the Act and Federal regulations at 42 CFR 440.240.

Section 1902(a)(10)(B) of the Act requires States to provide medical assistance to any categorically needy recipient which is not less in amount, duration or scope than services available to a medically needy recipient. In addition, under sections 1902(a)(10)(B) and (C)(i)(II) of the Act and 42 CFR 440.240, a State must also provide services that are equal in amount, duration, and scope to all individuals who are categorically needy or who are members of the same covered medically needy group. HCFA believes Tennessee SPA 91-42 violates these provisions. Section (I) in the matter following section 1902(a)(10)(F) of the Act, indicates that certain services provided to individuals meeting prescribed age requirements, shall not be required to be available in the same amount, duration and scope to individuals of any other age. EPSDT services are one of these services.

There are two separate comparability issues in Tennessee's plan amendment. First, Tennessee is proposing to provide orthodontia services to only those individuals over age 21 who have previously received orthodontia services under the EPSDT program. By choosing to provide orthodontia services to only former EPSDT recipients, HCFA believes that Tennessee violates the statutory requirements. Tennessee would not be providing all individuals within an eligibility group the same amount, duration and scope of services since only a few categorically or medically needy individuals would be receiving orthodontia services, not the entire group. Additionally, Tennessee could potentially be providing services in amount, duration and scope to medically needy individuals in excess of the services available to its categorically needy individuals who never received EPSDT services. Once an individual reaches the age of 21 and becomes ineligible for EPSDT services, Tennessee cannot violate the rules of comparability because the individual was previously EPSDT eligible.

HCFA believes that this same issue arises with respect to the services or devices provided for under part 10, item (g) of the proposed plan amendment (Attachment 3.1.A.1). This section indicates that an individual nearing his or her 21st birthday who receives prior authorization for a service or device (other than orthodontia) may receive that service after the individual attains the age of 21 if prior authorization was granted within 15 days prior to the recipient's 21st birthday and if the service is completed within 10 days after the recipient attains the age of 21. It is not clear whether Tennessee is providing these services or devices as EPSDT services. However, HCFA believes that Tennessee is proposing to provide services to a few recipients who have attained the age of 21 in excess of services available to other eligible recipients who did not have the service or device prior authorized within Tennessee's timeframe. HCFA believes this also violates the rules of comparability.

Second, Tennessee is proposing in the SPA to use the arbitrary age of 20½ by which prior authorization must be acquired in order for Tennessee to provide orthodontia services under the EPSDT program beyond the age of 21. Tennessee states that the reason for this is to encourage recipients to request coverage in a reasonable time period before eligibility is expected to end. However, HCFA believes that this requirement also violates the rules of comparability. The age of 20½ is not related to any specific eligibility criteria. While the EPSDT individual who did receive prior authorization before the age of 20½ would continue to receive these services, an individual who did not receive prior authorization until after age 20½, through no fault of his or her own, would have orthodontia services terminated upon reaching the age of 21.

The proposed amendment also contains other limits under part 4.b. of the proposed plan amendment (Attachment 3.1.A.1). HCFA asked Tennessee to remove any arbitrary limits on services provided to EPSDT recipients or to include language which indicates that these are tentative limits which can be exceeded if additional services are determined to be medically necessary. The Omnibus Budget Reconciliation Act of 1989 added section 1905(r)(5) to the Act which requires States to provide all medically necessary services to EPSDT recipients under the age of 21 to correct or

ameliorate conditions discovered by screen, even if the service is not provided for in the State plan.

Tennessee indicates that these limits meet commonly accepted standards of medical practice but that the limits can be exceeded when medically necessary. However, SPA 91–42 does not contain this language. Additionally, Tennessee indicates that removal of these specific limits would make it possible and probable for recipients to "provider shop" or loan their eligibility cards to ineligible individuals since recipients could continue to receive services without having to justify excess utilization. HCFA believes this argument is not persuasive. The State makes the final determination of medical necessity, not a provider. In addition, the provider would not be entitled to reimbursement for any services determined to be unnecessary or performed on ineligible individuals. The State is allowed to require prior authorization as a utilization control to contain unnecessary expenditures, but HCFA believes that it may not set arbitrary limits on the amount of services.

The notice to Tennessee announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Manny Martins,
Assistant Commissioner, Department of Health and Environment, Bureau of Medicaid, 729 Church Street, Nashville, Tennessee 37219–5406.

Dear Mr. Martins: I am responding to your request for reconsideration of the decision to disapprove Tennessee State Plan Amendment (SPA) 91–42.

The issue in this matter is whether the plan amendment meets the statutory requirements of sections 1902(a)(10)(B) and (c)(i)(II) of the Social Security Act (the Act) and Federal regulations at 42 CFR 440.240.

Section 1902(a)(10)(B) of the Act requires States to provide medical assistance to any categorically needy recipient which is not less in amount, duration or scope than services available to a medically needy recipient. In addition, under sections 1902(a)(10)(B) and (C)(i)(II) of the Act and 42 CFR 440.240, a State must also provide services that are equal in amount, duration and scope to all individuals who are categorically needy or who are members of the same covered medically needy group.

I am scheduling a hearing on your request for reconsideration to be held on November 4, 1992, in Room 510, 101 Marietta Street, Atlanta, Georgia. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597–3013.

Sincerely,

William Toby, Jr.,
Acting Deputy Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 18, 1992.

William Toby, Jr.,
Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92–23389 Filed 9–25–92; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Funding Priority for Grants for Area Health Education Centers Special Initiatives

The Health Resources and Services Administration (HRSA) announces the final funding priority for fiscal year (FY) 1993 for Grants for Area Health Education Centers Special Initiatives under the authority of section 781(a)(2), title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100–607.

This program announcement is subject to the reauthorization of this legislative authority and to the appropriation of funds. The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Final Funding Priority for Fiscal Year 1993

A proposed funding priority was published in the **Federal Register** dated July 10, 1992, at 57 FR 30742 for public comment. No comments were received during the 30-day comment period. Therefore, as proposed, the priority will be retained as follows:

A funding priority will be given to applications which demonstrate the development or implementation of information dissemination systems with the capability to provide state-of-the-art information on clinical modalities, protocols, and other guidelines which can address emerging health issues such as substance abuse, clinical preventive services, infant mortality and geriatrics for primary care practitioners, including National Health Service Corps personnel.

If additional programmatic information is needed, please contact: Ms. Cherry Tsutsumida, Chief, Multidisciplinary Centers and Programs Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C–05, Rockville, Maryland 20857, Telephone: (301) 443–6817, FAX: (301) 443–8890.

This program is listed at 93.824 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: September 22, 1992.

Robert G. Harmon,
Administrator.

[FR Doc. 92–23382 Filed 9–25–92; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, September 11, 1992.

(Call Reports Clearance Officer on (410) 965–4149 for copies of package)

1. Medical Report (Individual With Childhood Impairment)—0960–0102. The information on form SSA–3827 is used by the Social Security Administration to determine whether or not an individual with a childhood impairment medically qualifies for benefits under the Social Security Act. The affected public consists of medical sources.

Number of Respondents: 12,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 6,000 hours

2. Medical Report on Adult (Child) With Allegation of Human Immunodeficiency Virus (HIV)

Infection—0960-0503. The information on forms SSA-4814 and SSA-4815 is used by the Social Security Administration to determine if an individual claiming to have HIV infection meets the requirements for presumptive disability benefits.

	SSA-4814	SSA-4815
Numbers of respondents	25,000	7,500
Frequency of response	1	1
Average burden per response	[1] 10	[1] 10
Estimated annual burden	[2] 4,167	[2] 1,250
Total annual burden	[2] 5,417	

[1] Minutes. [2] Hours.

OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503

Dated: September 22, 1992.

Judy Hasche,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92-23381 Filed 9-25-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-92-3514]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 18, 1992.

John T. Murphy,

Director, Information Resources Policy and Management Division.

Submission of Proposed Information Collection to OMB

Proposal: Statement of Taxes.

Office: Housing.

Description of the Need for the Information and its Proposed Use: Form HUD-434 will be used by the Department to record the necessary information pertaining to taxes to enable HUD to establish its tax records and to continue immediate payment of taxes. The form will also verify the taxes paid when the lender's claim is audited for insurance benefits.

Form Number: HUD-434.

Respondents: State or Local Government, Businesses or Other For-Profit and Federal Agencies or Employees.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD-434	433		1		.5		217

Total Estimated Burden Hours: 217.

Status: Extension.

Contact: Betty Belin, HUD, (202) 401-2168, Angela Antonelli, OMB, (202) 395-6880.

Dated: September 18, 1992.

[FR Doc. 92-23500 Filed 9-25-92; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-92-3513; FR-3340-N-01]

Debenture Recall of Certain FHA Debentures

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

ACTION: Notice.

SUMMARY: This Notice announces a debenture recall of certain Federal Housing Administration debentures, in

accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, room 9138, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1591. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to Section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD regulations at 24 CFR 207.259(e)(3), the Federal Housing Commissioner, with approval of the Secretary of the Treasury, announces the call of all Federal Housing Administration debentures with coupon rates of 7½ percent or higher, except for those debentures subject to "debenture lock agreements," that have been registered on the books of the Federal Reserve Bank of Philadelphia, and are, therefore, "outstanding" as of September 30, 1992. The date of the call is January 1, 1993. To insure timely payment, debentures should be presented to the Federal Reserve Bank of Philadelphia by December 1, 1992.

The debenture will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debentures will be paid with the principal at redemption. During the period from the dates of this notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer or denominational exchanges of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after October 1, 1992. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on January 1, 1993, will be made to the registered holder or assignee.

Instructions for the presentation and surrender of debentures for redemption will be provided to holders by the Department.

Dated: September 21, 1992.

James E. Schonberger,

Associate General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92-23501 Filed 9-25-92; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3511; FR-3338-N-01]

Report of the Federal Interagency Committee on Noise (FICON)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of availability of report.

SUMMARY: At the direction of the Environmental Protection Agency and the Federal Aviation Administration, the Federal Interagency Committee on Noise (FICON) was formed in December 1990, with a basic charter to review specific elements of the assessment of airports noise impacts contained in documents prepared pursuant to the National Environmental Policy Act (NEPA); to review the relationship of Federal Aviation Regulation (FAR) part 150 to NEPA; and to make recommendations regarding potential improvements. The FICON is composed of representatives of the Department of Transportation (Office of the Secretary and the Federal Aviation Administration), Defense, Justice, Veterans Affairs, and Housing and Urban Development; the Environmental Protection Agency; and the Council on Environmental Quality. The FICON has completed its charter and has issued its report, which contains policy recommendations and technical findings and conclusions. This notice of the availability of the FICON Report is being published separately by all FICON member agencies.

ADDRESSES: Any person may obtain a copy of the FICON Report by submitting a written request to: Spectrum Sciences and Software, Inc., 242 Vicki Leigh Road, Fort Walton Beach, FL 32548-1314. Any person may express his or her views on the FICON Report by submitting written comments to: Federal Aviation Administration, Office of Environment and Energy, AEE-300, 800 Independence Avenue, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Joel Segal, Environmental Planning Division, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-4225, or (202) 708-2565 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The Federal Interagency Committee on Noise (FICON) was formed to review Federal policies that are used in the assessment of airport noise impacts. The FICON review focused primarily on:

- The manner in which noise impacts are determined, including whether aircraft noise impacts are fundamentally different from other transportation noise impacts;
- The manner in which noise impacts are described;
- The extent of impacts outside of Day-Night Average A-Weighted Sound Level (DNL) 65 decibels (dB) that should be reviewed in a National Environmental Policy Act (NEPA) document;
- The range of Federal Aviation Administration (FAA)-controlled mitigation options (e.g., noise abatement and flight track procedures) analyzed; and
- The relationship of the Federal Aviation Regulation (FAR) Part 150 process to the NEPA process, including ramifications to the NEPA process if they are separate, and exploration of the means by which the two processes can be handled to maximize benefits.

The FICON was organized into three subgroups to focus appropriately on the technical, legal, and policy issues associated with the assessment of airport noise impacts. The Technical Subgroup was tasked to review the body of science associated with methodologies and metrics for assessing airport noise impacts that have evolved since the 1980 meetings of the Federal Interagency Committee on Urban Noise (FICUN). The Policy Subgroup was tasked to review Federal policies that are used in the assessment of airport noise impacts. The Legal Subgroup reviewed the legal aspects of current and proposed Federal policies for assessing airport noise impacts. The Technical Subgroup's products were used as a basis for the policy findings, conclusions and recommendations in the Report.

FICON Report Conclusions

General

- There are no new descriptors or metrics of sufficient scientific standing to substitute for the present DNL cumulative noise exposure metric.
- The methodology employing DNL as the noise exposure metric and appropriate dose-relationships (primarily the Schultz curve for Percent Highly Annoyed (%HA)) to determine noise impact on populations is the proper one for civil and military aviation scenarios in the general vicinity of airports.

• Federal agencies generally conduct noise assessments at DNL levels of 65 dB and higher. For a variety of reasons, noise predictions and interpretations are frequently less reliable below DNL 65 dB. DNL prediction models tend to degrade in accuracy at large distances from the airport. Therefore, predictions of noise exposure and impact below DNL 65 dB should take the possibility of such inaccuracy into account.

• DNL is sometimes supplemented by other metrics on a case-by-case basis.

• Noise analyses should address impacts in the following areas: (1) Health and welfare; (2) environmental degradation/impact; and (3) land use planning.

• Complaints are an inadequate indicator of the full extent of noise effects on a population.

Health and Welfare

• The dose-effect relationship, as represented by DNL and %HA, remains the best available approach for analyzing overall health and welfare impacts for the vast majority of transportation noise analyses situations.

• The 10 dB nighttime penalty levied against noise during the 10 PM to 7 AM period is specifically designed to account for the intrusiveness of noise during this period and its potential impact on sleep. There are no new hard data that would justify a change in this penalty.

• If supplemental analysis for sleep disturbance is desired, an interim dose-response model developed by the AF Armstrong Laboratories may be used. Although this relationship is described in terms of Sound Exposure Level (SEL), single event metrics are of limited use in predicting and interpreting cumulative noise exposure impacts.

• Annoyance is a summary measure of the general adverse reaction of people to noise levels that cause speech interference; sleep disturbance; the desire for a tranquil environment; and the inability to use the telephone, radio, or television satisfactorily.

• No definitive evidence exists of nonauditory health effects from aircraft noise, particularly below DNL 70 dB.

• Long-Term Equivalent Sound Level $L_{eq(x)}$ (where X represents the time period of concern) or Time Above (TA) may be used for supplemental analysis of school and communications requirements indoor during specific hours.

• Public health and welfare effects below DNL 60 dB have not been established, but are assumed to decrease according to the decrease in %HA.

Environmental Degradation/Impact

• Under NEPA, environmental degradation might have to be assessed around airports even if there is no clear effect on public health and welfare. Other criteria might be appropriate.

• A 3 dB increase in the DNL environment represents a doubling of sound energy, and clearly is an indicator of the need for further analysis, although smaller increases may indicate similar need. In other words, the impact of a given incremental amount of change in noise levels depends, in part, upon the existing level of the noise environment.

• Recent technology and software advances in geographic information systems (GIS), noise methodology, and census data present an enhanced potential for detailed analysis of sound impacts on population and noise-sensitive areas. These technologies should be contained for use to determine noise impacts of present and proposed actions.

Land Use Planning

• DNL represents the accepted noise metric for input to compatible land use planning.

• For cumulative speech interference, Table 3–2, "Effects of Noise on People" (contained in the FICON Report, Volume II: Technical Report), provides a rough approximation of both outdoor and indoor predicted speech interference parameters for various levels of noise exposure as measured in DNL for residential land use only.

• There is a need for selective updating of land-use compatibility guidelines (including the Standard Land Use Coding Manual (SLUCM)), and for enhancing public understanding, through incentives and other programs, of the application and interpretation of guidelines.

Education of the Public

Education of the public should concentrate on the following frequently misunderstood issues:

•Environmental noise exposure is measured and described most generally by DNL. DNL should be defined clearly, and its significance and use should be explained clearly.

• The relation of DNL to %HA describes long-term community response to the overall sound environment (indices of health and welfare effects).

• Although the A-Weighted Maximum Sound Level for a single flyover is easily understood, it is useful only for analyzing short-term responses.

• Every change in the noise environment does not necessarily impact public health and welfare.

• Aircraft noise predictions below DNL 65 dB can be less accurate and should be interpreted with caution.

FICON Report Recommendations

• Continue use of the DNL metric as the principal means for describing long-term noise exposure to civil and military aircraft operations.

• Continue agency discretion in the use of supplemental noise analysis.

• Improve public understanding of the DNL, supplemental methodologies, and aircraft noise impacts.

• If screening analysis shows that noise sensitive areas will be at or above DNL 65 dB and will have an increase of DNL 1.5 dB or more, further analysis should be conducted of noise sensitive areas between DNL 60–65 dB having an increase of DNL 3 dB or more due to the proposed airport noise exposure.

• If the DNL 65 dB screening test calls for further analysis between DNL 60–65 dB, agency mitigation options should include noise sensitive areas between DNL 60–65 dB that are projected to have an increase of 3 dB or more as a result of the proposed airport noise exposure.

• If a FAR Part 150 program is included by the FAA as a NEPA mitigation measure, the FAA and the airport operator are responsible for ensuring that the commitment is carried out and the scope of the Part 150 study conforms to the scope of the NEPA noise analysis.

• Increase research on methodology development and on the impact of aircraft noise (R&D). To foster increased research, a standing Federal interagency committee should be established to assist agencies in providing adequate forums for discussions of public and private sector proposals identifying needed research and in encouraging the conduct of research in these areas. The following four initial R&D issues are recommended:

(i) Evaluate potential modifications to the 1980 FICUN land use compatibility table to improve its usefulness for planning for both routine land uses and noise-sensitive land uses.

(ii) Continue research into community reaction to aircraft noise, including sleep disturbance, speech interference, and nonauditory health effects of noise.

(iii) Investigative differences in perceptions of aircraft noise, ground transportation noise (highways and railroads), and general background noise.

(iv) Continue and expand research on the airport noise impacts of rotary-wing operations.

It is the FICON's belief that these recommendations will provide both immediate and long-term improvements in airport noise analysis. Federal interagency encouragement of a continuing review of airport noise analysis will provide a forum to address related public concerns.

While the FICON is seeking to achieve improved uniformity among Federal agencies in airport noise analysis, it must also recognize that agencies have differing legislative mandates and operating environments. These recommendations should be viewed as general guidance. Each Federal agency must determine how it can best use this guidance, supplementing it as appropriate to meet agency needs, within the framework of the NEPA requirements. The FICON Report does not address the adequacy of compliance with NEPA to date by the participating agencies, attempt to redefine thresholds of significance of impact under NEPA, nor modify the NEPA regulations or procedures of the agencies.

Public Review and Comment

Any person may express his or her views on the FICON Report by submitting written comments to: Federal Aviation Administration, Office of Environment and Energy, AEE-300, 800 Independence Avenue, Washington, DC 20591. Because the primary effect of the report's recommendations will be on the assessment of civil airport noise impacts for which the FAA is responsible, the FAA is serving as the focal point for the receipt of public comments. Copies of the written comments will be provided to all agencies participating in FICON.

The Department of Housing and Urban Development will review its procedures for evaluating airport noise impacts, if needed, based on the findings, conclusions, and recommendations in the report and any comments on the report. Any resulting change in regulations or procedures will be made through a separate agency procedure.

Authority: 42 U.S.C. 3535(d).

Dated: September 21, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92-23490 Filed 9-25-92; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-02-4212-11; N-53599]

Public Lands, Adjacent to Crescent Valley, Eureka County Nevada

ACTION: Notice.

SUMMARY: The following described public lands, adjacent to the Town of Crescent Valley, Eureka County, Nevada, have been examined and found suitable for classification for lease/purchase for recreation or public purposes under the provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.). The lands would not be offered for lease/purchase until at least 60 days after the date of publication of this Notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 30 N., R. 48 E.,

Sec. 32, lots 17, 18, 25 thru 28.

Containing 26.37 acres, more or less.

The Eureka County Board of Commissioners has made application for the development of a fairground for the Town of Crescent Valley, Nevada. The lease/patent when issued, will be subject to the provisions of the Recreation and Public Purposes Act, and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under application law and such regulations as the Secretary of the Interior may prescribe.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

And will be subject to:

1. A 10 ft. wide easement to Nevada Bell (N-46949) for buried telephone cable purposes.

2. A 400 ft. wide easement to Nevada Department of Transportation (NEV 044712) for state highway purposes.

Initially the lands would be leased, and after substantial development of the parcel may be purchased by the county under the special pricing program afforded to government entities.

The land is not required for any Federal purpose. The classification and subsequent lease/purchase are consistent with the Bureau's planning for the area.

Upon publication of this notice in the **Federal Register**, the above-described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws. The segregative effect shall terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, whichever comes first.

Detailed information concerning this action is available for review at the Bureau of Land Management, Elko District, 3900 E. Idaho St., Elko, Nevada. For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/purchase to the District Manager, Elko District Office, 3900 E. Idaho St., Elko, Nevada 89801. Any objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of timely objections, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: September 17, 1992.

Rodney Harris,

District Manager.

[FR Doc. 92-23391 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-HC-M

[CO-030-92-4320-10-1784]

Montrose District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR Subpart 1784, that a meeting of the Montrose District Grazing Advisory Board will be held on October 6, 1992, in Montrose, Colorado.

DATE: A meeting is scheduled October 6, 1992.

FOR FURTHER INFORMATION CONTACT: Dave Kauffman, Bureau of Land Management, 2465 South Townsend, Montrose, Colorado, 81401, telephone (303) 249-7791.

SUPPLEMENTARY INFORMATION: The Board will convene at 10 a.m. on October 6, 1992, in the conference room at the Montrose District Office, Montrose, Colorado. Agenda items will include: minutes of the previous meeting, public presentations and requests, election results, range improvement project review, new Board project proposals, updates on current issues, and arrangements for the next meeting. The meeting will adjourn at 4 p.m.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager prior to the meeting date. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: September 17, 1992.

Alan L. Kesterke,

District Manager.

[FR Doc. 92-23402 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-JB-M

[CO-920-92-4111-15; COC9884]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97-451, a petition for reinstatement of oil and gas lease COC9884, Moffat County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1991, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16-2/3 percent, respectively. The lessee has paid the required $500 administrative fee for the lease and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e), the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Joan Gilbert of the Colorado State Office at (303) 239-3783.

Dated: September 14, 1992.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 92-23441 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-92-4212-14; N-56356]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

The following described public land in the City of North Las Vegas, Clark County, Nevada has been determined to be suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale are sections 203 and 209 of Public Law 94-579, the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,
- Sec. 13: N½, NE¼SW¼, SE¼;
- Sec. 14: N½;
- Sec. 15;
- Sec. 16;
- Sec. 17;
- Sec. 18: lots 5 to 29, inclusive;
- Sec. 19: lots 5 to 18, inclusive;
- Sec. 20;
- Sec. 21: N½;
- Sec. 23: N½NE¼, SW¼NE¼, E½NW¼;
- Sec. 24: N½, NE¼SW¼, N½SE¼, SW¼SE¼.

T. 19 S., R. 62 E.,
- Sec. 18: lots 1 to 4, inclusive, E½, E½W½;
- Sec. 19: lots 1 to 4, inclusive, E½, E½W½;
- Sec. 20.

Aggregating 7,534.27 acres (gross).

This parcel of land, situated in Clark County is being offered as a direct sale to the City of North Las Vegas and is not required for any federal purposes. The sale is consistent with the Bureau's planning system. The sale of this parcel would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. Oil, gas, sodium, and potassium.

and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/the City of North Las Vegas.

2. Those rights for railroad purposes which have been granted to the Los Angeles and Salt Lake Railroad Company by Permit No. CC-0360 under the Act of March 3, 1875, 18 Stat. 482, 43 U.S.C. 934-939.

3. Those rights for road purposes which have been granted to the Corps of Engineers by Permit No. Nev-045137 under the Act of January 13, 1916, 44 LD 513.

4. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. NEV-061985 and Nev-067348 under the Act of February 15, 1901, 31 Stat. 790, 43 U.S.C. 959.

5. Those rights for material site and road purposes which have been granted to the Nevada Department of Transportation by Permit No. N-32236 under the Act of August 27, 1958, 72 Stat. 916, 23 U.S.C. 317(A).

6. Those rights for power line purposes which have been granted to Nevada Power Company by Permit No. N-39815, N-42592 and N-49722 under the Act of October 21, 1976, 90 Stat. 2776, 43 U.S.C. 1761.

Publication of this notice if the Federal Register shall establish September 27, 1992 as the date the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of segregation, whichever occurs first.

Dated: September 11, 1992.

Ben F. Collins,

District Manager, Las Vegas District Office.

[FR Doc. 92-23200 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

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 (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (FWS 0002), Washington, DC 20503, telephone 202-395-7340.

Title: Estimate of Non-market Benefits of the Trinity River (California)

Instream Flows and Anadromous Fish Runs

OMB Approval Number: New information collection

Abstract: The decline of the Trinity River fishery resource was precipitated by the completion of the Trinity River division portion of the Central Valley Irrigation Project in 1963. Roughly 90 percent of the Trinity River stream flow was moved via conduits from the Trinity River to the Sacramento River. The consequent loss of aquatic habitat on the Trinity River led to drastic declines in salmon and steelhead production. The proposed survey will identify and quantify non-market social impacts of the decline in the fishery runs as well as the loss of regional jobs created by the sharp loss of Trinity River outdoor recreational opportunities. The estimation of the magnitude of the dollar losses and of the number of jobs lost will, in turn, facilitate comparison of the cultural and economic value of the fishery resource with the market value of the hydro-power and the crop production provided by the trans-basin water movements

Service Form Number: N/A

Frequency: One time only

Description of Respondents: Individuals and households

Estimated Completion Time: 15 minutes (0.25 hours)

Annual Responses: 2,250

Annual Burden Hours: 604

Service Clearance Officer: James E. Pinkerton, 703-358-1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240

Dated: September 3, 1992.

Suzanne Mayer,

Acting Regional Director—Region 8.

[FR Doc. 92-23408 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-626 (Preliminary)]

Pads for Woodwind Instrument Keys From Italy

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-626 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Italy of pads for woodwind instrument keys that are alleged to be sold in the United States at less than fair value.[1] The Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 5, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202-205-3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on September 21, 1992, by Prestini Musical Instruments Corporation, Nogales, AZ.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on October 13, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Woodley Timberlake (202-205-3188) not later than October 9, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 16, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

[1] Pads for woodwind instrument keys are affixed to the keys of various woodwind instruments, e.g., saxophones, clarinets, oboes, and flutes. Such pads are provided for in subheading 9209.99.40 of the Harmonized Tariff Schedule of the United States (HTS).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: September 22, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-23464 Filed 9-25-92; 8:45 am]

BILLING CODE 7020-02-M

[332-336]

Probable Economic Effect of Extending a Tariff Rate Quota Under the United States-Canada Free-Trade Agreement

AGENCY: International Trade Commission.

ACTION: Institute of investigation.

SUMMARY: Following receipt on September 18, 1992, of a request from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332-336 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to advise the President of its judgment as to the probable economic effect of modifying rule 18 of section XI of the rules in annex 301.2 of the United States-Canada Free Trade Agreement. This Rule contains annual quantitative limits (tariff rate quota) on U.S. imports from Canada of non-wool fabric and non-wool made-up textile articles that may receive the preferential rates of duty under the agreement for the period January 1, 1989-December 31, 1992, if such articles are woven or knitted in Canada from yarn produced or obtained in a third country and that meet other applicable conditions for preferred tariff treatment. According to the USTR, in discussions with representatives of the Government of Canada, the United States has agreed provisionally to extend this period to December 31, 1993. According to the USTR, this extension would provide continuity to similar provisions contained in the North American Free Trade Agreement.

The USTR asked that the Commission provide its advice not later than October 25, 1992.

EFFECTIVE DATE: September 23, 1992.

FOR FURTHER INFORMATION CONTACT: The Project Leader, Ms. Kim Freund (202-205-3456). Textiles and Apparel Division, Office of Industries, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel (202-205-3091). The media should contact Edward Carroll, Acting Director, Office of Public Affairs (202-205-1819).

Hearing-impaired persons can obtain information on this study by contacting the Commission's TDD terminal on 202-205-1810.

Background

Section 202(d) of the United States-Canada Free-Trade Agreement Implementation Act authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules set forth in annex 301.2 of the agreement as may from time to time be agreed to by the United States and Canada. Section 103 of the Act requires, among other things, that the President obtain advice from the Commission.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 7, 1992. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Acting Secretary at the Commission's office in Washington, DC.

By order of the Commission.

Issued: September 24, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-23578 Filed 9-25-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31618]

C&S Railroad Corporation Modified Rail Certificate; Revised Notice

On August 24, 1992, C&S Railroad Corporation (C&S) filed a notice for partial termination of its modified rail certificate of public convenience and necessity issued under 49 CFR 1150.23. By decision served April 18, 1990, in this proceeding, the Commission authorized C&S to operate over three rail lines as follows: (1) Between Packerton Junction, PA (milepost 0.0) and Haucks, PA (milepost 19.5), a distance of 19.5 miles [the Nesquehoning Branch]; (2) between East Mahanoy Junction, PA (milepost 103.0) and Lofty, PA (milepost 110.4), a distance of 7.4 miles [the Catawissa Branch]; and (3) between York Junction, PA (milepost 148.3) and Delano, PA (milepost 158.2), a distance of 9.9 miles [the Shimer Running Track].

C&S states that the Commission recently authorized another entity to acquire and operate the Catawissa Branch and the Shimer Running Track.[1] C&S intends to continue operating the Nesquehoning Branch. Therefore, by agreement with Carbon County and the Carbon County Railroad Commission, C&S is authorized to continue operating the rail line between Packerton Junction, PA (milepost 0.0), and Haucks, PA (milepost 19.5), a distance of 19.5 miles.

This notice must be served on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: September 22, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-23496 Filed 9-25-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree In United States v. Amsted Industries, Inc., d/b/a American Steel Foundries

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *Amsted Industries, Inc. d/b/a American Steel Foundries,* Civil Action No. C87-1284A, was lodged with the United States District Court for the Northern District of Ohio, on September 10, 1992. This action was brought pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.* The complaint alleged that Defendant Amsted violated certain requirements of RCRA and the regulations promulgated thereunder at its electric arc steel foundry in Alliance, Stark County, Ohio ("Alliance facility"),

[1] Finance Docket No. 32075, *Reading Blue Mtn. & N. R. Co.—Acq. and Oper. Exemp.—Schulkill Co. Rail Trans. Auth.* (not printed), served July 15, 1992.

and at its disposal facility in Sebring, Mahoning County, Ohio ("Sebring facility").

Under the proposed Decree, Amsted would: (1) Develop and implement closure and post-closure plans for the Sebring facility; (2) develop and implement a RCRA groundwater monitoring program at the Sebring facility; (3) develop and implement a closure plan (and if necessary, a post-closure plan) for a "baghouse" area at the Alliance facility; and (4) comply with a number of generator, storage and disposal requirements at the Alliance facility. The Decree also requires Amsted to pay a civil penalty of $250,000.

The Department of Justice will receive comments on the proposed Consent Decree for a period of 30 days from the publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Amsted Industries, Inc. d/b/a American Steel Foundries*, D.J. Ref. No. 90-7-1-397.

The proposed Consent Decree may be examined at the Office of the United States Attorney (Civil Division) for the Northern District of Ohio, 1404 E. Ninth St., suite 500, Cleveland, Ohio, 44114-1748 (216-363-3900); the Region V Office of the U.S. Environmental Protection Agency, 111 West Jackson Street, Third Floor, Chicago, Illinois 60604 (312-886-0556); and at the U.S. Department of Justice, Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004 (202-347-7829). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center. In requesting a copy, please specify the documents required, together with a check payable to the "Consent Decree Library" for $9.75 ($0.25 per page reproduction costs).

John C. Cruden,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 92-23393 Filed 9-25-92; 8:45 am]

BILLING CODE 4410-01-M

Consent Decree in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Hepworth, et al.*, Civil Action No. 91-0025-S-EJL, was lodged with the United States District Court for the District of Idaho on September 11, 1992. This Consent Decree resolves a Complaint filed by the United States against John Hepworth and John Lezamiz pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413.

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, seeking to recover a civil penalty against defendants Hepworth and Lezamiz for alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos HESHAP") during the 1988 demolition of the Peterson building in downtown Twin Falls, Idaho. As part of the settlement in this case, defendant Hepworth and Lezamiz will pay the United States a civil penalty of $13,500 and will take adequate steps to ensure that future demolition and renovation operations of buildings they own will be conducted in compliance with the inspection, notification, and work practice requirements of the asbestos NESHAP.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Hepworth, et al.*, DOJ number 90-5-2-1-1377.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, 550 West Fort Street, Boise Idaho 83742, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of the proposed Consent Decree may also be obtained from the Consent Decree Library, 601 Pennsylvania Avenue, Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Consent Decree, please enclose a check in the amount of $3.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-23394 Filed 9-25-92; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Two Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Rohm and Haas Company, et al.*, Civil Action No 1:CV-92-1295 was lodged on September 16, 1992 with the United States District Court for the Middle District of Pennsylvania. The defendants in the action, Rohm and Haas Company and SmithKline Beecham Corporation, are respectively alleged to be a former owner and a successor-in-interest to a former owner of Whitmoyer Laboratories, Inc., the past and present owner of the Whitmoyer Laboratories Superfund Site in Jackson Township, Pennsylvania. The proposed consent decree requires the defendants to conduct certain cleanup activities at the Site under the oversight of the United States Environmental Protection Agency. The proposed consent decree also requires the payment of $250,000 to the Superfund in partial reimbursement of response costs incurred by the United States at the Site and obtains certain other relief.

Notice is hereby also given that a proposed consent decree in *United States* v. *Estate of Clarence W. Whitmoyer, Sr., et al.*, Civil Action No. 1:CV-92-1294 was lodged on September 16, 1992 with the United States District Court for the Middle District of Pennsylvania. The defendants in this action are the probate estate of the late Clarence W. Whitmoyer, Sr. and the probate estate's co-personal representatives sued in that capacity. Clarence W. Whitmoyer, Sr. is alleged to have been a corporate officer and director of Whitmoyer Laboratories, Inc. The proposed consent decree requires the payment of $2.9 million to the Superfund in partial reimbursement of response costs incurred by the United States at the Site and obtains certain other relief.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should specifically refer to *United States* v. *Rohm and Haas Company, et al.*, D.J. reference #90-11-3-701, in the case of the first proposed consent decree, or

United States v. *Estate of Clarence W. Whitmoyer, Sr., et al.*, D.J. reference #90-11-2-505, in the case of the second proposed consent decree.

The proposed consent decrees may be examined at the Office of the United States Attorney for the Middle District of Pennsylvania, Suite 1162, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of the proposed consent decree in *United States* v. *Rohm and Haas Company, et al.*, please enclose a check in the amount of $73.25 (25 cents per page reproduction costs), payable to the Consent Decree Library. In requesting a copy of the proposed consent decree in *United States* v. *Estate of Clarence W. Whitmoyer, Sr., et al.*, please enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Roger Clegg,

Deputy Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-23392 Filed 9-25-92; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, and pursuant to Section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given that on August 5, 1992, a proposed Consent Decree in *United States* v. *Sharon Steel Corporation and Monessen, Inc.*, Civil Action No. 92-1724, was lodged with the United States District Court for the Western District of Pennsylvania. The Consent Decree concerns violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.* ("the Act"), and National Emission Standard for Hazardous Pollutants for Benzene Emissions from Coke By-Product Recovery Plants, 40 CFR Part 61, Subpart L ("benzene coke NESHAP"), promulgated under Section 112(b) of the Act, as amended, 42 U.S.C. 7412, at Monessen's coke by-product plant located in Monessen, Pennsylvania.

The complaint alleges that the defendants failed to meet the NESHAP requirement that they install equipment designed to eliminate detectable levels of benzene emissions after Monessen's two-year waiver of compliance expired on September 15, 1991, and that the defendants have continued thereafter to operate the plant without complying with the benzene coke NESHAP.

The proposed Consent Decree requires the defendant to achieve compliance with the benzene coke NESHAP by October 13, 1992. The defendants are subject to stipulated penalties in the amount of $2,000 per day for any failure to meet this deadline. The consent decree also requires defendants to pay a civil penalty of $300,000 in nine installments over a two-year period, plus interest.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sharon Steel Corporation and Monessen, Inc.*, D.J. No. 90-5-2-1-1653.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Western District of Pennsylvania, 633 U.S. Post Office and Courthouse, 7th Avenue and Grant Street, Pittsburgh, Pennsylvania 15219; the Region III Office of the U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202-347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check payable to "Consent Decree Library" in the amount of $5.00 (25 cents per page reproduction costs).

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-23384 Filed 9-25-92; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(d)(2), and Departmental policy, 28 CFR 50.7, 38 FR 19029 (July 17, 1973), notice is hereby given that on September 17, 1992 a proposed Consent Decree in *United States of America* v. *The Upjohn Company, et al.*, Civil Action No. 1:92-CV-659, was lodged with the United States District Court for the Western District of Michigan.

On September 17, 1992, the Complaint in this action was filed by the United States of America against The Upjohn Company, the City of Kalamazoo, the Charter Township of Oshtemo, and Kalamazoo County, Michigan, under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, seeking injunctive relief and reimbursement of costs incurred by the United States in response to a release or threatened release of hazardous substances from the West KL Avenue Landfill in Kalamazoo, Michigan.

Under the terms of the Consent Decree, the Defendants would implement the remedy selected by the U.S. Environmental Protection Agency (EPA), pay EPA oversight costs, and pay past costs of approximately $2 million. It is expected that some additional 200 parties in a related third-party action will join this settlement.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *The Upjohn Company, et al.*, D.O.J. Ref. No. 90-11-2-561.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Michigan, 110 Michigan Street NW., Grand Rapids, Michigan 49503; the Region V Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and the Consent Decree Library, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree can be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of either $42.25 for the Consent Decree with exhibits or $17.75 for the Consent Decree without the exhibits (25 cents per page

reproduction charge) payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 92-23396 Filed 9-25-92; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, (38 FR 19029 March 29, 1984)), notice is hereby given that a proposed Consent Decree in *United States* v. *USS/KOBE Steel Company* was lodged with the United States District Court for the Northern District of Ohio on September 17, 1992. The proposed Consent Decree provides schedules and procedures for conducting pre-construction analyses and, if necessary, environmental reviews pursuant to the "Prevention of Significant Deterioration" and "New Source Review" provisions of the Clean Air Act and its implementing regulations. The proposed Consent Decree also provides for a civil penalty of $500,000 and a number of pollution control and pollution prevention measures.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *USS/KOBE Steel Company,* D.O.J. Ref. No. 90-5-2-1-1714.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Suite 500, 1404 East Ninth Street, Cleveland, Ohio, 44114-1704; at the Region V office of the U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois, 60604; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $12.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-23395 Filed 9-25-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-9039, et al.]

Proposed Exemptions; PYCO ACE Operations Retirement Investment Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

PYCO ACE Operations Retirement Investment Plan (the Plan) Located in Baltimore, Maryland

[Application No. D-9039]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale (the Sale) by the Plan of Group Annuity Contract, No. GA-10,205 (the GAC) issued by Mutual Benefit Life Insurance

Company, Newark, New Jersey (Mutual Benefit) to PYCO ACE Operations, the sponsoring employer (the Employer) and a party in interest with respect to the Plan; provided that (1) the Sale is a one-time transaction for cash; (2) the Plan does not suffer any loss nor incur any expenses in the transaction; (3) the Plan receives no less than the fair market value of the GAC at the time of the Sale; and (4) the trustee of the Plan has determined that the proposed Sale is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with a cash or deferred compensation arrangement intended to meet the requirements of sections 401(a) and 401(k), respectively, of the Code. In the Plan, as of December 31, 1991, there were approximately 50 participants and total assets of approximately $197,624.57. The named fiduciary of the Plan is the Employer which performs its fiduciary duties through four individuals selected, two each, from the owners of the Employer. In addition, the Plan has a trustee (the Trustee), who is an officer of one of the corporations that owns the Employer. The Trustee's role is limited to that of custodian of assets of the Plan. The Trustee must see that the assets of the Plan are properly and legally held in trust as required by the Act. This responsibility entails overseeing the establishment and maintenance of the investment and disbursement accounts of the trust, and overseeing the procedures of those accounts. Currently, trust accounts are maintained with the Bank of Alexandria of Alexandria, Virginia to facilitate disbursements.

A third-party recordkeeper, Independent Plan Coordinators, Inc. of Alexandria, Virginia, has been delegated the responsibility for maintaining detailed individual accounts and records of investment elections for each participant in the Plan.

The Employer is a Maryland general partnership that is managed by four individuals (the Board of Control), which operates a cogeneration facility in Trona, California that produces and sells steam and electricity. The Employer is owned by two corporations that are general partners, with each partner possessing a 50 percent interest in both the capital and earnings interests of the partnership. One of the partners is COSI PYCO, Inc., a Maryland corporation, that is owned through various subsidiaries by Constellation Holdings, Inc., a Maryland corporation. Constellation Holdings, Inc. is wholly owned by the Baltimore Gas and Electric Company, a Maryland corporation, which is a state regulated utility company serving the city of Baltimore and all or a part of nine counties in Maryland. The second partner that owns the Employer is the Pyropower Operating Services Company, Inc., which is owned through various subsidiaries by A. Ahlstron Corporation, a corporation of Finland. This Finnish corporation is a multinational, diversified, privately-owned company which, through its subsidiaries, produces and delivers machinery, equipment, and systems for the pulp, paper, and power industries. A. Ahlstron Corporation and its subsidiaries also manufacture specialty papers, packing materials, cores and board, insulation materials, electrical accessories, and glassfibre.

2. The Plan authorizes the Employer to select and approve all investment vehicles that are offered to participants of the Plan. After the Employer, makes its selection of investment vehicles, the participants of the Plan make their own decisions as to which investment vehicles to invest the assets of their individual Plan accounts. From December 1, 1990, the effective date of the Plan, until June 28, 1991, all contributions made to the Plan were invested solely in 5 different investment accounts provided by the GAC issued by Mutual Benefit. At the direction of Plan participants, some of the funds invested in the GAC were placed in a Guaranteed Certificate Account that provides for yields of fixed rates of interest in a manner similar to that provided by a guaranteed investment contract.

When the Employer selected Mutual Benefit as the investment vehicle for the Plan, Mutual Benefit was rated "AA+" by Standard & Poors Rating (S&P Rating) and "A+" by A.M. Best (Best). On May 20, 1991, S&P Rating lowered its rating of Mutual Benefit to "A" and Best lowered its rating of Mutual Benefit to "A". As of July 25, 1992, S&P Rating suspended its rating of Mutual Benefit and Best downgraded its rating of Mutual Benefit to "NA-10, under state supervision."

These last changes of ratings made as of July 25, 1991, were precipitated by an order of the Superior Court of New Jersey (the Order), issued on July 16, 1991, that placed Mutual Benefit under the control of the Commissioner of Insurance of the State of New Jersey as Rehabilitator (the Rehabilitator). Under the terms of the Order, the holders of the GAC were prohibited from withdrawing their investments and are subject to future actions of the Rehabilitator.[1]

On July 17, 1991, the Employer decided to cease all future contributions to Mutual Benefit, including contributions accruing subsequent to the last contribution of June 28, 1991. Shortly thereafter, the Employer contracted with the American Funds Group to provide an investment vehicle for the Plan. All amounts withheld from Mutual Benefit, and all subsequent contributions to the Plan, have been invested in four mutual funds sponsored by the American Funds Group pursuant to the direction of the Plan participants. All fees charged by the American Funds Group in connection with establishing these new investment vehicles have been paid by the Employer.

On August 7, 1991, the Superior Court of New Jersey removed restrictions on withdrawals of pension deposits held by Mutual Benefit in "separate accounts." This court order of August 7, 1991, enabled the Employer to withdraw all investments under the GAC, except for the investments in the Guaranteed Certificate Account portion of the GAC. Those portions removed from the GAC were invested at the direction of the Plan participants, with the American Funds Group. As of December 31, 1991, the Plan investments in the Guaranteed Certificate Account of the GAC, together with credited interest, totalled $62,350.98, which constituted approximately 31.5 percent of the total assets of the Plan on that date.

3. The GAC matures on August 1, 1995, and the Employer represents that it is doubtful that the full amount of the Plan's investment in the Guaranteed Certificate Account of the GAC, and the interest credited thereto, will be released by Mutual Benefit at the date of maturity. The participants of the Plan have been informed of the situation and problems with respect to Mutual Benefit. In addition to being concerned about the current restrictions on the funds in the Guaranteed Certificate Account of the GAC (that is, restrictions for purposes of final distributions upon termination of employment, security for loans from the Plan, and changes in investment elections), the participants of the Plan are concerned that they may not recover the full investment in the GAC.

[1] The Department notes that the decision to offer Mutual Benefit as the investment vehicle is governed by the fiduciary responsibility requirements of Part 4, Subtitle B, Title I of the Act. In this regard, the Department herein is not proposing relief for any violations of Part 4 of the Act which may have arisen as a result of the acquisition and holding of the GAC issued by Mutual Benefit.

In order to eliminate the risks of continuing to hold the GAC for the participants of the Plan, and to allow assets currently invested under the GAC in the Guaranteed Certificate Account to be transferred to other investments through the American Funds Group, the Employer has proposed purchasing the GAC from the Plan for cash in the amount of the total face value of the Guaranteed Certificate Account, plus interest accrued at the contract rate of 8.75 percent through the date of the purchase. The face value of the Guaranteed Certificate Account is the total amount paid by the Plan to Mutual Benefit and invested in the Guaranteed Certificate Account, less any withdrawals previously made from the Guaranteed Certificate Account.

The Employer represents that the Plan will not incur any expenses from the Sale, and all expenses incurred from the Sale will be borne by the Employer.

The Employer also represents that there has been filed with the Internal Revenue Service a request for a closing agreement pursuant to the Internal Revenue Procedure 92–16 [2] The Employer represents that it does not intend to claim a tax deduction under section 404 of the Code for any part of the purchase price to be paid to the Plan.

4. The Trustee of the Plan is represented by the applicant to have undertaken the responsibility for determining, on behalf of the Plan participants, the adequacy of the proposed consideration for the Sale of the GAC to the Employer. It is also represented that the Trustee has reviewed and considered the Employer's proposal to purchase the GAC from the Plan and has determined that such purchase would be in the best interests of the participants and beneficiaries of the Plan. In this regard, the Trustee has determined that the proposed consideration to be given for the GAC, the face value of the Guaranteed Certificate Account, plus accrued interest, will equal or exceed the fair market value of the GAC, because of the financial instability of Mutual Benefit.

In order for the Trustee to determine the fair market value of the GAC, Krish Actuarial Consultants of Laurel, Maryland were employed to make an independent appraisal of the Guaranteed Certificate Account, remaining in the GAC. Mr. S. Krishnamurthy, FIA, ASA, and President of Krish Actuarial Consultants, represents that he is an Enrolled Actuary and is familiar with the requirements of the Department and the Internal Service for valuing pension plan assets. Mr. Krishnamurthy determined that the fair market value of the GAC, as of March 31, 1992, was not more than the face value (as defined above) plus accrued interest to date of Sale.

5. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (a) The Plan will receive cash for the GAC in the amount of the face value of the Guaranteed Certificate Account plus accrued interest as of the date of the Sale, which a qualified, independent appraiser has determined to be not less than the fair market value of the GAC; (b) the transaction will enable the Plan and its participants and beneficiaries to avoid any risk associated with the continued holding of the GAC, and will permit the redirecting of Plan assets to safer investments; (c) the Plan will not incur any expenses with respect to the proposed transaction; and (d) the Trustee has determined that the Sale at the proposed price is in the best interests of the participants and beneficiaries of the Plan.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Carmine P. Errico, M.D., IRA Rollover Trust (the IRA), Located in Jersey City, New Jersey

[Application No. D–9047]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale of a certain vacant lot (Lot 28.01) by the IRA to Lyn Errico, a disqualified person with respect to the IRA; provided that the IRA receives the greater of: (1) The fair market value of Lot 28.01 as determined at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition cost of Lot 28.01 plus the aggregate holding costs incurred by the predecessor plan to the IRA and subsequently by the IRA since the initial acquisition of Lot 28.01; and further provided that the following conditions are satisfied: [3]

(a) The proposed sale will be one-time cash transaction; and

(b) The IRA will pay no expenses associated with the sale.

Summary of Facts and Representations

1. The IRA is an individual retirement account which was established October 26, 1989. Carmine P. Errico, M.D. (Dr. Errico) is the sponsor of the IRA. As of May 8, 1992, the IRA had total assets of $2,151,667. Dr. Errico's specialty is obstetrics and gynecology. He is an employee of Somerset OB/GYN Associates which is a professional association.

2. On July 12, 1985, the Carmine Errico, M.D. P.A. Defined Benefit Pension Plan (the Plan), the predecessor plan to the IRA, purchased Lot 28.01 for investment purposes from Joan A. Mehl, an unrelated third party, for a total cash consideration of $250,000. On the same date, Lyn Errico, the wife of Dr. Errico, purchased Lots 28 and 28.02 (collectively, the Lots) also from Joan A Mehl for a total of $100,000 in cash. Specifically, Lot 28 contains 5.63 acres, Lot 28.01 contains 7.5 acres and Lot 28.02 contains 3.19 acres. Lots 28 and 28.02 are contiguous and are adjacent on the east to Lot 28.01.

3. Subsequent to the purchase of Lot 28.01, the Plan was terminated and all of its assets were rolled over into the IRA between October 26, 1989 and November 20, 1989. On November 20, 1989, Lot 28.01 was rolled over into the IRA.[4] The applicant represents that Lot 28.01 has never been leased or used by a disqualified person while an asset of the Plan or the IRA. The applicant also notes that Lot 28.01 has never been encumbered by debt while held as an asset by either the Plan or the IRA. The Plan paid $10,750 in property taxes during the time it held Lot 28.01 as an asset, and the IRA paid property taxes in the aggregate amount of $18,908.91 for the period beginning January 1, 1990 to the present.

[2] Internal Revenue Procedure 92–16 provides for a temporary closing agreement program to settle certain tax liabilities that arise out of transactions between an employer-sponsor and the trust of a qualified defined contribution plan.

[3] Pursuant to CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[4] The Department expresses no opinion as to whether the Plan's acquisition and holding of Lot 28.01 until rollover into the IRA violated any provision of Part 4 of Title I of the Act. Nor is the Department expressing an opinion as to whether the holding of Lot 28.01 by the IRA was a prohibited transaction under section 4975(c)(1) (D) and (E) of the Code, and no relief is provided herein. The Department notes that section 408(a) of the Code provides that the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries.

4. Lyn Errico is proposing to purchase Lot 28.01 from the IRA in a one-time cash transaction. It is represented that the IRA will not incur any expenses as a result of the sale. In this regard, an appraisal of Lot 28.01 was performed, as of February 1, 1992, by Robert McNeely Vance (Mr. Vance), an independent qualified appraiser. Mr. Vance represents that Lot 28.01 is located in Clinton Township, Hunterdon County, New Jersey and consists of approximately 7.5 acres of vacant land. Mr. Vance relied on the direct sales comparison or the market approach and determined that, as of February 1, 1992, the fair market value of Lot 28.01 was $250,000. In a letter of April 23, 1992, Mr. Vance addressed the issues of: (1) Why Lot 28.01 did not appreciate in value since the initial acquisition; and (2) whether the adjacency of Lot 28.01 to Lots 28 and 28.02, which are owned by Lyn Errico, merits a premium above the fair market value to Lyn Errico as purchaser in the proposed transaction. Mr. Vance states that due to environmentally related regulations controlling development and use in wetland areas which were implemented since the initial acquisition, Lot 28.01 cannot be independently developed. Furthermore, because Lot 28.01 is bounded on the north and south by highways, on the west by fully developed properties, its only value would be to the owner of the adjacent Lots to the east, who is Lyn Errico. Therefore, the value of Lot 28.01 consists only of its ability to transfer development capacity to the adjacent lots, since it cannot be developed on its own. Because of these concerns, if Lot 28.01 were to be evaluated as if standing alone, on its own merits, Mr. Vance concludes that the fair market value would be nominal. Mr. Vance further stated that the fair market value of $250,000 is the maximum value for Lot 28.01 due to the fact that it cannot accommodate development within its own boundaries. As such, the value of $250,000 takes into consideration the fact that Lot 28.01 can only be used in conjunction with Lots 28 and 28.02 and thus includes the maximum premium value to the purchaser who also owns the adjacent Lots. However, because the aggregate holding costs combined with the initial acquisition cost of Lot 28.01 ($29,658.91+$250,000=$279,658.91) are greater than the current fair market value of Lot 28.01, the applicant has determined that the IRA will receive the greater of: (1) The fair market value of Lot 28.01 as determined at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition costs for Lot 28.01 plus the aggregate holding costs incurred by the Plan and the IRA since the initial acquisition of Lot 28.01.

5. It is represented that the transaction is desirable for the IRA as the sale will increase the liquidity of the IRA's investment portfolio. The transaction is protective of the IRA because the fair market value of Lot 28.01 was determined by an independent qualified appraiser and the IRA in this transaction will receive the greater of: (1) the fair market value of Lot 28.01 as determined at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition cost of Lot 28.01 plus the aggregate holding costs incurred by the Plan and subsequently by the IRA since the initial acquisition of Lot 28.01. It is also represented that the IRA would not be able to recoup the fair market value in an arm's-length sale because the value of Lot 28.01 is contingent on the two adjacent Lots which are owned by Lyn Errico.

6. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The IRA in this transaction will receive the greater of: (1) the fair market value of Lot 28.01 as determined at the time of the sale by an independent qualified appraiser; or (2) the initial acquisition cost of Lot 28.01 plus the aggregate holding costs incurred by the Plan and subsequently by the IRA since the initial acquisition of Lot 28.01;

(c) The IRA will pay no expenses associated with the sale;

(d) The sale will allow the IRA to liquidate its assets; and

(e) Dr. Errico as the sponsor of the IRA would be the only individual affected by the transaction.

Notice to Interested Persons

Because Dr. Errico is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 523-8883. (This is not a toll-free number.)

Profit Sharing Plan and Trust for Employees of Radiology Consultants (the Plan) Located in Orlando, Florida

[Application No. D-9053]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the proposed sale by the individual accounts in the Plan of John L. Beauchamp, Jr. (the Beauchamp Account) and Rong Dad Ho (the Ho Account) of each Account's respective 50% share of a certain 91.4 acre parcel of land and the fruit crop grown thereon (Grove Property I) to John L. Beauchamp, Jr., M.D. (Dr. Beauchamp) and Rong Dad Ho, M.D. (Dr. Ho), respectively; (2) the proposed sale by the individual account in the Plan of Douglas M. Roy (the Roy Account) of a certain 39.4 acre parcel of land and the fruit crop thereon (Grove Property II) to Douglas M. Roy, M.D. (Dr. Roy); and (3) the proposed sale by the individual account in the Plan of Arnold J. Spanjers (the Spanjers Account; collectively, the Accounts) of a certain 74.3 acre parcel of land and the fruit crop thereon (Grove Property III) to Arnold J. Spanjers, M.D. (Dr. Spanjers), provided that the following conditions are met:

(a) Each sale is a one-time transaction for cash;

(b) Each Account receives an amount which is no less than the greater of either the fair market value of the land on the Grove Property owned by such Account as appraised on January 15, 1992, or the fair market value of such land on the date of sale as established by an independent appraisal;

(c) Each Account receives the fair market value of the fruit crop on the Grove Property owned by such Account as of the date of sale, as established by an independent appraisal;

(d) With respect to the Beauchamp Account and the Ho Account, such Accounts receive an amount, as described in (b) and (c) above, which reflects each Account's 50% ownership interest in Grove Property I; and

(e) The Accounts do not pay any commissions or other expenses associated with the transactions.

Summarv of Facts and Representations

1. The Plan is a defined contribution plan which, as of December 31, 1991, had 49 participants and total assets of $14,801,260. The trustee of the Plan is Sun Bank, N.A. (the Bank), located in Orlando, Florida. The Bank is not the decision-maker for the investment of the Plan's assets involved in the subject transactions. The Plan allows for participants to direct the investment of assets held in their individual accounts. All of the Accounts are individually-directed accounts in accordance with the terms of the Plan. As of December 31, 1991, the total assets of each of the Accounts was as follows: (a) $1,031,093 for the Beauchamp Account; (b) $1,157,690 for the Ho Account; (c) $869,904 for the Roy Account; and (d) $1,804,382 for the Spanjers Account.

2. The Plan is sponsored by Radiology Consultants, P.A. (the Employer). The Employer is a Florida professional corporation that provides medical services in the field of radiology. The Employer is located at 306 Avenue C, NE., Winter Haven, Florida.

Dr. Beauchamp, Dr. Ho, Dr. Roy, and Dr. Spanjers (together, the Applicants) are all shareholders, directors and employees of the Employer.

3. The Grove Properties are parcels of land located in Hendry County, Florida, which are used for growing oranges. Grove Property I, a 91.4 acre parcel of land with 85.7 acres of bearing orange grove, is owned jointly by the Beauchamp Account and the Ho Account. Grove Property II, a 39.4 acre parcel of land with 36.9 acres of bearing orange grove, is owned by the Roy Account. Grove Property III, a 74.26 acre parcel of land with 69.1 acres of bearing orange grove, is owned by the Spanjers Account. The Bank, as trustee of the Plan, charges all expenses relating to the Grove Properties to the respective Accounts and credits all earnings, gains and losses from the Grove Properties to such Accounts.

The operation and maintenance of the Grove Properties is conducted by Cooperative Producers, Inc. (CPI). CPI handles the irrigation, planting and picking of the fruit on the Grove Properties, pursuant to service contracts with the Plan. The marketing and sales of the fruit on the Grove Properties is handled by Haines City Citrus Growers Association (Haines) for Grove Properties I and III and by Winter Haven Citrus Growers Association (Winter Haven) for Grove Property II. CPI, Haines and Winter Haven are all unrelated to the Employer and its affiliates. The Applicants state that at no time during the Plan's ownership of the Grove Properties have such properties been leased to, or used by, any party in interest with respect to the Plan. The Applicants and their affiliates do not own any property which is adjacent to the Grove Properties.

4. Grove Property I was purchased by the Plan, as an investment for the Beauchamp Account and the Ho Account pursuant to the investment directions of Drs. Beauchamp and Ho, respectively, on March 15, 1984 from Hickory Branch Groves, Inc. (Hickory Groves), an unrelated party, for $158,295. The Beauchamp and Ho Accounts each paid 50% of the purchase price for the property and each Account owns a 50% interest in the property. The Beauchamp and Ho Accounts had received a total of approximately $178,123 in income, and incurred a total of approximately $565,402 in operational expenses for Grove Property I, as of December 31, 1991. All income and expenses for Grove Property I have been shared equally by the Beauchamp and Ho Accounts.

Grove Property I was appraised on January 15, 1992 by Lloyd N. Race, SRA, an independent, qualified real estate appraiser in Winter Haven, Florida (the Appraiser), as having a fair market value of $1,200,000, as of December 21, 1991. The Appraiser states that the land on Grove Property I had a fair market value of $1,050,000 and the fruit had a fair market value of $150,000, as of such date.

5. Grove Property II was purchased by the Plan, as an investment for the Roy Account pursuant to the investment direction of Dr. Roy, on March 15, 1984 from Hickory Groves for $64,436.13. The Roy Account had received a total of approximately $54,104 in income, and incurred a total of approximately $275,512 in operational expenses for Grove Property II, as of December 31, 1991.

Grove Property II was appraised on January 15, 1992 by the Appraiser as having a fair market value of $460,000, as of December 21, 1991. The Appraiser states that the land on Grove Property II had a fair market value of $390,000 and the fruit had a fair market value of $70,000 as of such date.

6. Grove Property III was purchased by the Plan, as an investment for the Spanjers Account pursuant to the investment direction of Dr. Spanjers on March 15, 1984 from Hickory Groves for $189,744.43. The Spanjers Account had received a total of approximately $133,922 in income, and incurred a total of approximately $433,027 in operational expenses for Grove Property III, as of December 31, 1991.

Grove Property III was appraised on January 15, 1992 by the Appraiser as having a fair market value of $875,000, as of December 21, 1991. The Appraiser states that the land on Grove Property III had a fair market value of $740,000 and the fruit had a fair market value of $135,000, as of such date.

7. By letter dated May 15, 1992, the Appraiser represents that all appraisals made of the fruit value on the Grove Properties were based on the fruit crop's maturity as of the date of the appraisals. The Appraiser states that to the extent the fruit on the Grove Properties was not ready to be harvested, its value was discounted by the number of months remaining before it would be fully mature. The Appraiser's determination of the maturity of the fruit was made in accordance with the fruit maturity charts customarily used in the Florida citrus industry for fruit valuation. The price of the fruit was determined by the Appraiser based on the Florida Citrus Mutual Market News Bulletin (the Bulletin), an independent, third party source which provides current market price quotations for Florida citrus. However, the Appraiser states that because fruit prices fluctuate on a daily basis, each appraisal factored into the price quoted in the Bulletin a "stabilized price" or market average for such fruit prices in determining the fair market value of the fruit on the Grove Properties.

8. The Applicants state that the Grove Properties were purchased by the Accounts primarily for potential investment appreciation. However, the Applicants represent that the Grove Properties have not been profitable investments because of the operating expenses associated with the properties and the unrelated business taxable income incurred by the Accounts in connection with the properties. The Applicants also believe that the market value of the Grove Properties will decline in the near future due to substantial increases in imported citrus products which will adversely affect the prices for domestic citrus crops. In addition, the Grove Properties represent a significant percentage of the total assets of each of the Accounts (i.e. approximately 47% of the Beauchamp Account; 42% of the Ho Account; 53% of the Roy Account, and 48% of the Spanjers Account). Thus, the Applicants state that it would be in the best interests of the Accounts to sell the Grove Properties to enable the Accounts to diversify their investment portfolio and acquire other assets yielding a higher rate of return.

9. The Applicants represent that the market for citrus groves is currently depressed and that it is unlikely that the Accounts will be able to sell the Grove Properties to an unrelated party at a good price within a reasonable time. The Applicants propose to purchase the Grove Properties for cash at a price which is at least equal to the fair market value of the properties, as established by the Appraiser. The Applicants state that a sale of the Grove Properties by the Accounts at their fair market value at the present time will provide the Accounts with an amount which will exceed in each instance the acquisition and holding costs the Accounts have incurred for the Grove Properties. The Appraiser will update all appraisals of the Grove Properties prior to the proposed transactions to provide the most current market prices for the land and the fruit. The purchase price to be paid by the Applicants for the land on the Grove Properties in each instance will be equal to the greater of either (i) the fair market value of the land as currently appraised by the Appraiser, or (ii) the fair market value of the land as of the date of sale, as established by the Appraiser's updated appraisals. However, because of the volatility and fluctuation in the value of the fruit on the Grove Properties, the Applicants will purchase the fruit crop at a price equal to the fair market value of the fruit as of the date of sale, as established by the Appraiser based on the maturity of the fruit and current market prices for the fruit at the time of the transactions. The Appraiser will determine the fruit's maturity and current market price using the same valuation methodology which was used in the prior appraisals of the Grove Properties (see discussion in Item 7 above involving "stabilized price").

Neither the Plan nor the Accounts will not pay any commissions or other expenses for the proposed transactions.

10. In summary, the Applicants represent that the proposed transactions will meet the statutory criteria of section 408(a) of the Act because: (a) Each sale will be a one-time transaction for cash; (b) the Accounts will receive in each instance a price equal to the greater of either (i) the fair market value of the land on the Grove Properties as currently appraised by the Appraiser, or (ii) the fair market value of such land as of the date of sale, as established by the Appraiser's updated appraisal; (c) the Accounts will receive in each instance the fair market value of the fruit on the Grove Properties as of the date of sale, as established by the Appraiser based on the maturity of the fruit and the "stabilized price" methodology in determining the current market prices for the fruit; (d) no commissions or other expenses will be paid by either the Plan or the Accounts for the proposed transactions; and (e) the transactions will enable to Accounts to eliminate the expenses being incurred in connection the operation and maintenance of the Grove Properties as well as the taxes on unrelated business taxable income from the properties and will allow the Accounts to reinvest the proceeds in other investments yielding a greater return.

Notice to Interested Persons: because the Applicants are the only participants in the Plan to be affected by the proposed transactions, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

First Citizens Bank and Trust Company And Adopting Companies Pension Plan (the Plan) Located in Raleigh, North Carolina

[Application No. D-8834]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the proposed continued holding by the Plan after December 31, 1992, of shares of common stock (the Stock) of First Citizens BancShares, Inc. (BancShares), the parent corporation of the sponsor of the Plan; and (2) the proposed acquisition, holding, and exercise by the Plan of a put option (the Put) with respect to the Stock; provided that the following conditions are satisfied:

(A) The Plan's interests for all purposes with respect to the Stock are represented by Wachovia Bank of North Carolina, N.A. (the Fiduciary) for the duration of the Plan's holding of any of the Stock;

(B) The Fiduciary will take whatever action is necessary to protect the Plan's rights, including, but not limited to the exercise of the Put, if the Fiduciary, in his sole discretion, determines that such exercise is appropriate;

(C) The Fiduciary retains the right under the Put to require Bancshares, at any time, to purchase some or all of the Stock from the Plan for the greater of (1) the Stock's fair market value as of December 31, 1992, or (2) the fair market value of the Stock as of the date of such sales;

(D) BancShares' obligations under the Put remain secured by an escrow account containing cash or U.S. government securities worth at least 25 percent of the fair market value of the Stock as of December 31, 1992, as long as the Plan continues to hold any shares of the Stock; and

(E) Additional shares of the Stock are not voluntarily acquired on behalf of the Plan unless such acquisition satisfies the requirements of sections 406(a)(1)(E), 407(a) and 408(e) of the Act.[5]

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan sponsored by First Citizens Bank and Trust Company (the Bank), a North Carolina corporation with its principal place of business in Raleigh. The Bank serves as trustee of the Plan, which is also sponsored by the American Guaranty Insurance Company and the First Citizens Mortgage Company, each of which is a subsidiary of the Bank. The Bank is a subsidiary of BancShares, a Delaware public corporation. BancShares was incorporated on August 7, 1986, as successor to First Citizens Corporation (FCC), which was a bank holding company of which the Bank was the sole subsidiary. On October 21, 1986, FCC was merged into BancShares, which became the surviving corporation and the sole shareholder of the Bank.

2. As of December 31, 1990, BancShares had authorized 20 million shares of Class A Common Stock (Class A Stock), one dollar par value per share, of which 7,422,037 shares were outstanding, and 5 million shares of Class B Common Stock (Class B Stock), one dollar par value per share, of which 1,853,068 shares were outstanding. The Class A Stock is listed on the National Association of Securities Dealers Automated Quotation System (NASDAQ) national market system. The Class B Common Stock is not listed by

[5] An acquisition of Stock shall not be deemed to have occurred if the Plan acquires shares of the Stock as a result of a stock dividend or stock split.

NASDAQ and trades are privately consummated. The Bank represents that the total volume of trading in the Class A Stock during 1990 was 245,942 shares and that the total number of shares of the Class B Common Stock traded during 1990 was 15,866 shares.

3. As of September 16, 1991, the Plan owned 126,400 shares of Class A Stock (the Class A Shares) and 31,600 shares of Class B Stock (the Class B Shares). The Bank represents that the Plan acquired the Class A and Class B Shares (together, the Stock) prior to December 17, 1987 through a series of corporate reorganizations. As of December 31, 1991, the Plan had total assets of $97,851,075 and the Bank represents that the total fair market value of the Class A Shares and the Class B Shares was $3,476,000 and $869,000, respectively, constituting less than 5 percent of the assets of the Plan. The Bank represents that at the time of the Plan's acquisition of the Stock, and at all times thereafter, the Class A Shares and the Class B Shares each represented less than twenty five percent of the issued and outstanding stock of its respective class. As of December 31, 1990, 65.96 percent of the Class A Stock, and 67.50 percent of the Class B Stock, were beneficially owned by directors and executive officers of BancShares and the Bank.

Because directors and executive officers of the Plan sponsor and its sole shareholder own in excess of 50 percent of the Class A and Class B Stock, the Bank represents that the Plan's continued holding of the Stock beyond December 31, 1992 would be prohibited by section 406(a)(1)(E) of the Act, as a result of the failure to satisfy the definition of "qualifying employer security" contained in section 407(d)(5). The Bank is proposing that the Plan continue to hold the Stock after December 31, 1992, in addition to the Put which will enable the Plan to require the Bank to buy the Stock back from the Plan, and is requesting an exemption to permit such transactions under the terms and conditions described herein.

4. The interests of the Plan with respect to the Stock will be represented by an independent fiduciary, Wachovia Bank of North Carolina (the Fiduciary), appointed by the Bank, in its capacity as Plan trustee, pursuant to an agreement (the Agreement) which designates the Fiduciary as manager of the Plan's investment in the Stock. Under the Agreement, the Fiduciary has full investment discretion with respect to the Stock, including the authority to make all decisions regarding continued holding or disposition of the Stock, the voting of proxies, and the exercise of any conversion privilege, tender offer, or similar right relating to the Stock. The Fiduciary is authorized to direct that the Stock, or any portion thereof, be sold at any time that the Fiduciary determines to be in the best interest of the Plan, including the authority to require the Stock to be purchased by Bancshares in accordance with the terms of the Put, described herein. The Fiduciary is empowered to give such other directions to the Bank in its capacity as Plan trustee as are appropriate for the execution of the Fiduciary's duties under the Agreement. The Agreement specifies that the Fiduciary is an "investment manager" and a "fiduciary" with respect to the Plan under the Act and that such status will be maintained for the duration of the Agreement. The Agreement continues in effect until the Stock is no longer held by the Plan, although the Agreement is terminable with at least 30 days notice. In the event that such termination notice is given by either party while the Stock is still owned by the Plan, the Agreement provides that the termination will not be effective until a successor Fiduciary has been secured under circumstances approved by the Department.

5. The Bank, the Fiduciary, and BancShares have executed the Put, which is a put option agreement that grants the Fiduciary the right, on behalf of the Plan, to direct BancShares at any time to purchase all or any portion of the Stock from the Plan, subject only to the approval of the Federal Reserve Board.[6] The terms of the Put provide that it becomes effective on January 1, 1993. The Put requires the purchase price of the Stock, in the event of any exercise of the Put, to be greater of (a) the fair market value of the Stock as of the date of the closing of the purchase transaction, or (b) the fair market value of the Stock on December 31, 1992. The Put provides that for purposes of the purchase price of the Stock in the event of an exercise of the Put, the Stock's fair market value shall be determined by the Fiduciary pursuant to a valuation conducted as of the closing date of the purchase in accordance with section 3(18) of the Act.

6. The Bank, the Fiduciary, the Bancshares will execute an escrow agreement (the Escrow) establishing an escrow account to secure Bancshares' obligations under the Put, and the Escrow will be maintained for the duration of the Plan's ownership of any of the Stock. Upon exercise of the Put or in any sale of the Stock to a third party, if the Plan fails to receive as the consideration in such sale the full purchase price required under the Put, the proceeds of the escrow account may be transferred to the Plan to compensate the Plan with respect to any deficiency. The Escrow requires Bancshares to transfer to an escrow account a quantity of United States government securities (the Securities) with a total value of at least 25 percent of the fair market value of the Stock as of December 31, 1992. In the event the Plan reduces its holding of the Stock, the value of Securities held under the Escrow may be reduced, if the value of the Securities in Escrow is greater than 30 percent of the fair market value of the Stock still being held by the Plan, provided that the value of the Securities held under the Escrow remains no less than twenty five percent of the greater of (1) the current fair market value of the Stock, or (2) the fair market value of the Stock as of December 31, 1992, based on the number of shares of the Stock still being held by the Plan. The current fair market value of the Stock for purposes of the Escrow is to be determined as of the last day of each calendar year by the Bank, subject to approval of the Fiduciary, and the Fiduciary's determination shall control in the event of disagreement with the Bank. The Plan will have a lien against the assets in the Escrow, so that the Plan will have priority over all creditors of Bancshares with respect to those assets.

7. As a condition of the exemption proposed herein, the Bank agrees that the Plan shall not require any additional shares of Class A or Class B Stock, unless at the time of any such acquisition the requirements of section 406(a)(1)(E), 407(a) and 408(e) of the Act are satisfied without regard to the exemption proposed herein. The foregoing restriction would not apply to the Plan's receipt of additional Stock as a dividend or in connection with a stock split, merger, recapitalization or reorganization involving the Stock. The Bank represents that all future sales, if any, of the Stock by the Plan to a party in interest with respect to the Plan will satisfy the requirements of section 408(b)(12) of the Act.

[6] Bancshares represents that the Put provides for approval of the Federal Reserve Board (the FRB) because of (1) an FRB regulation requiring the bank holding company to obtain FRB approval before purchasing or redeeming its equity securities if the consideration therefore is equal to ten percent or more of the holding company's net worth, and (2) an FRB policy of requesting bank holding companies to consult with the FRB prior to any material redemption of securities. In the event the FRB were to deny approval of any exercise of the Put, the Plan would be protected by the Escrow, described in section 6 herein, from any failure to obtain, in a resulting sale of the Stock to a third party, the full purchase price required under the Put.

8. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Stock represents less than five percent of the Plan's total assets; (2) At all times since acquisition by the Plan, the Stock has constituted less than twenty-five percent of all outstanding shares of each class of the Stock; (3) The interests of the Plan for all purposes related to the continued holding of the Stock are represented by the Fiduciary, which has full discretionary authority with respect the Plan's interests in the Stock and under the Put and Escrow; (4) The Put will enable the Fiduciary to require a sale of the Stock of BancShares at any time for no less than the greater of the Stock's fair market value (a) as of December 31, 1992, or (b) as of the date of such sale; (5) The Escrow will protect the Plan's right to receive the full fair market value of the Stock in any exercise of the Put; and (6) The Plan will not acquire additional share of the Stock if such acquisition would be in violation of the Act.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 22nd day of September, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-23340 Filed 9-25-92; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication, NRC Generic Letter: Analog to Digital Replacements Under the 10 CFR 50.59 Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed Generic Letter: Extension of comment period.

SUMMARY: On August 14, 1992, (57 FR 36680), the NRC published for public comment a proposed Generic Letter, "Analog to Digital Replacements Under the 10 CFR 50.59 Rule)." The comment period for this proposed Generic Letter was to have expired on September 14, 1992. In view of the importance of the proposed Generic Letter and the desirability of obtaining meaningful comments from interested parties, the NRC has decided to extend the comment period for an additional thirty days. The extended comment period now expires on October 14, 1992.

DATES: The comment period has been extended and now expires on October 14, 1992. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P-223, Phillips Buildings, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:14 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2129 L Street, NW., (Lower level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clyde Shiraki (301) 504-3101.

Dated at Rockville, Maryland, this 22nd day of September 1992.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-23444 Filed 9-25-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 040-08977 License No. STB-1526 EA 92-171]

Order Modifying License (Effective Immediately) and Demand for Information

In the Matter of Aircraft Components, Inc., Bradford, Connecticut.

I

Aircraft Components, Inc. (ACI) or (Licensee) is the holder of Source Material License No. STB-1526 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 40. The License authorizes the Licensee to possess, store, and precision-machine magnesium-thorium castings for aircraft components. The License also limits the Licensee's possession of radioactive material of natural thorium to 45 kilograms in the form of thorium oxide not exceeding 4% alloyed with magnesium. The License was originally issued on December 21, 1988, and is due to expire on January 31, 1994.

II

On August 26, 1992, an inspector from the NRC Region I office conducted an inspection at the Licensee's facility in Branford, Connecticut. The inspection was conducted to review the Licensee's activities to determine compliance with NRC requirements and to assure safe performance of those activities. At the outset of the inspection, the inspector questioned Mr. Michael V. Bruno, President and Radiation Safety Officer for the facility, concerning the amount of

thorium possessed by the Licensee on that date. Mr. Bruno estimated that the Licensee possessed approximately 71 kilograms of thorium. Since this amount was in excess of the limit authorized by the License, the inspector reviewed the Licensee's inventory records for the period between May 30, 1990, and the date of the inspection. Based upon that review, as well as information subsequently provided to the NRC by the Licensee, the NRC determined that the Licensee had, in fact, exceeded its possession limits for thorium throughout the period between June 30, 1989 and August 26, 1992. The largest amount of thorium possessed during that period was 306.5 kilograms on April 25, 1991. During that period, on at least one occasion (i.e., May 9, 1991) the Licensee possessed more than 200 kilograms of thorium in a dispersible form (i.e., a form that can be easily distributed creating widespread contamination).

The inspector questioned Mr. Bruno concerning his knowledge of whether the Licensee's possession limit was exceeded, and if so, the length of time it had been exceeded. Mr. Bruno indicated that he was aware that the limit had been exceeded for several months. The inspector then questioned Mr. Bruno as to why he did not seek and obtain a license amendment from the NRC to authorize possession of larger amounts of natural thorium. Mr. Bruno indicated that he did not seek a license amendment because he knew that to obtain such an amendment, the Licensee would first be required to provide financial assurance for decommissioning (which assures that the Licensee has adequate funds available for decommissioning of the facility). On September 11, 1992, Region I management, as well as representatives from the NRC's Office of the General Counsel, contacted Mr. Bruno by phone to verify the statements made to the inspector. Mr. Bruno confirmed his prior conversations with the inspector concerning why the violation occurred, and also indicated that he was aware, since June 1989, that the Licensee had exceeded the possession limit.

III

Condition B of License No. STB–1526 limits the Licensee's possession of thorium to 45 kilograms. Contrary to this requirement, from June 30, 1989 to August 26, 1992, the Licensee, at various times, possessed more than 45 kilograms of thorium. As set forth in Section II of this Order, the Licensee's President and Radiation Safety Officer was aware of the possession limit in License Condition 6, and was aware that the amount of thorium in the Licensee's possession exceeded that limit.

In addition, as required by 10 CFR 40.36, any licensee authorized to possess greater than 10 millicuries of source material (which equates to 45.5 kilograms of natural thorium) in a readily dispersible form shall submit, on or before July 27, 1990, a certification of financial assurance for decommissioning, or a decommissioning funding plan, in accordance with the criteria set forth therein. These requirements were developed to assure that licensees who possessed substantial quantities of readily dispersible material would have in place a financial mechanism that would assure protection of public health and safety by providing adequate funding for the ultimate decontamination and decommissioning of the facility. In its initial license application, dated October 21, 1988, ACI requested a possession limit of 500 kilograms of natural thorium. Since ACI had not provided the necessary financial assurance required by 10 CFR 40.36 in its license application, the NRC sent a letter to ACI on November 25, 1988, stating that the Licensee must submit a certification that financial assurance has been provided before the NRC could authorize possession of greater than 45 kilograms of thorium. ACI responded to the NRC, in a letter dated December 1, 1988, by changing its requested possession limit to 45 kilograms. In that December 1, 1988 letter, the requested authorization limit was changed "[d]ue to the fact that we [ACI] were not aware of the recent regulatory requirements to submit financial assurance in the amount of $150,000 * * * ."

IV

Based on the above, I conclude that Mr. Bruno, the Licensee's President and Radiation Safety Officer, intentionally violated NRC requirements in that he knew possession of natural thorium in amounts greater than 45 kilograms of natural thorium was contrary to the conditions of its License. Further, Mr. Bruno also intentionally failed to seek an amendment to the License authorizing possession of greater amounts because he wanted to avoid the cost of providing the required financial assurance for decommissioning to the NRC. Although the Licensee, subsequent to the inspection, reduced its inventory of natural thorium to an amount less than its licensed limit, the willful actions by the most senior person in the Licensee's organization raise serious questions concerning the willingness of the Licensee to comply with NRC regulatory requirements. Consequently, further action and information as described in sections V and VII is necessary in order to determine (1) whether NRC should have the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. STB–1526 in compliance with the Commission's requirements, (2) whether, because of the Licensee's possession and use of material exceeding license limits, the site has been contaminated such that remedial measures are needed, and (3) whether the health and safety of the public, including the Licensee's employees, will be protected. Therefore, the public health, safety, and interest require that pending receipt and evaluation of that information the Licensee take the actions described below to determine the extent of contamination at the facility and the cost of its decommissioning. In light of the past possession of significantly more than 45 kilograms of natural thorium in dispersible form, it is necessary to provide evidence of financial assurance to complete decommissioning activities. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the willful conduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

V

Accordingly, pursuant to sections 161b, 161c, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 40, *It is hereby ordered, effective immediately, that:*

Within 30 days of the date of this Order, the Licensee shall:

1. Conduct a radiation survey of the premises in accordance with the guidance in the "Manual for Conducting Radiological Surveys in Support of License Termination", NUREG/CR 5849 (June 1992), where licensed activities were carried out or licensed materials were stored and submit a written report of the results of that survey as set forth in 10 CFR 40.42(c)(1)(v), to the NRC Regional Administrator, Region I. The survey is to be performed by an independent qualified health physicist.

2. Prepare and submit to the NRC Regional Administrator, Region I, a plan and schedule for NRC approval for decommissioning the facility for unrestricted use, together with a detailed cost estimate for completing the plan according to the schedule for releasing the facility for unrestricted use. The plan shall meet "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of License for Byproduct Source, or Special Nuclear Material" July 1982, and Options 1 or 2 of "Disposal or Onsite Storage of Thorium or

Uranium Wastes from Past Operations", 46 FR 52061 (October 23, 1981).

3. Submit to the NRC Regional Administrator, Region I, a certification that financial assurance for completing the decommissioning activities described in the plan submitted pursuant to Paragraph 2 has been provided in the amount estimated pursuant to Paragraph 2. The certification shall use one of the methods described in 10 CFR 40.36(e). See Regulatory Guide 3.66 "Standard Format and Content of Financial Assurance Mechanisms for Decommissioning under 10 CFR parts 30, 40, 70, and 72" (July 1990). A copy of the executed financial instrument obtained to meet this certification requirement must also be sent to the NRC Regional Administrator, Region I.

The Regional Administrator, Region I, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

VI

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why this Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which that person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), 57 FR 20194 (May 12, 1992), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in Section V above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

VII

In addition to issuance of this Order Modifying License No. STB-1526, the Commission requires further information from the Licensee in order to determine whether the Commission can have reasonable assurance that in the future the Licensee will conduct its activities in accordance with the Commission's requirements and will not willfully violate those requirements.

Accordingly, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 40.31(b), in order for the Commission to determine whether the License should be further modified, suspended, or revoked or other enforcement action taken, the Licensee is required to submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 within 30 days of the date of this Demand for Information, in writing and under oath or affirmation, a statement of why, in light of the willful violation of the requirements by the President and Radiation Safety Officer described above, (1) NRC should conclude that the Licensee and its employees will in the future comply with Commission requirements, (2) the Licensee should not be required to promptly decommission the facility for unrestricted use, and (3) License No. STB-1526 should not be revoked.

Copies should also be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the NRC Regional Administrator, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

After reviewing your response, the NRC will determine whether decommissioning and revocation will be required or other enforcement action is necessary to ensure compliance with regulatory requirements.

Dated at Rockville, Maryland this 21st day of the September, 1992.

For The Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 92-23442 Filed 9-25-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-446A]

Texas Utilities Electric Co.; No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the antitrust operating license review of Unit 1 of the Comanche Peak Steam Electric Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review and an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon the examination of the events since the issuance of the Comanche Peak Steam Electric Station, Unit 1 (Comanche Peak 1) operating license, to TU Electric Company, the staffs of the Inspection and Licensing Policy Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as "staff," have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the operating license review of Comanche Peak 1 are not of the nature to require a second antitrust review at the operating license stage of the application for Comanche Peak 2.

In reaching this conclusion, the staff considered the structure of the electric utility industry in northeastern and north central Texas, the events relevant to the Comanche Peak construction permit review, the antitrust settlement subsequent to the construction permit review and the Comanche Peak 1 operating license review.

The conclusion of the staff analysis is as follows:

In an effort to identify any changed activity on the part of the licensee, the staff requested updated Regulatory Guide 9.3 information in

December 1991. Notice of receipt of this information was published in the **Federal Register** and the staff received comments from two electric power cooperatives, Cap Rock Electric Cooperative, Inc. and Cajun Electric Power Cooperative, Inc.

The staff reviewed the comments from Cap Rock and Cajun and fully considered them in the context of the Commission's significant change review. The staff determined that the issues raised by Cap Rock addressed compliance or contractual matters, not licensing matters pertinent to the staff's § 105c(2) operating license significant change review. Moreover, the issues of concern to Cap Rock were being litigated in a manner that ultimately should resolve the concerns raised by Cap Rock. The staff determined that the concerns raised by Cajun in its comments to Regulatory Guide 9.3 were issues that should be addressed by the FERC, not the NRC, and that there was an ongoing forum at the FERC in which Cajun could seek redress from its concerns pursuant to participation in the Texas DC intertie.

TU Electric experienced changes in its business since the Comanche Peak 1 operating license review; however, the changed activity was in large part due to the changing electric bulk power industry and the role of power generators within this industry. The staff did not identify any changes in TU Electric's activities that would require a remedy by the NRC in this licensing action. None of the changes identified meet all three of the Commission's *Summer* criteria.

Section 105c(2) requires a formal antitrust review at the operating license stage only in the event of significant changes in the licensee's activities since the previous antitrust review. The NRC established criteria for identification of significant changes in its *Summer* decision and delegated the authority to make the significant change determination to the staff. The staff's analysis of the changes in the licensee's activities has not identified any changed activity that could be remedied in the Commission's licensing process as envisioned in *Summer*. Consequently, the staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 2 of the Comanche Peak Steam Electric Station.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensee's activities or proposed activities since the completion of the antitrust operating license review of Unit 1 of the Comanche Peak Steam Electric Station.

Signed on September 17, 1992 by Thomas E. Morley, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 within 30 days of the initial publication of this notice in the **Federal Register**. Requests for reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only, if they contain new information, such as information about facts or events of antitrust significance that have occurred since the date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, the 21st day of September 1992.

For the Nuclear Regulatory Commission.

Anthony T. Gody,

Chief, Inspection and Licensing Policy Branch Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 92-23443 Filed 9-25-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon written request copies available from: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549

Extension

Rule 17a-2, File No. 270-189
Rule 19d-3, File No. 270-245

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following rules under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

Rule 17a-2 (17 CFR 240.17a-2), which requires the manager of an underwriting syndicate to retain certain information relating to stabilizing purchases of a security being distributed. It is estimated that approximately 500 broker-dealers incur an average annual burden of one hour to comply with this rule.

Rule 19d-3 (17 CFR 240.19d-3), which prescribes the form and content of applications to the Commission for review of final disciplinary sanctions, denials of membership, participation, or association with a member, or prohibitions or limitations of access to services imposed by self-regulatory organizations. It is estimated that approximately 13 respondents incur an average burden of 18 hours to comply with this rule.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with Securities and Exchange Commission rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: September 21, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23411 Filed 9-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31208; File No. SR-CBOE-92-20]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Reduced Transaction Charges for Certain Index Option Spread Transactions

September 22, 1992.

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 September 2, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. 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 CBOE has proposed to extend through October 15, 1992, a pilot program[1] which provides a 50% rebate on transaction and trade match fees for "box" [2] trades by public customers in

[1] The pilot program was first approved by the Commission on a three-month pilot basis, effective from July 1, 1991, through September 30, 1991. See Securities Exchange Act Release No. 29482 (July 24, 1991), 56 FR 36180. Since then, the pilot has been extended three times, first through December 31, 1991, then through March 31, 1992, and most recently through August 31, 1992. See Securities Exchange Act Release Nos. 30025 (December 3, 1991), 56 FR 64537, 30288 (January 27, 1992), 57 FR 4226, and 30857 (June 24, 1992), 57 FR 29543.

[2] The CBOE defines a "box trade" as a four-sided SPX option spread composed of (i) a long call and short put at one strike price and (ii) a short call and long put at a different strike price, where all four positions expire in the same month.

Standard & Poor's 500 Stock Index options ("SPX"), provided the "box" trade totals 500 or more contracts for the four sides of the trade. The text of the proposed rule change is available at the Office of the Secretary, CBOE 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 CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

The CBOE proposes to extend, through October 15, 1992, a pilot program which provides a 50% rebate on transaction and trade match fees for "box" [3] trades by public customers in SPX options, provided the "box" trade totals 500 or more contracts for the four sides of the trade. The rebate is available to member firms that provide the Exchange with documents evidencing transactions that meet the standards of the pilot program. At the end of each month, member firms must submit their rebate requests to the Exchange's Accounting Department.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(4), in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and those persons associated with its members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

[3] *See supra* note 2 for the CBOE's definition of a "box" trade.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communication's relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by October 19, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–23461 Filed 9–25–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Cincinnati Stock Exchange, Incorporated

September 22, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Appalachian Power Co.
7.40% Cum. Pfd. $100.00 Par Value (File No. 7–9106)
Appalachian Power Co.
8.12% Cum. Pfd. $100.00 Par Value (File No. 7–9107)
Appalachian Power Co.
$2.65. Cum. Pfd. No Par Value (File No. 7–9108)
Armco, Inc.
$2.10 Cum. Conv. Pfd., No Par Value (File No. 7–9109)
Armco, Inc.
$4.50 Cum. Conv. Pfd., No Par Value (File No. 7–9110)
Arvin Industries, Inc.
$3.75 Conv. Exch. Pfd., No Par Value (File No. 7–9111)
Asia Pacific Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–9112)
Asset Investors Corp.
Common Stock, $.01 Par Value (File No. 7–9113)
Associated Natural Gas Corp.
Common Stock, $.10 Par Value (File No. 7–9114)
Atlantic Richfield, Co.
$2.80 Cum. Conv. Pfd. $1.00 Par Value (File No. 7–9115)
Banc Florida Financial Corp.
Common Stock, $.01 Par Value (File No. 7–9116)
Bank of Boston Corp.
Adj. Rte. Cum. Pfd. Ser. A, No Par Value (File No. 7–9117)
Bank of Boston Corp.
Adj. Rte. Cum. Ser. B Pfd., No Par Value (File No. 7–9118)
Bank of Boston Corp.
Adj. Rte. Cum. Ser. C Pfd., No Par Value (File No. 7–9119)
Bank of New York Co., Inc.
Adj. Rte. Non Cum. Pfd., No Par Value (File No. 7–9120)
Bank of New York Co., Inc.
Cum. Adj. Rte. Pfd., No Par Value (File No. 7–9121)
Barclays Bank Plc
American Depositary Receipts, Ser. B, No Par Value (File No. 7–9122)
Barclays Bank Plc
American Depositary Receipts, Ser. C1/C2 Units, No Par Value (File No. 7–9123)
Barclays Bank Plc
American Depositary Receipts Ser. D Units, No Par Value (File No. 7–9124)

Beazer Plc
American Depositary Shares, Common Stock, No Par Value (File No. 7-9125)
Belo A.H. Corp.
Common Stock, $1.67 Par Value (File No. 7-9126)
Beneficial Corp.
5% Cum. Pfd. $.50 Par Value (File No. 7-9127)
Beneficial Corp.
$4.50 Div. Cum. Pfd. $100.00 Par Value (File No. 7-9128)
Beneficial Corp.
$4.30 Div. Cum. Conv. Pfd. No Par Value (File No. 7-9129)
Beneficial Corp.
$5.50 Div. Cum. Conv. Pfd. No Par Value (File No. 7-9130)
Berkshire Hathway, Inc.
Common Stock, $5.00 Par Value (File No. 7-9131)
Berlitz International, Inc.
Common Stock, $.10 Par Value (File No. 7-9132)
Biocraft Laboratories, Inc.
Common Stock. $.01 Par Value (File No. 7-9133)
Borden Chemical & Plastic L.P.
Depositary Receipts, No Par Value (File No. 7-9134)
Boston Celtics L.P.
Common Stock, No Par Value (File No. 7-9135)
Boston Edison Co.
8.88% Cum. Pfd. Ser. $100.00 Par Value (File No. 7-9136)
Boston Edison Co.
$1.46 Cum. Pfd. Ser. $1.00 Par Value (File No. 7-9137)
BRE Properties, Inc.
C1. A Common Stock, $1.00 Par Value (File No. 7-9138)
Bristol-Myers Squibb Co.
$2.00 Conv. Pfd. $1.00 Par Value (File No. 7-9139)
British Airways Plc (1st Interim)
Common Stock, No Par Value (File No. 7-9140)
Broken Hill Proprietary Co. Ltd.
Common Stock, No Par Value (File No. 7-9141)
Brooklyn Union Gas Co.
$2.47 Cum. Pfd., Ser. I $25.00 Par Value (File No. 7-9142)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 14, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-23413 Filed 9-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18963; 811-5575]

Advance America Funds, Inc.; Notice of Application

September 13, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Advance America Funds, Inc. (formerly, Constitution Funds, Inc.).

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 3410 South Galena Street, Denver, Colorado 80231.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, diversified management investment company that was organized as a corporation under the laws of Maryland. On June 2, 1988, applicant filed a registration statement pursuant to section 8(b) of the Act. A registration statement under the Securities Act of 1933 was filed on June 2, 1988. The registration statement was declared effective and the initial public offering commenced on October 19, 1988.

2. On June 25, 1991, applicant's board of directors approved a reorganization plan under which all the assets of applicant's four series, U.S. Government Fund ("US Government"), Tax-Free Income Fund ("Tax-Free"), Strategic Income Fund ("Strategic"), and Equity Income Fund ("Equity"), would be exchanged for shares of Oppenheimer U.S. Government Trust ("OUSGT"), Oppenheimer Tax-Free Bond Fund ("OTFBF"), Oppenheimer Strategic Income Fund ("OSIF"), and Oppenheimer Equity Income Fund ("OEIF"), respectively. After a prospectus and proxy statement on Form N-14 filed in connection with the reorganization was declared effective by the Commission, applicant mailed proxy materials to its shareholders. At a meeting held on October 17, 1991, applicant's shareholders approved the merger.

3. On October 18, 1991, the net assets of applicant were transferred to the assets of OUSGT, OTFBF, OSIF, and OEIF and shareholders of applicant became shareholders of OUSGT, OTFBF, OSIF, and OEIF. In essence, a shareholder of applicant who voted shares in favor of the reorganization elected to redeem his shares (at net asset value which was calculated after subtracting a cash reserve retained by each series for the payment of expenses and liabilities) and reinvest the proceeds in shares of the corresponding fund at no sales charge and without recognizing taxable gain or loss for Federal income tax purposes.

4. Expenses incurred in connection with the merger were split between applicant and the funds into which they merged. Reorganization expenses paid by US Government, Tax-Free, Strategic, and Equity totalled $17,093, $18,215, $12,384, and $15,065, respectively. Liabilities of applicant were accrued and have been paid by each series.

5. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding.

Applicant is not a party to any litigation or administrative proceeding.

6. Articles of dissolution were filed in Maryland on August 31, 1992. Applicant will effect its dissolution in Maryland after receiving the order requested.

7. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23410 Filed 9-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18964; 812-8044]

Broad Street Trust, et al.; Application

September 18, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Broad Street Trust; Daily Money Fund; Fidelity Franklin Street Trust; Fidelity Beacon Street Trust; Fidelity California Municipal Trust; Fidelity California Municipal Trust II; Fidelity Capital Trust; Fidelity Cash Reserves; Fidelity Charles Street Trust; Fidelity Commonwealth Trust; Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Corporate Recovery Fund; Fidelity Court Street Trust; Fidelity Court Street Trust II; Daily Tax-Exempt Money Fund; Fidelity Destiny Portfolios; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Devonshire Trust; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Fund; Fidelity Government Securities Fund; Fidelity Income Fund; Fidelity Institutional Cash Portfolios; Fidelity Institutional Trust; Fidelity Investment Trust; Fidelity Limited Term Municipals; Fidelity Magellan Fund; Fidelity Massachusetts Municipal Trust; Fidelity Money Market Trust; Fidelity Mt. Vernon Street Trust; Fidelity Municipal Trust; Fidelity Municipal Trust II; Fidelity New York Municipal Trust; Fidelity New York Municipal Trust II; Fidelity Puritan Trust; Fidelity Securities Fund; Fidelity Select Portfolios; Fidelity Special Situations Fund; Fidelity Sterling Performance Portfolio, L.P.; Fidelity Summer Street Trust; Fidelity Trend Fund; Fidelity Union Street Trust; Fidelity Union Street Trust II; Fidelity U.S. Investments Bond Fund, L.P.; Fidelity U.S. Investments—Government Securities Fund, L.P.; Fidelity Yen Performance Portfolio, L.P.; Fidelity Income Trust; Institutional Investors Trust; Fidelity Diversified Trust; Fidelity Investment Series; Fidelity Securities Trust; Spartan U.S. Treasury Money Market Fund; Fidelity Oliver Street Trust; Variable Insurance Product Fund; Variable Insurance Products Fund II; Zero Coupon Bond Fund; Fidelity Institutional Tax-Exempt Cash Portfolios; and Fidelity Management & Research Company ("FMR").

RELEVANT ACT SECTION: Section 45(a).

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 45(a) of the Act declaring that public disclosure of sections II through V of a report concerning the Fidelity Group of Funds Interfund Lending Facility Design, dated May 31, 1992, is neither necessary nor appropriate in the public interest or for the protection of investors.

FILING DATE: The application was filed on August 13, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504-2263, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Pubic Reference Branch.

Applicants' Representations

1. Each applicant investment company ("Fund") is a business trust formed under the laws of Massachusetts or Delaware or a partnership under the laws of Delaware. Each Fund has entered or will enter into a management or advisory and service contract with FMR. The principal underwriter for each of the Funds is or will be Fidelity Distributors Corporation.

2. On January 11, 1990, the SEC issued an order under sections 6(c) and 17(b) of the Act granting the Funds and FMR exemptions from the provisions of sections 12(d)(1), 17(a)(1), 17(a)(3), 17(d), 18(f), and 21(b) of the Act, and rule 17d-1 thereunder, to enable the Funds and FMR to establish a facility through which Funds having uninvested cash could, under certain circumstances, loan that cash to Funds seeking to borrow cash on a temporary basis (the "Interfund Lending Facility" or "Facility"). Daily Money Fund, Investment Company Act Release Nos. 17257 (Dec. 8, 1989) (notice) and 17303 (Jan. 11, 1990) (order).

3. As a condition to the January 11, 1990, order, FMR and the Funds agreed to prepare and submit to the Funds' boards of directors or general partners an initial special report on the design of the Interfund Lending Facility, including a report by their independent public accountants. FMR and the Funds further agreed that, following review of the initial report, the next Fund required to file its Form N-SAR would file the initial report as an exhibit and the other Funds would incorporate the initial report by reference in their next Form N-SAR filings. In satisfaction of the above condition, Fidelity Select Portfolios designated the initial report as an exhibit to its Form N-SAR for the period ending April 30, 1990, and the other Funds incorporated the initial report by reference into their next Form N-SARs. FMR and the Funds requested and received confidential treatment under section 45(a) of the Act for the initial report. Investment Company Act Release Nos. 17771 (Oct. 2, 1990) (notice) and 17827 (Oct. 30, 1990) (order).

4. As a further condition to the January 11, 1990, order, the Funds and FMR agreed that on the first and second anniversary of the commencement of operations of the Interfund Lending Facility, they would submit to the SEC an annual report on the "Design of a System and Certain Compliance Tests," that would include an opinion of the Funds' independent public accountant as to the sufficiency of the operation and control procedures of the Interfund Lending Facility. In satisfaction of the first anniversary portion of this condition, Fidelity Cash Reserves designated the first annual report as an exhibit to its Form N-SAR for the period ending May 31, 1991, and the other

Funds incorporated the annual report by reference as exhibits to their next Forms N-SAR. On July 31, 1991, the Funds requested an order pursuant to section 45(a) of the Act granting confidential treatment to the first annual report. This request was granted by the SEC by order dated November 6, 1991 (Investment Company Act Release No. 18399).

5. In final satisfaction of the condition to the January 11, 1990, order, Fidelity Cash Reserves has designated the second annual report (the "Confidential Report") as an exhibit to its Form N-SAR for the period ending May 31, 1992, and the other Funds will incorporate the Confidential Report by reference as exhibits in their Forms N-SAR next filed. Applicants now request an order under section 45(a) of the Act that would grant confidential treatment to the Confidential Report.

6. Section I of the Confidential Report describes in general terms the SEC's order authorizing the Interfund Lending Facility and the contents of the Confidential Report. Much of this material previously has been made public, and applicants do not request confidential treatment of section I.

7. Section II provides a general overview of the operation of the Facility, and describes the objectives and use of the Facility. It outlines the Facility's primary activities and describes the operational responsibilities of each group within FMR or the Funds to the Facility.

8. Section III summarizes the management and operational control objectives and the procedures for the Facility. For each identified control objective, it identifies the associated procedures required at each step to accomplish such objective, as well as the managerial, legal, and operational approvals required.

9. Section IV describes in more detail the management control procedures used to assure compliance with each of the control objectives. It describes in greater detail than sections II and III the legal and managerial approvals required, the documentation necessary, and the parties responsible for carrying out each step.

10. Section V discusses the scope of the testing performed on the management and operational procedures described in section IV.

11. The Confidential Report has been and continues to be maintained by the Funds on a strictly confidential, non-public, need-to-know basis.

12. The Funds generated the Confidential Report within the last year. As a result, the Confidential Report reflects current methods and capabilities of management and control.

Applicants' Legal Analysis

1. Section 45(a) of the Act provides that the information contained in any application filed with the SEC under the Act shall be made available to the public, unless and except insofar as the SEC finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors.

2. Applicants state that public disclosure of the Confidential Report is not necessary to inform shareholders and potential investors in the Funds of the material facts regarding the Funds' participation in the Interfund Lending Facility. Each Fund participating in the Interfund Lending Facility has added disclosures to its prospectus concerning the Interfund Lending Facility and the Fund's participation therein.

3. The Freedom of Information Act, 5 U.S.C. 552, provides various exceptions to the general rule that all information provided to or generated by the government should be made available to the public.[1] One such exception is for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4).

4. Applicants state that the information contained in the Confidential Report fits within the above-mentioned exception because it has been obtained from a person, is both commercial and financial in nature, and is, and has been treated as, confidential.

5. Applicants state that because they are engaged in a highly competitive business, they would likely lose an important competitive advantage as a result of the disclosure of the information contained in the Confidential Report. The Interfund Lending Facility allows both borrowing and lending Funds to obtain a higher return for shareholders than they could obtain in the absence of such a facility. The Funds and FMR believe that no other investment company group has yet undertaken to develop operational and control procedures to establish a lending program similar to the Interfund Lending Facility. The Confidential Report documents each of the steps necessary to establish such a system, and thus would enable other investment company complexes to develop such a system in a much shorter time and with far greater confidence in its soundness than they might have absent the Confidential Report.

6. Applicants believe the Confidential Report would be extraordinarily useful to their major competitors. The Confidential Report as a whole would provide competitors a blueprint for the establishment and monitoring of an interfund lending facility. Operation of the Facility is highly complex. The development of the Facility required FMR to review its entire system to identify problems that might occur in the operation of the Facility, develop controls to help insure that such problems would not occur, develop procedures to implement such controls, develop computer and manual techniques for carrying out those procedures, and instruct the relevant personnel in how to carry them out. This process required in excess of twelve months and involved numerous meeting of FMR staff, as well as input from the Fund's auditors, counsel, and custodians.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23409 Filed 9-25-92; 8:45 am]

BILLING CODE 8010-01-M

[1] The Division of Investment Management recognizes that any order granting the confidential treatment requested by applicants will be issued under section 45(a) only, and that any such order will not be dispositive of any Freedom of Information Act request filed by a third party.

[Rel. No. IC-18665; 811-4954]

Fortius II Fund, Inc; Notice of Application

September 18, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Fortius II Fund, Inc.

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company under the 1940 Act.

FILING DATE: The application on Form N-8F was filed on September 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 13, 1992, and should be

accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 575 Fifth Avenue, 17th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, (202) 272-2190, or Barry D. Miller, Senior Special Counsel, (202) 272-3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end, non-diversified management company organized as a corporation under the laws of the State of Maryland. On March 13, 1987, applicant filed a registration statement pursuant to section 8(b) of the 1940 Act. On that date, applicant also filed a registration statement pursuant to the Securities Act of 1933. The registration statement never became effective and applicant never commenced a public offering of its shares.

2. Applicant was formed because of a beneficial tax treatment which has since expired. On August 10, 1990, applicant's sole shareholder and board of director's authorized the dissolution of applicant.

3. Pursuant to the liquidation, the securities held in applicant's portfolio were sold at competitive bid in the market to brokers who were primary government securities dealers. Because applicant's portfolio consisted solely of fixed income securities, no brokerage commissions were incurred.

4. On September 17, 1990, applicant's shareholder redeemed its shares and received a final distribution of $26,565,969 representing the net asset value of applicant.

5. As of the date of the application, the applicant had no assets, debts or liabilities, and was not a party to any litigation or administrative proceeding.

6. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding up of its affairs.

7. On October 18, 1991, applicant filed Articles of Dissolution dissolving its corporate existence in Maryland.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23412 Filed 9-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25637; International Series Release No. 459]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

September 18, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 13, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

PSI Resources, Inc., et al. (31-890)

PSI Resources, Inc. ("PSI Resources"), an Indiana public-utility holding company exempt from registration under section 3(a)(1) of the Act pursuant to rule 2, 1000 East Main Street, Plainfield, Indiana 46168, and its wholly owned Indiana subsidiary companies, PSI Argentina, Inc. ("PSI Argentina") and Costanera Power Corporation ("CPC"), have filed an application in connection with the proposed acquisition of an additional interest in Central Costanera S.A. ("Costanera"), an Argentine electric power generating company.[1] The application requests an unqualified order of exemption pursuant to section 3(b) of the Act for PSI Argentina, CPC, Costanera, and Argelec, a newly organized Argentine company.

PSI Resources' wholly owned public-utility subsidiary company, PSI Energy, Inc. ("PSI Energy"), generates, transmits and sells electric power in Indiana. PSI Energy and PSI Resources reported operating revenues in 1991 of approximately $1.1198 billion and $1.1223 billion, respectively.

PSI Resources currently has a 2.994% ownership interest in Costanera through an international consortium ("Consortium") that has acquired 60% of the voting securities of the Argentine utility.[2] The Consortium members have organized Argelec to hold the 60% interest in Costanera. When the individual Consortium members transfer their shares in Costanera to Argelec, they will have the following voting interests in Argelec: Endesa (50.01%), Enersis/Chilectra (20%), PC/Sade (25%), and PSI Resources (through CPC) (4.99%). PSI Resources has an option under the Consortium Agreement to acquire additional interests in Costanera, by acquiring up to a total of 10% of the shares of Argelec.[3]

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[1] Costanera's primary asset is a generating facility consisting of seven gas and oil fired generating units and related equipment, having a total installed capacity of 1,260 megawatts.

[2] The initial acquisition by PSI Resources of less than a 5% interest did not require prior Commission approval under section 9(a)(2).

The other Consortium members, and their respective interests in Costanera are Empresa Nacional de Electricidad, S.A. ("Endesa") (30.006%), Enersis, S.A. and Distribuidora Chilectra Metropolitana, S.A. ("Enersis/Chilectra") (together 12%), Perez Companc, S.A.C.F.I.M.F.A. and Sade, S.A.C.C.I.F.I.M. ("PC/Sade") (together 15%). Entergy Corporation ("Entergy"), a registered holding company, has an option to acquire an ownership interest of up to approximately 6%. See *Entergy Corporation*, Holding Co. Act Release Nos. 25579 and 25607 (July 10, 1992 and August 14, 1992). Endesa will be the operator of the Costanera facility although, in the future, PSI Argentina or CPC may provide technical or operating services.

PSI Resources is also part of a consortium that recently submitted a succeseful bid to acquire 51% of the voting securities of a newly formed Argentine electric distribution company, Edesur, S.A. See *PSI Resources*, HCAR 25570 (July 2, 1992).

[3] In the event that Entergy and/or PSI Resources exercise their respective options, in whole or in part, the interests of Endesa and PC/Sade will be decreased accordingly.

Should the Consortium members determine not to use Argelec as an investment vehicle to hold the 60% Costanera interest, PSI Resources, through CPC, would acquire the additional shares of Costanera directly, thereby increasing its equity interest in Costanera from 2.994% to approximately 6%.

PSI Resources currently has invested approximately $4.5 million for the purchase of its 2.994% equity interest in Costanera. In addition, PSI Resources has made a loan of approximately $4 million to Costanera. Upon CPC's exercise of the option, this investment will increase by approximately $4.5 million. The application states that the maximum level of investment should not exceed $20 million.

PSI Resources intends to fund the acquisition of the additional interest in Costanera through a short-term revolving loan agreement ("Loan Agreement") with one or more financial institutions ("Lenders"). In connection with the Loan Agreement, the Lenders have required PSI Resources and PSI Energy to enter into an intercompany agreement which provides that in the event a restructuring of the holding company system is required whereby PSI Resources becomes a subsidiary of PSI Energy, and PSI Resources is then unable to repay borrowings under the Loan Agreement, PSI Energy will directly support PSI Resources' obligations under the Loan Agreement out of its available earned surplus or net profits. Other than this financial arrangement and the personnel commitment described below, there will be no transactions or financial commitments between PSI Argentina, CPC, Argelec and Costanera, on the one hand, and PSI Energy, on the other hand.

The application states that neither PSI Resources nor PSI Argentina will assume any of Costanera's liabilities. In addition, PSI Resources anticipates that only a small number of employees will be involved in providing technical and training services to Costanera, and that none of PSI Energy's senior management will be assigned on a full-time or long-term basis to such tasks. To the extent that employees of PSI Energy provide any services in connection with the Argentine operations, the time and cost of such employees will be allocated in accordance with accounting procedures already in place and subject to review by the Indiana Utility Regulatory Commission ("IURC").

As a result of the acquisition of Costanera, Argelec, CPC, PSI Argentina and PSI Resources will each be a "holding company" within the meaning of section 2(a)(7) with respect to Costanera, and Costanera will be a direct or indirect "subsidiary company" of each within the meaning of section 2(a)(8).

Applicants request orders of exemption under section 3(b) for Costanera, Argelec, CPC and PSI Argentina. The application states that none of Costanera, Argelec, CPC and PSI Argentina will derive a material part of its income, directly or indirectly, from sources within the United States, nor will any company operate, or have any subsidiary company that operates, as a public-utility company in the United States. The application also states that, if unqualified exemptions are granted, Argelec, CPC and PSI Argentina will rely upon rule 10(a)(1) to provide an exemption insofar as each is a holding company; and PSI Resources will rely on rule 11(b)(1) to provide an exemption from the approval requirements of sections 9(a)(2) and 10 to which it would otherwise be subject.

If unqualified orders of exemption under section 3(b) are not granted, the application requests orders under section 3(a)(5) exempting PSI Argentina, CPC and Argelec from all provisions of the Act, except section 9(a)(2).

The applicants estimate, based on a 6% interest in Costanera's revenues for 1990, that PSI Resources's pro forma share of such revenues will be approximately $9–10 million (or less than 1% of each of PSI Resources' and PSI Energy's gross revenues in 1991). PSI Resources states that it will continue to qualify as an exempt holding company under section 3(a)(1) after the acquisition.

Applicants have informed the IURC of the proposed transactions and will provide a letter from the IURC stating that the proposed activities do not require its prior approval.

Northeast Utilities, et al. (70–7966)

Northeast Utilities ("NU"), 107 Selden Street, Berlin, Connecticut, 06037–1616, registered holding company, and its wholly owned subsidiary, Charter Oak Energy, Inc. ("COE"), 107 Selden Street, Berlin, Connecticut, 06037–1616, have filed an application-declaration, under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By order dated May 17, 1989 (HCAR No. 24893) ("1989 Order"), the Commission authorized NU to establish COE in order to invest and participate in qualifying cogeneration facilities located throughout the nation and in qualifying small power production facilities located in the service territories of NU and the New England Power Pool. The 1989 Order also authorized NU to invest in COE up to $7.5 million per year through December 31, 1992 for purposes of financing preliminary development and administrative costs. By order dated January 29, 1992, (HCAR No. 25461) ("1992 Order"), the Commission expanded the authorization it had granted to NU in the 1989 Order to authorize COE to explore the potential for investment and participation in independent power production facilities ("IPP Facilities"). The 1992 Order specified, however, that COE was not to invest in, or participate in the construction of, IPP facilities without further Commission approval.

NU and COE now request authorization, through December 31, 1992, to establish a wholly owned subsidiary and for that subsidiary to engage in preliminary development of qualifying small power production facilities and qualifying cogeneration facilities ("Qualifying Facilities") and in IPP Facilities. NU and COE intend to incorporate COE Development Corp. ("COE Development") in Connecticut to pursue the preliminary development of Qualifying Facilities and IPP Facilities. NU and COE propose to establish COE Development to engage in such preliminary development in order to isolate the risks and potential liabilities that could arise in such activities.

COE proposes to acquire 100 shares of common stock ($1.00 par value) issued by COE Development for $10,000. COE also proposes to invest in COE Development up to $4.5 million in 1992, which funds COE will acquire pursuant to the 1992 Order.[4] COE proposes to provide the $4.5 million to COE Development through (1) additional acquisitions of capital stock, (2) capital contributions, (3) open account advances, and (4) subordinated loans. The advances and loans would be at an interest rate based on the cost of funds to NU itself but in no case in excess of the prime rate at a bank designated by NU. The term of such advances and loans would not be in excess of one year.

The application-declaration indicates that COE Development will engage in preliminary development activities in part with services directly provided by Northeast Utilities Service Company. In addition, the application-declaration states that no COE company, subsidiary, or affiliate will invest in, or participate in the construction of, IPP facilities without further Commission approval.

Allegheny Power System, Inc. (70–8046)

The Potomac Edison Company ("Potomac Edison"), 10435 Downsville Pike, Hagerstown Maryland 21740, and Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virgina 26554, both electric public-utility subsidiary companies of Allegheny Power System, Inc., a registered holding company, have filed an application-declaration under

[4] The combined spending of COE and COE Development in 1992 would not exceed $7.5 million.

sections 9(a), 10 and 12(c) of the Act and Rule 42(a) thereunder.

By orders dated May 5, 1970 (HCAR No. 16712), April 21, 1970 (HCAR No. 16688), April 30, 1970 (HCAR No. 16711) and June 8, 1976 (HCAR 19565), the Commission authorized Monongahela to issue and sell 50,000 shares of Series F preferred stock, par value $100 ("Series F") and Potomac Edison to issue and sell 50,000 shares of Series E preferred stock, par value $100 ("Series E") and 150,000 shares of Series H preferred stock, par value $100 ("Series H").

Monongahela is now proposing to redeem all 50,000 shares of its Series F, with a dividend rate of $9.64. The current optional redemption price of the Series F is $103.88 per share.

Potomac Edison is also proposing to redeem all 50,000 shares of its Series E, with a dividend rate of $9.40. The current optional redemption price of the Series E is $103.97 per share. Potomac Edison further proposes to redeem all 150,000 shares of its Series H, with a dividend rate of $9.64. The current optional redemption price of the Series H is $103.88 per share.

Monongahela and Potomac Edison propose to effect the redemptions without the issuance of senior securities or additional common equity, thereby partially reducing the equity portion of their respective capitalization.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23414 Filed 9-25-92; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 18969; 811-6507]

Public Funding Portfolios, Inc.; Proposed Deregistration

September 22, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Proposed Deregistration under the Investment Company Act of 1940 ("Act").

RELEVANT ACT SECTION: Section 8(f).

SUMMARY: Pursuant to delegated authority, the SEC proposes to declare by order, on its own motion, that Public Funding Portfolios, Inc. (the "Fund") has ceased to be investment company under the Act.

HEARING OR NOTIFICATION OF HEARING: An order of deregistration will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary. Hearing requests should be received by the SEC by 5:30 p.m. on October 19, 1992. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Law Clerk, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

STATEMENT OF FACTS: The following is a summary of information regarding the Fund.

1. The Fund is an open-end non-diversified management company organized as a Maryland corporation. The Fund registered as an investment company under the Act and filed a registration statement under the Securities Act of 1933 on December 19, 1991. The registration statement did not become effective.

2. The SEC filed a complaint against the Fund in the United States District Court for the Central District of California on March 17, 1992.[1] The complaint alleged, among other things, that the Fund: (a) Violated section 13(a)(3) of the Act by acquiring assets in violation of the Fund's investment policies and restrictions; (b) violated section 17(f) of and rule 17f-2 under the Act by failing to keep its assets with a proper custodian; (c) violated section 17(g) of the Act by failing to obtain a fidelity bond; (d) violated rule 22c-1 under the Act by selling, redeeming, or repurchasing redeemable securities issued by a registered investment company at prices other than those based on the current net asset value of each security, and (e) violated section 31 of the Act by failing to keep proper books and records. The complaint also alleged that the Fund's investment adviser, Public Funding Group, Inc. (the "Adviser"), and its president, V. Thayne Whipple II, committed fraud in the offer or sale of securities in violation of section 17(a) of the Securities Act of 1933, and in connection with the purchase or sale of securities in violation of section 10(b) of the Securities Exchange Act of 1934, and with aiding and abetting the Fund in committing the violations set forth above.

[1] Securities and Exchange Commission v. Public Funding Group, Inc., *et al.*, Civil Action No. 92 1646 (C.D. Cal. filed March 17, 1992).

3. The complaint alleged the following facts. The Fund distributed its securities solely in exchange for portfolio assets. By mid-February 1992, the Fund claimed to have 24 shareholders and total assets of approximately $40 million. The portfolio assets consisted of common sock and "commercial paper" notes. None of the stock held by the Fund was traded on any U.S. stock exchange, nor were any bid or ask prices listed for them during the Fund's existence. None of the commercial paper was rated by any commercially available rating service. All of the "commercial paper" was in fact merely promissory notes that had been signed and presented to the Fund in exchange for Fund shares. Nevertheless, the Adviser calculated the value of the portfolio assets at their face amounts, thus grossly overstating the Fund's total asset value. The Fund accepted the stock and notes in exchange for Fund shares in order to allow the use of the Fund's shares by the shareholders as collateral for loans from brokerage firms. To facilitate the use of the Fund's shares as collateral, the Adviser arranged to have the daily net asset values of the Fund's shares reported to the National Association of Securities Dealers, Inc. for public quotation. Subsequently, the Fund shareholders attempted to use the Fund shares as collateral for approximately $18.6 million of margin loans from broker-dealers.

4. On March 31, 1992, the Fund, the Adviser, and Whipple consented to the entry of a judgment and permanent injunction against them. In addition to enjoining them from future violations of the securities laws as set forth in the complaint, the judgment required that the Fund be dissolved by returning the portfolio securities to the shareholders who originally exchanged such securities for shares of the Fund.

5. All of the portfolio securities except shares of IT BK Group of Companies, Inc. ("IT Bank") and Sonnergie, Inc. ("Sonnergie") were returned to the persons and entities that exchanged them for shares of the Fund. The Fund shareholders who had exchanged the securities of these two companies did not respond to letters or repeated telephone calls seeking instructions on where to send the IT Bank and Sonnergie stock certificates. When the Fund's president attempted to transfer the shares back to the Fund's shareholders through IT Bank's and Sonnergie's transfer agent, he was informed that the transfer agent records for IT Bank and Sonnergie had been sent to Italy and Germany, respectively.

6. On September 1, 1992, the Fund deposited the stock certificates of IT Bank and Sonnergie with the United States District Court for the Central District of California. Each of the remaining thirteen shareholders was mailed a notice stating that their shares of IT Bank and Sonnergie had been deposited with the court. The Fund has no remaining assets and is enjoined from engaging in any further business activities.

7. Section 8(f) of the Act allows the Commission to deregister an investment company on its own motion if it finds that the company has ceased to be an investment company.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-23482 Filed 9-25-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1703]

Advisory Committee to the United States Section International Commission for the Conservation of Atlantic Tunas Partially Closed Meeting

The Advisory Committee to the United States Section International Commission for the Conservation of Atlantic Tunas (ICCAT) will meet on October 19, 1992, at the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), Second Floor Conference Room, Silver Spring Metro Center Building 2, 1335 East-West Highway, Silver Spring, Maryland. The session will be open to the interested public and will begin at 9:30 am. The Committee will review the decisions reached at the 1991 ICCAT meetings, highlight on-going scientific preparations, and identify outstanding issues for the 1992 annual ICCAT meeting.

The Advisory Committee will also meet in closed session from 9:30 a.m. to 5 p.m. on October 20, 1992. The session will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States negotiating position to be taken at the upcoming ICCAT annual meeting in Madrid, Spain, November 9-13, 1992. The members of the Advisory Committee will examine various options for the U.S. negotiating position at the November meeting, and these considerations must necessarily involve a review of classified materials. Accordingly, the determination has been made to close this portion of the meeting pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 1 and 5 U.S.C. 552(c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Brian S. Hallman, Deputy Director, Office of Fisheries Affairs (OES/OFA), room 5806, U.S. Department of State, Washington, DC 20520-7818. Mr. Hallman can be reached by telephone on (202) 647-2335 or by FAX on (202) 647-1106.

Dated: September 15, 1992.

David A. Colson,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 92-23440 Filed 9-27-92; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended September 18, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48345.

Date filed: September 14, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC3 Reso/P 0476 dated September 4, 1992; TC3 Expedited Reso 002n (US Territories).

Proposed Effective Date: October 15, 1992.

Docket Number: 48346.

Date filed: September 14, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC3 Reso/P 0477 dated September 4, 1992; TC3 Expedited Resos (US Territories); r-1—002d r-2—070uu r-087rr r-4—072a r-5—085t.

Proposed Effective Date: November 1, 1992.

Docket Number: 48347.

Date filed: September 14, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC3 Reso/P 0480 dated September 4, 1992; Expedited Reso 003B (US Territories).

Proposed Effective Date: January 1, 1993.

Docket Number: 48349.

Date filed: September 14, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC3 Reso/P 0474 dated September 4, 1992; Expedited Resos, r-1 to 4-9; r-1—043i r-6—092f; r-2—053i r-7—092v; r-3—063i r-8—014a; r-4—065i r-9—085hh; r-5—085hh.

Proposed Effective Date: October 1, 1992.

Docket Number: 48350.

Date filed: September 14, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC3 Reso/P 0475 dated September 4, 1992; Expedited Resos, r-1 to 4-41.

Proposed Effective Date: October 15, 1992.

Docket Number: 48351.

Date filed: September 14, 1992.

Parties: Members of the International Air Transport Association.

Subject: MV/CSC/027 dated July 31, 1992; Mail Vote S060—Reso 600a amendment to reflect impact of EC regulations.

Proposed Effective Date: January 1, 1993.

Docket Number: 48361.

Date filed: September 18, 1992.

Parties: Members of the International Air Transport Association.

Subject: Comp Telex—Reso 024F—Finland.

Proposed Effective Date: October 1, 1992.

Docket Number: 48362.

Date filed: September 18, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC3 Reso/P 0482 dated September 8, 1992. Japan/Korea-Southwest Pacific (except UST, others), r-1 to r-9. TC3 Reso/P 0483 dated September 8, 1992, Japan/Korea-Australia, r-10 to 4-23. TC3 Reso/P 0484 dated September 8, 1992, Japan/Korea-New Zealand, r-24 to 4-23.

Proposed Effective Date: January 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-23485 Filed 9-25-92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 18, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of

the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48356.

Date filed: September 17, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 15, 1992.

Description: Application of Euro Pacific Air, Inc., pursuant to section 401(d) of the Act and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing it to engage in interstate and overseas charter air transportation of persons, property, and mail.

Docket Number: 48357.

Date filed: September 17, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 15, 1992.

Description: Application of Euro Pacific Air, Inc., pursuant to section 401(d) of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing it to engage in foreign charter air transportation of persons, property, and mail between a point or points in the United States, its territories and possessions (including the District of Columbia) and a point or points outside thereof.

Docket Number: 45185.

Date filed: September 15, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 13, 1992.

Description: Application of Continental Airlines, Inc. pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal of the Newark-London authority in its Route 383 certificate for a period of five years.

Docket Number: 47708.

Date filed: September 17, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 1, 1992.

Description: Amendment No. 3 to the Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, requests authority to engage in foreign air transportation of persons, property, and mail between a point or points in the United States and point or points in Venezuela.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-23484 Filed 9-25-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-92-27]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 19, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 21, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 13203.

Petitioner: Boeing.

Sections of the FAR Affected: 14 CFR 25.807(c) (1) and (5); 25.809(f)(1); 25.813(b).

Description of Relief Sought: To amend Exemption No. 1870D to permit the carriage of up to six persons on the upper deck of Model 747-400F airplanes having an all-cargo main deck configuration.

Docket No.: 26152.

Petitioner: Sierra Academy of Aeronautics.

Sections of the FAR Affected: 14 CFR part 141, appendix F, paragraphs (C)(III)(a)(2) (i) and (ii).

Description of Relief Sought: To extend Exemption No. 5245 which allows Sierra Academy of Aeronautics to graduate students from its FAA approved Commercial Helicopter Pilot training course with 80 hours of flight instruction in helicopters and 70 hours of directed solo training in helicopters.

Docket No.: 26942.

Petitioner: Precision Airlines.

Sections of the FAR Affected: 14 CFR 135.180(a).

Description of Relief Sought: To allow Precision Airlines to phase in a Traffic Avoidance Collision System (TCAS) implementation program over a 3-year period starting in 1995 rather than having all required TCAS equipment installed by February 9, 1995. Precision proposes the following schedule: 30 percent compliance by February 9, 1995; another 30 percent compliance by February 9, 1996; and the remaining 40 percent compliance by February 9, 1997.

Docket No.: 26971.

Petitioner: United Airlines.

Sections of the FAR Affected: 14 CFR 121.314.

Description of Relief Sought: The petitioner requests a partial exemption from § 121.314 of the FAR, Amendment 121-202. In specific, the petitioner seeks to extend the compliance date to April 20, 1993, for completing re-repairs of contoured liners.

Dispositions of Petitions

Docket No.: 17145.

Petitioner: United Airlines.

Sections of the FAR Affected: 14 CFR 121.665 and 121.697(a) and (b).
Description of Relief Sought/ Disposition: To extend Exemption No. 2466, as amended, which permits United Airlines to use computerized load manifests which bear the printed name and position of the person responsible for loading the aircraft.

Grant, July 28, 1992, Exemption No. 2466H

Docket No.: 26482.
Petitioner: United Parcel Service.
Sections of the FAR Affected: 14 CFR 121.358.
Description of Relief Sought/ Disposition: To allow United Parcel Service until June 30, 1995, to install either an approved airborne windshear warning and flight guidance system, an approved airborne windshear warning and flight guidance system, an approved airborne detection and avoidance system, or an approved combination of the systems (windshear equipment) in 18 Douglas DC-8 aircraft.

Grant, September 9, 1992, Exemption No. 5520

Docket No.: 26582.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 61.3(a) and (c), 61.29(c), 63.3(a), 63.16(d), and 121.383(a)(2).
Description of Relief Sought/ Disposition: To permit the establishment of special procedures that would enable an operator to issue to its flight crewmembers, on a temporary basis, confirmation of any required crewmember certificate based upon information contained in the operator's approved record system. This procedure would serve in lieu of the FAA telegraphic certificate confirmation provided for in §§ 61.29(c) and 63.16(d) in those situations for which there is insufficient time for the airman to obtain certificate confirmation from the FAA prior to operating a scheduled flight.

Partial Grant, July 24, 1992, Exemption No. 5487

Docket No.: 26692.
Petitioner: America West Airlines, Inc. and BT Commercial Corporation.
Sections of the FAR Affected: 14 CFR 93.217 and 93.223.
Description of Relief Sought/ Disposition: To extend Exemption No. 5340A which allows BT Commercial Corporation (BT) to hold and America West Airlines, Inc. to continue to operate seven slots at O'Hare International Airport (O'Hare) and two slots at J.F.K. International Airport (J.F.K.). America West Airlines, Inc. transferred its seven slots at Chicago's O'Hare and two slots at New York's J.F.K. to BT as part of debtor-in-possession financing. BT leased those slots back to America West to operate. Under Exemption No. 5340A, these slots were not subject to the withdrawal provisions of the slot regulations, with the exception of the use-or-lose provisions of § 93.227 of the FAR. America West currently operates the subject slots in full compliance with this regulation.

Grant, September 9, 1992, Exemption No. 5518

Docket No.: 26734.
Petitioner: Sierra Industries, Inc.
Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a)(1) and (2).
Description of Relief Sought/ Disposition: To permit Sierra Industries, Inc., and the operators of its Cessna Citation 500 models (for Serial Nos. 0001 through 0349 only) that are equipped with STC No. SA8176SW and either STC Nos. SA 2172NM or SA645NW to be operated by one pilot without a second-in-command.

Grant, September 9, 1992, Exemption No. 5517

Docket No.: 26784.
Petitioner: Florida Aerial Advertising.
Sections of the FAR Affected: 14 CFR 45.29(b)(1).
Description of Relief Sought/ Disposition: To allow for the use of smaller aircraft nationality and registration markings in place of the 12-inch high markings required by the regulations.

Denial Grant, September 14, 1992, Exemption No. 5521

Docket No.: 26919.
Petitioner: Kalamazoo Aviation History Museum.
Sections of the FAR Affected: 14 CFR part 45.
Description of Relief Sought/ Disposition: To operate the museum's Ford Trimotor, model number 5-AT-C, serial number 58, with 3-inch high nationality and registration marks located on each side of the fuselage under leading edge of the horizontal stabilizer.

Grant, September 11, 1992, Exemption No. 5521

[FR Doc. 92-23484 Filed 9-25-92; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Supplemental Environmental Impact Statement; Howard County, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a final environmental impact statement will be prepared for the proposed highway project in Howard County, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. David Lawton, Planning, Research, Environment and Safety Engineer, Federal Highway Administration, The Rotunda—suite 220, 711 West 40th Street, Baltimore, Maryland 21211.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland State Highway Administration and Howard County, will prepare a supplement to final environmental impact statement number FHWA-MD-EIS-87-04-F, dated July 12, 1989, for the proposed action involving the extension of Maryland Route 100, on new location, from west of Maryland Route 104 in Howard County to Interstate Route 95 in Howard County, Maryland a distance of approximately three (3) miles. This supplemental document is being developed as a result of proposed alignment shifts, to minimize and avoid wetland impacts, in corridors not previously evaluated in the 1989 FEIS.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. The purpose of Maryland Route 100 is to provide a controlled access east-west highway that will relieve congestion of the existing roadway network, and to provide a safe and efficient highway link that will move people, goods, and services more quickly and directly.

The alternatives under consideration include (1) taking no action and (2) constructing a six-lane divided, limited access highway on new location connecting U.S. 29 to I-95. Incorporated into and studied with the various build alternatives will be design variation of grade, alignment and structures.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest

in this proposal. A public hearing will be held in the fall of 1992. Public notice will be given of the time and place of the hearing.

The draft supplemental EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning this proposed actions and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal Programs and activities apply to this program).

Issued on: September 15, 1992.

A.P. Barrows,

Division Administrator, Baltimore, Maryland.

[FR Doc. 92-23390 Filed 9-25-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Petition

This notice sets forth the reason for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Dr. Alan Morris, petitioned the agency on May 14, 1992, to "investigate the emergency release of motorized shoulder belts" in all vehicles equipped with automatic shoulder belts. The petition alleged that, during the course of an accident, the release buckle, which is made of plastic, can disintegrate as a result of an occupant's head striking the buckle, thereby releasing the shoulder belt. The petitioner implies that if such an event were to occur, the occupant would be exposed to excessive contact with the vehicle's interior components (e.g., the steering wheel, windshield, and dashboard) and increased potential for ejection, such as in a rollover accident. Dr. Morris also raised a concern about obscuration of vision and head impact caused by the location of the buckle release.

The agency has construed his request for an investigation as both a petition to conduct an investigation to determine whether a safety defect exists and a petition to commence a proceeding to determine whether rulemaking is appropriate regarding alleged problems with the emergency release of motorized shoulder belts.

As the basis of the petition, Dr. Morris reported a rollover accident involving a 1991 Ford Escort. The vehicle went off the road and rolled over one time. According to Dr. Morris the right front passenger struck her head on the emergency release buckle, causing the buckle to disintegrate and release the automatic shoulder belt. During a telephone conversion, Dr. Morris informed the agency that the occupant, who was ejected from the vehicle, sustained serious injuries. The occupant did not use the manual lap belt.

The location of the buckle release in the Escort is typical of vehicles equipped with a motorized automatic shoulder belt having an emergency release buckle. The buckle release is near the side of the front seat occupant's head when the belt is in use. The location of the safety belt buckle release anchorage is an important design consideration in ensuring performance of the belt system. The buckle in these vehicles is in a zone that could be contacted by the occupant's head during a violent crash, especially a rollover. Failure to use a lap belt may allow additional movement of the upper body (and head), thereby increasing the chance of head contact with various portions of the interior of the vehicle, including the buckle release, during such crashes.

The agency encourages full use of the vehicle's seat belt system. No matter what kind of automatic system the vehicle has, if it has a manual lap belt, it must be buckled for maximum protection. Occupants must use the complete system the manufacturer installed in the car and they must follow the instructions listed in the owner's manual.

To assess whether there have been instances of a buckle release due to occupant contact, the agency searched its real-world accident files that would contain such information. This search revealed no records indicating a buckle releasing during an accident in vehicles with automatic shoulder belts.

NHTSA estimates that there were over 5.3 million registered vehicles equipped with automatic shoulder belts which have emergency release buckles in the United States as of September 1, 1991. Out of these 5.3 million plus vehicles on the road, NHTSA's computerized consumer compliant system does not contain any instance, except for the petitioner's where occupant contact with the buckle during an accident allegedly caused the buckle to break and the shoulder belt to disengage. Further, NHTSA is not aware of any complaints of automatic shoulder belt buckle breakage, regardless of what might have caused the breakage.

A review of the agency's testing for compliance with Federal Motor Vehicle Safety Standard No. 208, "Occupant Crash Protection," revealed no buckle failure or belt release due to head contact with the emergency release buckle. Further, in the agency's consumer information program concerning vehicle crashworthiness, the New Care Assessment Program (NCAP), there were no reports of buckle release. In one NCAP test of a 1992 vehicle, the test dummy's head contacted the buckle release when the dummy rebounded back towards the seat after its initial forward motion. However, the buckle was not damaged and remained engaged.

Concerning visual obscuration, NHTSA has received two consumer complaints alleging visual obscuration to the side in vehicles with automatic shoulder belts. However, neither reported that an accident occurred as a result of the problem. Based on very few complaints reported and no accidents, the alleged visual obscuration caused by the emergency release buckle does not appear to present a significant safety risk.

Since no evidence of a safety-related defect trend was discovered on either of the issues included in Dr. Morris' petition, further commitment of resources does not appear to be warranted.

With respect to the petition concerning rulemaking, for the reasons cited above, it was also concluded that there is not a reasonable possibility that any amendments to NHTSA's safety standards would be issued at the conclusion of a regulatory proceeding. Therefore, the petition is denied in its entirety.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR and 1.50 and 501.8.

Issued on: September 22, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-23416 Filed 9-25-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: September 21, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0152.
Form Number: IRS Form 3115.
Type of Review: Revision.
Title: Application for Change in Accounting Method.
Description: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.
Respondents: Individuals or households, Farms, Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 6,400.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Form and recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
3115 19 hours, 51 minutes	3 hours, 36 minutes	5 hours, 20 minutes.
A 23 hours, 12 minutes	1 hour, 58 minutes	3 hours, 38 minutes.
B 4 hours, 18 minutes	1 hour, 4 minutes	2 hours, 23 minutes.
C 26 hours, 33 minutes	3 hours, 11 minutes	3 hours, 45 minutes.
D 14 hours, 21 minutes	2 hours, 41 minutes	3 hours, 2 minutes.

Frequency of Response: Annually.
Estimated Total Reporting Burden: 357,335 hours.
OMB Number: 1545-1277.
Form Number: IRS Form 1040-TEL.
Type of Review: Revision.
Title: Telefile Income Tax Return for Single Filers With No Dependents.
Description: State of Ohio 1040EZ filers will have the option of filing Form 1040-TEL, in which they will enter their tax information on a Touch-Tone telephone. IRS will use the information collected to figure the filer's tax, and refund or balance due.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 200,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	7 minutes.
Learning about the law or the form.	7 minutes.
Preparing the form	17 minutes.
TeleFile phone call, and copying, assembling and sending the form to the IRS.	27 minutes.

Frequency of Response: Annually.
Estimated Total Reporting Burden: 142,025 hours.
Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 92-23476 Filed 9-25-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 21, 1992.

The Department of Treasury has made revisions and resubmitted 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 bed addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0130.
Form Number: IRS Form 1120S, Schedule D, and Schedule K-1.
Type of Review: Resubmission.
Title: U.S. Income Tax Return for an S Corporation (Form 1120S) Capital Gains and Losses and Built-In Gains (Schedule D) Shareholder's Share of Income, Credits, Deductions, etc. (Schedule K-1).
Description: Form 1120S, Schedule D (Form 1120S), and Schedule K-1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule K-1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S Corporation and the shareholders.
Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/Recordkeepers: 1,389,600.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120S	63 hours, 8 minutes	18 hours, 36 minutes	34 hours, 27 minutes	4 hours, 1 minutes.
Schedule D (1120S)	9 hours, 5 minutes	4 hours, 13 minutes	9 hours, 13 minutes	1 hour, 29 minutes.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER—Continued

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Schedule. K-1 (1120S)	14 hours, 35 minutes	9 hours, 43 minutes	14 hours, 7 minutes	1 hour, 4 minutes.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 298,553,554 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.

[FR Doc. 92-23477 Filed 9-25-92; 8:45 am]

BILLING CODE 4830-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-87]

Modification of Determination of Action Pursuant to Section 301 Concerning Canadian Exports of Softwood Lumber; Opportunity for Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of modification pursuant to section 307(a)(1)(C) of the Trade Act of 1974, as amended (Trade Act), of action concerning Canadian exports of softwood lumber; and opportunity for interested persons affected by the modification to submit written comments.

SUMMARY: On October 4, 1991, the United States Trade Representative (USTR) determined, pursuant to section 301 of the Trade Act, that certain Canadian government acts, policies, and practices relating to the termination of the Memorandum of Understanding on Trade in Softwood Lumber (MOU) are unreasonable and burden or restrict United States commerce (56 FR 50738, corrected by 56 FR 58944). After determining that action was appropriate, USTR directed the Customs Service to (1) withhold liquidation of entries of softwood lumber from Canada after October 4, 1991; (2) require importers to post bonds to cover potential 301 duties with respect to those entries; and (3) assess 301 duties upon entries from each province at the lower of the MOU rate or the subsidy rate found by the Department of Commerce (Commerce) in its parallel countervailing duty investigation. USTR expressly conditioned the assessment of 301 duties upon the issuance by both Commerce and the International Trade Commission (ITC) of affirmative final determinations in the countervailing duty investigation.

Commerce and the ITC have issued affirmative determinations, thus satisfying the conditions for the imposition of 301 duties upon the entries covered by the 301 determination (*i.e.*, entries after October 4, 1991 and before March 12, 1992, the date of Commerce's preliminary determination). In its final determination, Commerce found that imports of certain softwood lumber products from Canada were receiving countervailable subsidies of 6.51 percent *ad valorem*. This rate is applicable to all provinces and territories covered by the investigation. Because British Columbia was not subject to an export tax under the MOU, the Customs Service may liquidate entries of softwood lumber from that province without the assessment of any 301 duties. In addition, 15 companies were excluded from the countervailing duty order. The Customs Service may liquidate entries of softwood lumber from these companies without the assessment of any 301 duties.

Canada, several provinces, and the United States and Canadian industries have requested review of the Commerce and ITC determinations pursuant to chapter 19 of the Canada-United States Free Trade Agreement (CFTA). To allow for the completion of chapter 19 review, USTR has modified its 301 determination pursuant to section 307(a)(1)(C) of the Trade Act. Specifically, USTR has directed the Customs Service to notify importers of record of softwood lumber from the provinces and territories subject to a 301 duty (*i.e.*, Alberta, Manitoba, Ontario, Quebec, Saskatchewan, the Northwest Territories, and the Yukon Territory) during the period covered by the 301 determination that (1) they may request extension of liquidation pursuant to 19 U.S.C. 1504(b)(3) pending the conclusion of Chapter 19 review proceedings; (2) any request based upon the binational panel proceedings will be considered for good cause; and (3) any entries extended pursuant to such a request will be assessed 301 duties in accordance with the outcome of chapter 19 review proceedings (*i.e.*, at the lower of the applicable MOU rate or the Commerce rate at the conclusion of chapter 19 review proceedings).

DATES: The Customs Service will notify the affected importers of record as soon as possible and will extend the liquidation of particular entries upon receipt of any request pursuant to 19 U.S.C. 1504(b)(3) from the importer of record. The Customs Service will liquidate any affected entry for which no request has been received within one year of the date of entry at the lower of the 6.51 percent rate found by Commerce or the applicable MOU rate. Interested persons affected by the modification of action may submit written comments by October 30, 1992.

ADDRESSES: Office of the United States Trade Representative, room 223, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David Weiss, Deputy Assistant United States Trade Representative for North American Affairs, (202) 395-5663; or Timothy Reif, Associate General Counsel (202) 395-6800.

SUPPLEMENTARY INFORMATION: On June 5, 1986, in response to a petition filed on behalf of the United States industry, Commerce initiated a countervailing duty investigation regarding softwood lumber products from Canada. On October 22, 1986, following the issuance of a preliminary determination of injury by the ITC, Commerce published a preliminary determination estimating that subsidies of 15 percent *ad valorem* were being provided to Canadian producers of certain softwood lumber products.

On December 30, 1986, the United States and Canada signed the MOU, in which Canada agreed to impose a 15 percent export charge on certain softwood lumber products. The MOU provided, among other things, that the original charge could be reduced or eliminated with respect to lumber exported from provinces that instituted replacement measures increasing stumpage or other charges on the harvest of timber. In return for Canada's recommitments in the MOU (and the

Administration's use of section 301, as described below), the United States lumber industry withdrew its petition and commerce terminated the countervailing duty investigation.

On the same date, the President took action pursuant to section 301 of the Trade Act to ensure that the objectives and commitments of the MOU were fulfilled (52 FR 231, 233). In particular, the President determined that the inability of the Government of Canada to collect export charges during an interim period following the signing of the MOU constituted a burden and restriction upon United States commerce. Accordingly, the President proclaimed an increase in rates of duty on softwood lumber products from Canada until the export charge required by the MOU became effective.

On September 3, 1991, the Government of Canada announced that it would terminate the MOU in 30 days. Thus, as of October 4, 1991, Canada terminated the MOU and ceased collecting export charges on softwood lumber products. Consequently, the United States, which in December 1986 had terminated its countervailing duty investigation in reliance upon Canada's undertakings in the MOU, was denied the offset that had been provided by Canadian export charges against possible injurious Canadian subsidies.

On October 4, 1991, in response to Canada's termination of the MOU, Commerce initiated a new countervailing duty investigation. Because of the limited notice provided by Canada prior to termination of the MOU, and the length of time required to complete a preliminary subsidy investigation, Commerce was unable to impose interim protective measures during the period between the termination of the MOU and the issuance of a new preliminary determination, which, if affirmative, would require importers to post bonds or cash deposits to cover estimated countervailing duties.

Also on October 4, 1991, USTR determined that Canada's acts, policies, and practices in terminating the MOU were unreasonable and burdened or restricted United States commerce. USTR further determined that action was appropriate pursuant to section 304 (1) To restore and maintain the *status quo* pending the issuance of the preliminary countervailing duty determination; and (2) if warranted, to impose duties to offset the effects of any subsidies found in that investigation. These determinations were made at the specific direction of the President, after consultations with the Government of Canada failed to result in a mutually satisfactory solution.

In the 301 determination, USTR instructed the Customs Service to withhold liquidation of Canadian lumber entered between the termination of the MOU and the issuance of Commerce's preliminary determination. USTR also instructed the Customs Service to assess 301 duties on the entries covered by the 301 determination if Commerce and the ITC issued final affirmative determinations in the countervailing duty investigation. Any 301 duties were to be based upon the lower of the MOU rate or the rate determined in the countervailing duty investigation.

On March 12, 1992, Commerce issued its preliminary determination, and the interim measures imposed pursuant to the countervailing duty law superseded those imposed pursuant to section 301. Both Commerce and the ITC subsequently issued final affirmative determinations. Thus, the preconditions for the assessment of 301 duties have been satisfied.

In its final determination, Commerce found that imports of certain softwood lumber products from Canada were receiving countervailable subsidies of 6.51 percent *ad valorem*. This rate is applicable to all provinces and territories covered by the investigation. As noted previously, the 301 determination directed Customs to assess 301 duties at the lower of the provincial rates applicable under the MOU or those found by commerce in the countervailing duty investigation. Because British Columbia was not subject to an export charge under the MOU, entries of softwood lumber from that province may be liquidated without the assessment of any 301 duties. In addition, 15 companies were excluded from the countervailing duty order. The Customs Service may liquidate entries of softwood lumber from these companies without the assessment of any 301 duties.

Exports of softwood lumber from the remaining provinces (*i.e.*, Alberta, Manitoba, Ontario, Quebec, Saskatchewan, the Northwest Territories, and the Yukon Territory) were subject to an export charge under the MOU. Under the MOU, Quebec's export tax rate was 6.2 percent *ad valorem* through October 31, 1991, and 3.1 percent *ad valorem* thereafter. Alberta, Manitoba, Ontario, Saskatchewan, the Northwest Territories and the Yukon Territory were subject to the full 15 percent *ad valorem* export tax throughout the MOU period. Thus, in the absence of any modification to the 301 determination, entries from these provinces during the period covered by the 301 determination would be assessed 301 duties at the lower of the 6.51 percent *ad valorem* found by Commerce or the applicable rate under the MOU.

The Government of Canada, various provinces, and the Canadian lumber industry have requested review of the Commerce and ITC determinations pursuant to chapter 19 of the CFTA. Additionally, the United States industry has challenged Commerce's determination, contending that it understates the level of Canadian subsidies. The chapter 19 proceedings could result in an increase or decrease in the amount of countervailing duties imposed upon the entries covered by that investigation.

Accordingly, USTR has modified its 301 determination pursuant to section 307 of the Trade Act to allow for the completion of chapter 19 proceedings. Section 307(a)(1)(C) authorizes the USTR to modify any action, subject to the specific direction, if any, of the President with respect to such action, that is being taken pursuant to section 301 if such action is no longer appropriate. After consulting with representatives of the domestic industry and the Government of Canada, USTR has decided that the 301 determination should be modified to allow for the extension of liquidation of entries covered by the 301 determination that could be affected by the chapter 19 proceedings.

Specifically, USTR has directed the Customs Service to notify importers of record of softwood lumber during the period covered by the 301 determination (*i.e.*, October 4, 1991 through March 12, 1992) that (1) they may request extension of liquidation pursuant to 19 U.S.C. 1504(b)(3) pending the outcome of chapter 19 proceedings; (2) any request based upon the pendency of chapter 19 proceedings will be considered for good cause; and (3) any entries extended pursuant to such a request will be assessed 301 duties in accordance with the outcome of chapter 19 proceedings (*i.e.*, at the lower of the applicable MOU rate or the Commerce rate at the conclusion of chapter 19 proceedings). Importers shall be informed that the results of the chapter 19 proceedings may be to increase, decrease, or eliminate the 301 duty to be assessed and that the proceedings may take a year or more to complete.

Opportunity for Comment

Section 307(a)(2) requires USTR to provide an opportunity for comment by interested persons affected by a

modification of action concerning the effects of the modification and whether the modification is appropriate. Accordingly, all interested persons affected by this modification may submit written comments concerning the modification. USTR will consider any comments submitted by such persons in determining whether any further modifications may be necessary.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b). Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR; 600 17th Street NW., Washington, DC 20506. All comments should be submitted by October 30, 1992.

Comments will be placed in a file (Docket No. 301-87) open to public inspection pursuant to 15 CFR 2006.13 except for confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of the 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the docket, which is open to public inspection.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

[FR Doc. 92-23467 Filed 9-25-92; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Ann Bickoff, Veterans Health Administration (161B3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 535-7407.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before October 28, 1992.

Dated: September 11, 1992.

By direction of the Secretary.

Doneld R. Howell,

Chief, Information Management Division.

New Collection

1. Epidemiological, Clinical, and Psychosocial Study of Post-Traumatic Stress Disorders Among Selected Ethno-Cultural Minority Vietnam Era and Theater Veterans VA Form 10-20933A, B and C.

2. The purpose of this study is to determine the prevalence for Post-Traumatic Stress Disorders (PTSD) among Native Hawaiian and Japanese Americans era and theater veterans; the patterns of PTSD expression and experience; and the perception and evaluation of the treatments received for PTSD and non-PTSD, as well as the barriers to seeking and obtaining care.

3. Individuals or households.

4. 5,180 hours.

5. 5 hours.

6. Non-recurring.

7. 1,036 respondents.

[FR Doc. 92-23415 Filed 9-25-92; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Cemeteries and Memorials; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. appendix, the Department of Veterans Affairs gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held on October 20, 1992.

The First Session of the meeting will begin at 8 a.m. in the Shoreway Acres Inn, Shore Street, Falmouth, Massachusetts 02541. Items to be discussed include, but are not limited to, expansion plans, the state cemetery grant program, memorialization and eligibility policy. The meeting will be open to the public up to the seating capacity, which is about 20 persons. The Second Session of the meeting will begin at 2 p.m. at the Massachusetts National Cemetery, Bourne, Massachusetts 02532. This session will be open to the public. Those wishing to attend should contact Mr. Terry Glaser, Special Assistant to the Director, National Cemetery System, [phone (202) 535-7819] not later than 12 noon, EDT October 13, 1992.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should write to the Director, National Cemetery System (40) at 810 Vermont Avenue, NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Letters should indicate the subject matter they want to discuss. Oral presentations will be limited to 10 minutes in duration. Those wishing to submit written statements to the Committee must also mail or otherwise deliver them to the Director, National Cemetery System.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Director, National Cemetery System by 12 noon EDT October 13, 1992. Oral statements will be heard only between 11:30 a.m. and 12 noon, October 20, 1992.

Dated: September 21, 1992.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-23478 Filed 9-25-92; 8:45 am]

BILLING CODE 8320-01-M

Veterans' Advisory Committee on Rehabilitation; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92-463) of October 6, 1972, that the Department of Veterans Affairs Veterans' Advisory Committee on Rehabilitation has been renewed for a 2-year period beginning September 17, 1992, through September 17, 1994.

Dated: September 17, 1992.

By direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-23479 Filed 9-25-92; 8:45 am]

BILLING CODE 8320-01-M

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92-463 that a

subcommittee meeting of the Advisory Committee on Women Veterans will be held on October 9, 1992, room 322, 1825 K Street, NW., Washington, DC. The purpose of the subcommittee meeting is to review the research protocol for the Study of Reproductive Health Outcomes Among Women Vietnam Veterans. The subcommittee will address such issues as study design, questionnaire design and feasibility of the main study.

The subcommittee will convene on October 9 from 10 a.m. to 3 p.m. and all sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Barbara Brandau, Committee Coordinator, Department of Veterans Affairs (phone 202/535-7571) prior to October 2, 1992.

Dated: September 21, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-23480 Filed 9-25-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 188
Monday, September 28, 1992

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).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Closed Meeting

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: September 30, 1992, 9:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

(1) Northwest Pipeline Corporation, Docket Nos. IN90-1-000, CP89-304-000 and CP89-305-000.

(2) Indicated Shippers v. El Paso Natural Gas Company, Docket Nos. CP91-732-000 and CP88-332-010.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

Dated: September 23, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 92-23540 Filed 9-24-92; 9:13am]

BILLING CODE 6717-01-M

Corrections

Federal Register
Vol. 57, No. 188
Monday, September 28, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1145

[Ex parte No. 394 (Sub-No.10)]

Railroad Rates on Recyclables; Exemptions

Correction

In proposed rule document 92-21663 beginning on page 41122, in the issue of Wednesday September 9, 1992, make the following correction:

§ 1145.9 [Corrected]

1. On page 41123, in the second column, in § 1145.9, in the section heading "[Amended]" should read "Exemptions".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-AGL-6]

Proposed Alteration to VOR Federal Airways; MI

Correction

In proposed rule document 92-19732 beginning on page 37491 in the issue of Wednesday, August 19, 1992, make the following correction:

§ 71.1 [Corrected]

1. On page 37492, in the second column, under § 71.1, in the second paragraph, under V-116, in the seventh line, "890°" should read "089°"

2. On the same page, in the same column under V-221, in the fourth line, "225°" should read "255°".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 92-AWP-13]

Proposed Establishment of Temporary Restricted Area R-2540; Capay, CA

Correction

In proposed rule document 92-19731 beginning on page 37493, in the issue of Wednesday, August 19, 1992, make the following correction:

§ 73.25 [Corrected]

1. On page 37494, in the third column, under § 73.25, in the third paragraph, in the third line, the year "1922" should read "1992".

BILLING CODE 1505-01-D

federal register

Monday
September 28, 1992

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule will permit taking of designated species during the 1992-93 season.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240, (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1992

On May 8, 1992, the Service published for public comment in the **Federal Register** (57 FR 19865) a proposal to amend 50 CFR part 20, with comment periods ending July 20, 1992, for early-season proposals and August 31, 1992, for late-season proposals. On June 19, 1992, the Service published for public comment a second document (57 FR 27672) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 25, 1992, a public hearing was held in Washington, DC, as announced in the May 8 and June 19 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 10, 1992, the Service published in the **Federal Register** (57 FR 30884) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1992-93 season. On August 6, 1992, a public hearing was held in Washington, DC, as announced in the **Federal Registers** of May 8, June 19, and July 10, 1992, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 21, 1992, the Service published a fourth document (57 FR 38202) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1992-93. The fifth document in the series, published August 21, 1992 (57 FR 38215), dealt specifically with proposed frameworks for the 1992-93 late-season migratory bird hunting regulations. On August 27, 1992, the Service published in the **Federal Register** (57 FR 39072) a sixth document consisting of a final rule amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On September 22, 1992, the Service published a seventh document in the **Federal Register** (57 FR 43856), final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1992-93. The final rule described here is the eighth in a series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20 to set hunting seasons, hours, areas, and limits for species subject to late-season regulations and those early-seasons that were previously deferred.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options were considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1992." Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

On July 2, 1992, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the May 8 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management at the address indicated under the caption **ADDRESSES**. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by section 4 of Executive Order 12291, in the **Federal Register** dated August 21, 1992 (57 FR 38202).

Authorship

The primary authors of this rule are David F. Caithamer and William O. Vogel, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each State conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: September 23, 1992.

Mike Hayden,

Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K is amended as follows.

1. The authority citation for part 20 is revised to read as follows:

Authority: Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703–711), and the Fish and Wildlife Improvement Act of November 8, 1978, as amended, (16 U.S.C. 712).

BILLING CODE 4310-55-F

Note - The following annual regulations provided for by §§20.104, 20.105, 20.106, 20.107, and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.104 is amended as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the Federal Register on August 21, 1992, (57 FR 38202) and September 22, 1992, (57 FR 43856).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

NOTE: The following seasons are in addition to the seasons published previously in the August 27, 1992, Federal Register (57 FR 39072).

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	5 (3)	8
Possession limit	25 (1)	30 (2)	10 (3)	16
MISSISSIPPI FLYWAY				
* * * * *				
Tennessee				
Reelfoot Zone	Nov. 14-Nov. 15 & Dec. 12-Jan. 8	Closed	Oct. 10-Dec. 13	Nov. 14-Feb. 28
State Zone	Dec. 5-Dec. 7 & Dec. 19-Jan. 14	Closed	Oct. 10-Dec. 13	Nov. 14-Feb. 28
Wisconsin				
North Zone	Oct. 3-Oct. 11 & Oct. 17-Nov. 6	Closed	Sept. 12-Nov 15	Oct. 3-Oct. 11 & Oct. 17-Nov. 6
South Zone	Oct. 3-Oct 6 & Oct 14-Nov. 8	Closed	Sept. 12-Nov. 15	Oct. 3-Oct. 6 & Oct. 14-Nov. 8
CENTRAL FLYWAY				
* * * * *				
Texas	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 28-Jan. 31	Oct. 24-Feb. 7
* * * * *				
PACIFIC FLYWAY				
Arizona (13)				
North Zone	Closed	Closed	Closed	Oct. 9-Dec. 6
South Zone	Closed	Closed	Closed	Oct. 9-Oct. 18 & Nov. 16-Jan. 3
California	Closed	Closed	Closed	Oct. 3-Jan. 17
* * * * *				
Nevada				
Clark County	Closed	Closed	Closed	Nov. 21-Jan. 17
Remainder of State	Closed	Closed	Closed	Nov. 14-Dec. 13
New Mexico (10)	Oct. 3-Oct. 18 & Nov. 29-Jan. 10	Closed	Closed	Oct. 3-Oct. 18 & Nov. 29-Jan. 10
Oregon	Closed	Closed	Closed	Oct. 10-Jan 3
Utah				
Zone 1	Closed	Closed	Closed	Oct. 3-Nov. 30
Zone 2	Closed	Closed	Closed	Nov. 6-Jan. 3
Washington				
East Zone	Closed	Closed	Closed	Oct. 17-Oct. 25 & Nov. 15-Jan. 10
West Zone	Closed	Closed	Closed	Oct. 17-Oct. 25 & Nov. 15-Jan. 3
* * * * *				

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, the limits for clapper and king rails are 10 daily and 20 in possession.
(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 6 in possession.

* * * * *

(10) In New Mexico, the rail limits are 10 daily and 10 in possession.

* * * * *

(13) In Arizona, Ashurst Lake in Unit 5B is closed to common snipe hunting.

3. Section 20.105 paragraph (a) is amended, paragraph (b) is revised, and paragraph (e) is added to read as *follows:*

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the Federal Register on August 21, 1992, (57 FR 38202) and September 22, 1992, (57 FR 43856).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

(a) Common Moorhens and Purple Gallinules
(Atlantic, Mississippi, and Central Flyways)

NOTE: The following seasons are in addition to the seasons published previously in the August 27, 1992, Federal Register (57 FR 39072). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
	* * * * *		
Georgia	Nov. 26-Nov. 29 &	15	30
	Dec. 16-Jan. 10	15	30
	* * * * *		
Virginia	Oct. 7-Oct. 10 &	15	30
	Nov. 25-Nov. 28 &	15	30
	Dec. 26-Jan. 16	15	30
West Virginia			
Zone 1	Oct. 3-Oct. 10 &	15	30
	Dec. 30-Jan. 20	15	30
Zone 2	Oct. 3-Oct. 10 &	15	30
	Oct. 24-Nov. 14	15	30
MISSISSIPPI FLYWAY			
	* * * * *		
Michigan			
North Zone	Oct. 3-Nov. 1	15	30
Middle Zone	Oct. 10-Nov. 8	15	30
South Zone	Oct. 17-Nov. 12 &	15	30
	Nov. 27-Nov. 29	15	30
Minnesota (2)	Oct. 3-Oct. 11 &	15	30
	Oct. 15-Nov. 1 &	15	30
	Nov. 6-Nov. 8	15	30
	* * * * *		
Tennessee			
Reelfoot Zone	Nov. 14-Nov. 15 &	15	30
	Dec. 12-Jan. 8	15	30
State Zone	Dec. 5-Dec. 7 &	15	30
	Dec. 19-Jan. 14	15	30

	Season Dates	Limits Bag	Limits Possession
Wisconsin			
North Zone	Oct. 3-Oct. 11 &	5	10
	Oct. 17-Nov. 6	5	10
South Zone	Oct. 3-Oct. 6 &	5	10
	Oct. 14-Nov. 8	5	10
PACIFIC FLYWAY			
All States	Seasons are in aggregate with coots and listed in paragraph (e).		

* * * * *

(2) In Minnesota, the daily bag limit is 15 and the possession limit is 30 coots, moorhens, and gallinules in the aggregate.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway)

Within the special sea duck areas, the daily bag limit is 7 and the possession limit is 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Limits Possession
Connecticut	Oct. 2-Jan. 16	7	14
Delaware	Sept. 26-Jan. 9	7	14
Georgia	Nov. 26-Jan. 10	7	14
Maine	Oct. 5-Jan. 19	7	14
Maryland	Oct. 9-Jan. 20	5	10
Massachusetts	Oct. 6-Jan. 20	7	14
New Hampshire	Sept. 15-Dec. 30	7	14
New Jersey	Oct. 2-Jan. 16	7	14
New York	Oct. 6-Jan. 20	7	14
North Carolina	Oct. 6-Jan. 20	7	14
Rhode Island	Oct. 9-Jan. 16	7	14
South Carolina	Oct. 6-Jan. 20	7	14
Virginia	Oct. 6-Jan. 20	7	14

Note: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(e) Waterfowl, Coots, and Pacific-Flyway Seasons for Common Moorhens and Purple Gallinules

ATLANTIC FLYWAY

Definitions

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, and brant.

Flywaywide Restrictions

Duck Limits: The daily bag limit may include no more than 1 female mallard, 1 pintail, 1 black duck, 1 mottled duck, 2 wood ducks, 2 redheads, and 1 fulvous tree duck. The possession limit is twice the daily bag limit.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Harlequin Ducks: All areas of the Flyway are closed to harlequin duck hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits Bag	Limits Possession
Connecticut			
Ducks (1):			
North Zone	Oct. 17-Oct. 24 &	3	6
	Nov. 28-Dec. 19	3	6
South Zone	Oct. 17 only &	3	6
	Dec. 19-Jan. 16	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
North Zone	Oct. 17-Oct. 24 &	1	2
	Oct. 26-Nov. 7 &	2	4
	Nov. 21-Dec 31 &	2	4
	Jan. 1-Jan. 7	3	6
South Zone	Oct. 17-Oct. 24 &	1	2
	Nov. 21-Dec. 31 &	2	4
	Jan. 1-Jan. 14	3	6
(special season)	Jan. 15-Feb. 15	State Permit Only	
Light Geese:	Oct. 17-Jan. 30	5	10
Brant:			
North Zone	Oct. 17-Oct. 24 &	2	4
	Nov. 28-Jan. 8	2	4
South Zone	Oct. 17-Oct. 24 &	2	4
	Dec. 10-Jan. 20	2	4
Delaware			
Ducks	Nov. 4-Nov. 7 &	3	6
	Nov. 23-Nov. 28 &	3	6
	Dec. 14-Jan. 2	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Nov. 23-Nov. 28 &	1	2
	Dec. 12-Jan. 14	1	2
Light Geese:			
Bombay Hook NWR	Nov. 8-Nov. 22	5	10
Statewide	Oct. 14-Nov. 7 &	5	10
	Nov. 23-Jan. 14 &	5	10
	Jan. 28-Feb. 10	5	10
Brant	Nov. 23-Nov. 28 &	2	4
	Dec. 4-Jan. 16	2	4
Florida			
Ducks	Nov. 25-Nov. 29 &	3	6
	Dec. 19-Jan. 12	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese	Closed	--	--

	Season Dates	Limits Bag	Limits Possession
Georgia			
Ducks	Nov. 26-Nov. 29 &	3	6
	Dec. 16-Jan. 10	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese (special area)	Jan. 14-Jan. 17 &	State Permit Only	
	Jan. 28-Jan. 31	State Permit Only	
Brant	Closed	--	--
Maine			
Ducks:			
North Zone	Oct. 5-Oct. 23 &	3	6
	Nov. 11-Nov. 21	3	6
South Zone	Oct. 5-Oct. 17 &	3	6
	Nov. 26-Dec. 12	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 1-Oct. 15 &	1	2
	Oct. 16-Nov. 21 &	2	4
	Nov. 25-Dec. 12	2	4
Light Geese	Oct. 1-Jan. 15	5	10
Brant	Oct. 1-Nov. 19	2	4
Maryland			
Ducks (2)	Oct. 16-Oct. 17 &	3	6
	Nov. 26-Nov. 27 &	3	6
	Dec. 19-Jan. 9	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Nov. 16-Nov. 27 &	1	2
	Dec. 4-Dec. 11 &	1	2
	Dec. 12-Jan. 20	2	4
Light Geese	Oct. 24-Nov. 27 &	4	8
	Dec. 1-Feb. 10	4	8
Brant	Nov. 16-Nov. 27 &	2	4
	Dec. 15-Jan. 20	2	4

	Season Dates	Limits Bag	Limits Possession
Massachusetts			
Ducks:			
Western Zone	Oct. 9-Nov. 7	3	6
Central Zone	Oct. 13-Oct. 24 &	3	6
	Nov. 11-Nov. 28	3	6
Coastal Zone	Oct. 19-Oct. 28 &	3	6
	Dec. 14-Jan. 2	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Western Zone	Oct. 9-Oct. 23 &	1	2
	Oct. 24-Nov. 28 &	2	4
	Dec. 8-Dec. 26	2	4
Central Zone	Oct. 13-Oct. 24 &	1	2
	Nov. 11-Dec. 31 &	2	4
	Jan. 1-Jan. 7	3	6
(special season)	Jan. 21-Feb. 5	5	10
Coastal Zone	Oct. 19-Oct. 31 &	1	2
	Nov. 25-Dec. 31 &	2	4
	Jan. 1-Jan. 20	3	6
(special season)	Jan. 21-Feb. 5	5	10
Light Geese:			
Western Zone	Oct. 9-Nov. 28 &	5	10
	Dec. 8-Dec. 26	5	10
Central Zone	Oct. 13-Oct. 24 &	5	10
	Nov. 11-Jan. 7	5	10
Coastal Zone	Oct. 19-Oct. 31 &	5	10
	Nov. 25-Jan. 20	5	10
Brant:			
Berkshire & Central Zone	Closed		
Coastal Zone	Nov. 25-Jan. 13	2	4
New Hampshire			
Ducks:			
Inland Zone	Oct. 7-Oct. 25 &	3	6
	Nov. 25-Dec. 5	3	6
Coastal Zone	Oct. 8-Oct. 11 &	3	6
	Nov. 25-Dec. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Inland Zone	Oct. 7-Oct. 15 &	1	2
	Oct. 16-Dec. 15	2	4
Coastal Zone	Oct. 18-Oct. 25 &	1	2
	Oct. 26-Dec. 26	2	4
Light Geese:			
Inland Zone	Oct. 7-Dec. 15	5	10
Coastal Zone	Oct. 18-Dec. 26	5	10
Brant:			
Inland Zone	Oct. 7-Nov. 25	2	4
Coastal Zone	Oct. 18-Dec. 6	2	4

	Season Dates	Limits Bag	Limits Possession
New Jersey			
Ducks:			
North Zone	Oct. 17-Oct. 24 &	3	6
	Nov. 23-Dec. 14	3	6
South Zone	Oct. 24-Oct. 31 &	3	6
	Nov. 26-Dec. 17	3	6
Coastal Zone	Oct. 31-Nov. 7 &	3	6
	Dec. 12-Jan. 2	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese.			
North Zone	Oct. 17-Oct. 24 &	1	2
	Nov. 23-Dec. 31 &	2	4
	Jan. 1-Jan. 23	3	6
South Zone	Oct. 24-Oct. 31 &	1	2
	Nov. 26-Dec. 31 &	2	4
	Jan. 1-Jan. 26	3	6
Coastal Zone	Oct. 31-Nov. 7 &	1	2
	Nov. 30-Dec. 31 &	2	4
	Jan. 1-Jan. 30	3	6
Light Geese.			
North Zone	Oct. 17-Jan. 30	5	10
South Zone	Oct. 24-Nov. 21 &	5	10
	Nov. 26-Feb. 10	5	10
Coastal Zone	Oct. 17-Jan. 30	5	10
Brant			
North Zone	Oct. 17-Nov. 13 &	2	4
	Nov. 23-Dec. 14	2	4
South Zone	Oct. 24-Nov. 20 &	2	4
	Nov. 26-Dec. 17	2	4
Coastal Zone	Oct. 31-Nov. 27 &	2	4
	Dec. 12-Jan. 2	2	4
New York			
Ducks			
Long Island Zone	Nov. 20-Nov. 29 &	3	6
	Dec. 22-Jan. 10	3	6
Lake Champlain Zone	Oct. 7-Oct. 11 &	3	6
	Nov. 7-Dec. 1	3	6
Northeastern Zone	Oct. 3-Oct. 17 &	3	6
	Oct. 31-Nov. 14	3	6
Southeastern Zone	Oct. 10-Oct. 18 &	3	6
	Nov. 21-Dec. 11	3	6
Western Zone	Oct. 8-Oct. 15 &	3	6
	Nov. 1-Nov. 22	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30

	Season Dates	Limits Bag	Limits Possession
New York (cont.)			
Canada Geese:			
Long Island Zone	Nov. 20-Nov. 27 &	1	2
	Nov. 28-Nov. 29 &	2	4
	Dec. 3-Dec. 31 &	2	4
	Jan. 1-Jan. 31	3	6
Lake Champlain Zone	Oct. 7-Oct. 15 &	1	2
	Oct. 16-Dec. 15	2	4
Northeastern Zone	Oct. 3-Oct. 15 &	1	2
	Oct. 16-Dec. 11	2	4
Southeastern Zone	Oct. 21-Nov. 1 &	1	2
	Nov. 21-Dec. 31 &	2	4
	Jan. 1-Jan. 17	3	6
Western Zone	Nov. 1-Nov. 15 &	1	2
	Nov. 16-Nov. 30 &	2	4
	Dec. 12-Dec. 31 &	2	4
	Jan. 1-Jan. 20	3	6
Light Geese:			
Long Island Zone	Nov. 20-Nov. 29 &	5	10
	Dec. 3-Jan. 31	5	10
Lake Champlain Zone	Oct. 7-Jan. 21	5	10
Northeastern Zone	Oct. 3-Jan. 17	5	10
Southeastern Zone	Oct. 10-Jan. 17	5	10
Western Zone	Oct. 8-Jan. 20	5	10
Brant:			
Long Island Zone	Nov. 20-Nov. 29 &	2	4
	Dec. 3-Jan. 11	2	4
Lake Champlain Zone	Oct. 7-Nov. 25	2	4
Northeastern Zone	Oct. 3-Nov. 21	2	4
Southeastern Zone	Oct. 10-Nov. 28	2	4
Western Zone	Oct. 8-Nov. 26	2	4
North Carolina			
Ducks	Oct. 1-Oct. 3 &	3	6
	Nov. 26-Nov. 28 &	3	6
	Dec. 28-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
East Zone	Closed		
West Zone	Closed	--	--
Light Geese	Nov. 2-Feb. 10	5	10
Brant	Nov. 26-Nov. 28 &	2	4
	Dec. 5-Jan. 20	2	4

	Season Dates	Limits Bag	Limits Possession
Pennsylvania			
Ducks:			
North Zone	Oct. 10-Oct. 24 &	3	6
	Nov. 9-Nov. 23	3	6
South Zone	Oct. 26-Oct. 31 &	3	6
	Nov. 23-Dec. 16	3	6
Northwest Zone	Oct. 12-Oct. 17 &	3	6
	Nov. 9-Dec. 2	3	6
Lake Erie Zone	Nov. 9-Nov. 28 &	3	6
	Dec. 17-Dec. 26	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese.			
North Zone	Oct. 10-Oct. 17 &	1	2
	Oct. 19-Dec. 18	2	4
South Zone (3)	Oct. 26-Nov. 2 &	1	2
	Nov. 16-Dec. 31	2	4
	Jan. 1-Jan. 16	3	6
(special season)	Jan. 20-Feb. 5	5	10
Erie, Mercer, and Butler Counties	Oct. 12-Oct. 19 &	1	2
	Oct. 20-Oct. 24 &	2	4
	Nov. 9-Jan. 4	2	4
Crawford County	Oct. 12-Dec. 19	1	2
Light Geese	Oct. 16-Jan. 30	5	10
Brant	Nov. 23-Jan. 11	2	4
Rhode Island			
Ducks	Oct. 9-Oct. 11 &	3	6
	Nov. 25-Nov. 29 &	3	6
	Dec. 14-Jan. 4	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 9-Oct. 11 &	1	2
	Nov. 25-Nov. 29 &	1	2
	Nov. 30-Dec. 31 &	2	4
	Jan. 1-Jan. 30	3	6
Light Geese	Oct. 9-Oct. 11 &	5	10
	Nov. 25-Jan. 30	5	10
Brant	Nov. 25-Jan. 13	2	4
South Carolina			
Ducks (4)	Nov. 25-Nov. 28 &	3	6
	Dec. 26-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese			
(special season)	Jan. 21-Jan. 23	State Permit Only	
Light Geese	Nov. 25-Nov. 28 &	5	10
	Dec. 26-Jan. 20	5	10
Brant	Nov. 25-Nov. 28 &	2	4
	Dec. 26-Jan. 20	2	4

	Season Dates	Limits Bag	Possession
Vermont			
Ducks:			
Lake Champlain Zone	Oct. 7-Oct. 11 &	3	6
	Nov. 7-Dec. 1	3	6
Interior Zone	Oct. 7-Nov. 1 &	3	6
	Nov. 26-Nov. 29	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese (5)	Oct. 7-Oct. 15 &	1	2
	Oct. 16-Dec. 15	2	4
Light Geese	Oct. 7-Jan. 21	5	10
Brant	Oct. 7-Nov. 25	2	4
Virginia			
Ducks	Oct. 7-Oct. 10 &	3	6
	Nov. 25-Nov. 28 &	3	6
	Dec. 26-Jan. 16	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese:			
Back Bay Area	Closed	--	--
Remainder of State	Nov. 16-Dec. 5 &	1	2
	Dec. 7-Dec. 8 &	2	4
	Dec. 14-Jan. 20	2	4
Light Geese	Oct. 26-Oct. 31 &	5	10
	Nov. 2-Feb. 10	5	10
Brant	Nov. 30-Dec. 19 &	2	4
	Dec. 21-Dec. 26 &	2	4
	Dec. 28-Jan. 20	2	4
West Virginia			
Ducks:			
Zone 1	Oct. 3-Oct. 10 &	3	6
	Dec. 30-Jan. 20	3	6
Zone 2	Oct. 3-Oct. 10 &	3	6
	Oct. 24-Nov. 14	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese			
Zone 1	Oct. 1-Oct. 10 &	3	6
	Nov. 23-Jan. 20	3	6
Zone 2	Oct. 1-Nov. 16 &	3	6
	Dec. 29-Jan. 20	3	6
Light Geese:			
Zone 1	Oct. 1-Oct. 10 &	5	10
	Nov. 23-Jan. 20	5	10
Zone 2	Oct. 1-Nov. 16 &	5	10
	Dec. 29-Jan. 20	5	10
Brant	Dec. 2-Jan. 20	2	4

(1) In Connecticut, the season is closed for black ducks during October 17 through October 24 in the North Zone and on October 17 in the South Zone.
(2) In Maryland, the daily bag limit may include no more than 1 redhead; and the black duck season is closed October 16 through October 17.
(3) In Pennsylvania, the special season will only be held along portions of the Susquehanna and Juniata Rivers. See State regulations for details.
(4) In South Carolina, the bag limit of 3 may include no more than 1 female mallard or 1 black duck or 1 mottled duck.
(5) In Vermont, a permit is required for the Dead Creek Goose Management Area in the town of Addison.

MISSISSIPPI FLYWAY

Definitions

The Mississippi Flyway. Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, and brant.

Flywaywide Restrictions

Duck Limits: The daily bag limit may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead. The possession limit is twice the daily bag limit.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits Bag	Possession
Alabama			
Ducks			
North Zone	Dec. 17-Jan. 3 &	3	6
	Jan. 9-Jan. 20	3	6
South Zone	Nov. 19-Nov. 22 &	3	6
	Dec. 24-Jan. 18	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese		5	5
Canada or White-fronted			
North Zone	Dec. 12-Jan. 30	2	4
South Zone	Nov. 19-Nov. 22 &	2	4
	Dec. 16-Jan. 30	2	4
Light Geese and Brant	Same as for Canada geese	5	5

	Season Dates	Limits Bag	Limits Possession
Arkansas			
Ducks	Nov. 21-Nov. 29 &	3	6
	Dec. 12-Dec. 23 &	3	6
	Dec. 26-Jan. 3	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada			
East Zone	Jan. 9-Jan. 31	2	4
West Zone	Jan. 4-Jan. 17	1	2
White-fronted	Nov. 21-Jan. 29	2	4
Brant	Nov. 21-Jan. 29	7	14
Light Geese	Nov. 21-Feb. 8	7	14
Illinois			
Ducks:			
North Zone	Oct. 17-Nov. 15	3	6
Central Zone	Oct. 31-Nov. 29	3	6
South Zone	Nov. 14-Dec. 13	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese (1):		7	14
Canada (2):			
North Zone			
Northeastern Zone	Oct. 3-Oct. 11 &	2	4
	Oct. 17-Jan. 3	2	4
Remainder of North Zone	Oct. 17-Jan. 3	2	4
Central Zone			
Northeastern Zone	Oct 3-Oct. 11 &	2	4
	Oct. 31-Jan. 17	2	4
Remainder of Central Zone	Oct. 31-Jan. 17	2	4
South Zone:			
Southern Illinois Quota Zone (2)	Nov. 14-Jan. 31	2	10
Rend Lake Quota Zone (2)	Nov. 14-Jan. 31	2	10
Remainder of South Zone	Nov. 14-Jan. 31	2	4
White-fronted and Brant:			
North Zone	Oct. 17-Dec. 25	2	4
Central Zone	Oct. 31-Jan. 8	2	4
South Zone	Nov. 14-Jan. 22	2	4
Light Geese:			
North Zone	Oct. 17-Jan. 3	7	14
Central Zone	Oct. 31-Jan. 17	7	14
South Zone	Nov. 14-Jan. 31	7	14

	Season Dates	Limits Bag	Limits Possession
Indiana			
Ducks:			
North Zone	Oct. 17-Oct. 19 &	3	6
	Nov. 13-Dec. 9	3	6
South Zone	Oct. 30-Nov. 1 &	3	6
	Dec. 5-Dec. 31	3	6
Ohio River Zone	Nov. 26-Nov. 29 &	3	6
	Dec. 16-Jan. 10	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (2):			
North Zone (3)	Oct. 17-Oct. 19 &	2	4
	Nov. 13-Jan. 18	2	4
South Zone			
Posey County (2)	Nov. 23-Jan. 31	2	4
Remainder of South Zone	Oct. 30-Nov. 8 &	2	4
	Nov. 21-Jan. 19	2	4
Ohio River Zone:			
Posey County (2)	Nov. 23-Jan. 31	2	4
Remainder of Ohio River Zone	Nov. 12-Jan. 20	2	4
White-fronted	Same as for Canada geese	2	4
Light Geese and Brant	Same as for Canada geese	7	14
Iowa			
Ducks:			
North Zone	Oct. 10-Oct. 13 &	3	6
	Oct. 24-Nov. 18	3	6
South Zone	Oct. 24-Oct. 30 &	3	6
	Nov. 7-Nov. 29	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada:			
Southwest Zone	Oct. 10-Dec. 18	2	4
Remainder of State	Oct. 3-Dec. 11	2	4
White-fronted:			
Southwest Zone	Oct. 10-Dec. 18	2	4
Remainder of State	Oct. 3-Dec. 11	2	4
Brant			
Southwest Zone	Oct. 10-Dec. 18	7	14
Remainder of State	Oct. 3-Dec. 11	7	14
Light Geese:			
Southwest Zone	Oct. 10-Dec. 28	7	14
Remainder of State	Oct. 3-Dec. 21	7	14

	Season Dates	Limits Bag	Limits Possession
Kentucky			
Ducks:			
West Zone	Nov. 26-Nov. 29 &	3	6
	Dec. 16-Jan. 10	3	6
East Zone	Nov. 26-Nov. 29 &	3	6
	Dec. 23-Jan. 17	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese (1):		7	14
Canada:			
Western Goose Zone (2):			
Fulton County	Nov. 26- Feb. 12	2	4
Remainder of Zone	Nov. 26-Jan. 31	2	4
Remainder of State	Dec. 13-Jan. 31	2	4
White-fronted			
Western Goose Zone	Nov. 26-Jan. 31	2	4
Remainder of State	Dec. 13-Jan. 31	2	4
Light Geese and Brant			
Western Goose Zone	Nov. 26-Jan. 31	7	14
Remainder of State	Dec. 13-Jan. 31	7	14
Louisiana			
Ducks:			
West Zone	Nov. 21-Dec. 5 &	3	6
	Dec. 26-Jan. 9	3	6
East Zone			
Catahoula Lake Zone	Nov. 21-Dec. 20	3	6
Remainder of East Zone	Nov. 21-Nov. 27 &	3	6
	Dec. 26-Jan. 17	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada			
Southwest Zone (4)	Jan. 20-Jan. 28	1	2
Remainder of State	Closed	--	--
White-fronted (4)	Nov. 21-Dec. 12 &	2	4
	Dec. 19-Feb. 4	2	4
Brant	Nov. 21-Dec. 12 &	7	14
	Dec 19-Feb. 4	7	14
Light Geese	Nov 21-Dec. 12 &	7	14
	Dec. 19-Feb. 14	7	14

	Season Dates	Limits Bag	Limits Possession
Michigan			
Ducks:			
North Zone	Oct. 3-Nov. 1	3	6
Middle Zone	Oct. 10-Nov. 8	3	6
South Zone	Oct. 17-Nov. 12 &	3	6
	Nov. 27-Nov. 29	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada (2):			
North Zone	Sept. 26-Nov. 14	2	4
Middle Zone	Oct. 10-Nov. 28	2	4
South Zone:			
Muskegon Wastewater Goose Management Unit (GMU) (2)	Oct. 17-Nov 14 &	2	4
	Dec. 1-Dec. 22	2	4
Allegan County GMU (2)	Oct. 17-Nov. 14 &	1	2
	Nov. 15-Dec. 5	2	4
Saginaw County GMU (2)	Oct. 3-Nov. 8 &	2	4
	Nov. 27-Nov. 29	2	4
Tuscola/Huron GMU (2)	Oct. 3-Nov. 8 &	2	4
	Nov. 27-Nov. 29	2	4
Southern Michigan GMU:			
East of U.S. 27/127	Oct. 17-Nov. 12 &	2	4
	Nov. 27-Nov. 29	2	4
(special season)	Jan. 9-Feb. 7	2	4
West of U.S. 27/127	Oct. 17-Nov. 12 &	2	4
	Nov. 27-Dec. 14	2	4
(special season)	Jan. 9-Feb. 7	2	4
Remainder of South Zone:			
East of U.S. 27/127	Oct. 17-Nov. 12 &	2	4
	Nov. 27-Nov. 29	2	4
West of U.S. 27/127	Oct. 17-Nov. 12 &	2	4
	Nov. 27-Dec. 14	2	4
White-fronted	See Footnote 5	2	4
Light Geese and Brant	See Footnote 5	7	14

	Season Dates	Limits Bag	Limits Possession
Minnesota			
Ducks	Oct. 3-Oct. 11 &	3	6
	Oct. 15-Nov. 1 &	3	6
	Nov. 6-Nov. 8	3	6
Mergansers	Same as for ducks	5	10
Coots (6)	Same as for ducks	15	30
Geese:		7	14
Canada:			
West Central Zone:			
Lac qui Parle Zone (2)	Oct. 3-Nov. 11	1	2
Remainder of West Central Zone	Oct. 3-Nov. 11	1	2
Southeast Zone:			
Twin Cities Metro Zone and Olmsted County	Oct. 3-Dec. 11 &	2	4
	Dec. 15-Dec. 24	2	4
Remainder of Southeast Zone	Oct. 3-Dec. 11	2	4
Remainder of State	Oct. 3-Nov. 21	2	4
White-fronted:			
West Central Zone	Oct. 3-Nov. 11	2	4
Southeast Zone	Oct. 3-Dec. 11	2	4
Remainder of State	Oct. 3-Nov. 21	2	4
Brant			
West Central Zone	Oct. 3-Nov. 11	7	14
Southeast Zone	Oct. 3-Dec. 11	7	14
Remainder of State	Oct. 3-Nov. 21	7	14
Light Geese	Oct. 3-Dec. 21	7	14
Mississippi			
Ducks	Dec. 19-Dec. 22 &	3	6
	Dec. 26-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada	Dec. 7-Jan. 31	2	4
White-fronted	Dec. 7-Jan. 31	2	4
Brant	Dec. 7-Jan. 31	7	14
Light Geese	Dec. 7-Feb. 14	7	14

	Season Dates	Limits Bag	Limits Possession
Missouri			
Ducks and Mergansers:			
North Zone	Oct. 31-Nov. 29	3	6
Middle Zone	Nov. 7-Dec. 6	3	6
South Zone	Nov. 28-Dec 27	3	6
Coots	Same as for ducks	15	30
Geese (1):		7	14
Canada:			
North Zone:			
Swan Lake Zone (2)	Oct. 31-Nov. 8 &	2	4
	Nov. 21-Dec. 31	2	4
Central Missouri Zone			
	Oct. 31-Nov. 8 &	2	4
	Nov. 21-Dec. 31	2	4
(special season)	Oct. 3-Oct. 12	3	6
Remainder of North Zone	Oct. 31-Nov. 8 &	2	4
	Nov. 21-Dec. 31	2	4
Middle Zone			
Schell-Osage Zone	Nov. 14-Jan. 2	2	4
Remainder of Middle Zone	Nov. 28-Dec. 6 &	2	4
	Dec. 19-Jan. 28	2	4
South Zone	Nov. 28-Dec. 6 &	2	4
	Dec. 19-Jan. 28	2	4
White-fronted			
North Zone	Oct. 31-Jan. 8	2	4
Middle Zone	Nov. 14-Jan. 22	2	4
South Zone	Nov. 14-Jan. 22	2	4
Brant			
North Zone	Oct. 31-Jan. 8	7	14
Middle Zone	Nov. 14-Jan. 22	7	14
South Zone	Nov. 14-Jan. 22	7	14
Light Geese			
North Zone	Oct. 31-Jan. 18	7	14
Middle Zone	Nov. 14-Feb. 1	7	14
South Zone	Nov. 14-Feb. 1	7	14

	Season Dates	Limits Bag	Limits Possession
Ohio			
Pymatuning Area:			
Ducks (7)	Oct. 12-Oct. 17 &	3	6
	Nov. 9-Dec. 2	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Canada Geese	Oct. 12-Dec. 19	1	2
Light Geese	Oct. 16-Jan. 30	5	10
Brant	Nov. 23-Jan. 11	2	4
Remainder of State:			
Ducks:			
North Zone	Oct. 17-Oct. 31 &	3	6
	Nov. 14-Nov. 28	3	6
South Zone	Oct. 17-Oct. 24 &	3	6
	Dec. 20-Jan. 10	3	6
Ohio River Zone	Oct. 17-Oct. 24 &	3	6
	Dec. 30-Jan. 20	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada			
North Zone (8)	Oct. 17-Nov. 28 &	2	4
	Dec. 15-Jan. 10	2	4
South Zone	Oct. 17-Oct. 24 &	2	4
	Nov. 20-Jan. 20	2	4
Ohio River Zone	Oct. 17-Oct. 24 &	2	4
	Nov. 20-Jan. 20	2	4
White-fronted	Same as for Canada geese	2	4
Light Geese and Brant	Same as for Canada geese	7	14
Tennessee			
Ducks:			
Reelfoot Zone	Nov. 14-Nov. 15 &	3	6
	Dec. 12-Jan. 8	3	6
State Zone	Dec. 5-Dec. 7 &	3	6
	Dec. 19-Jan. 14	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:		7	14
Canada:			
Northwest Zone (2)	Dec. 5-Feb. 15	2	4
Southwest Zone	Dec. 5-Jan. 31	2	4
Kentucky/Barkley Lakes Zone	Dec. 13-Jan. 31	2	4
Remainder of State (9)	Oct. 3-Oct. 14 &	2	4
	Dec 5-Jan. 31	2	4
White-fronted	Nov. 23-Jan. 31	2	4
Light Geese	Nov. 23-Jan. 31	7	14

	Season Dates	Limits Bag	Limits Possession
Wisconsin			
Ducks:			
North Zone	Oct. 3-Oct. 11 &	3	6
	Oct. 17-Nov. 6	3	6
South Zone	Oct. 3-Oct. 6 &	3	6
	Oct. 14-Nov. 8	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	5	10
Geese:		7	14
Canada (2):			
Horicon Zone	Sept. 26-Dec. 14	Tag System--See State Regulations	
Collins Zone	Sept. 26-Nov. 20 &	Tag System--See State Regulations	
	Nov. 30-Dec. 4	Tag System--See State Regulations	
Exterior Zone:			
Mississippi River Subzone:			
North Duck Zone	Oct. 3-Oct. 11 &	1	2
	Oct. 17-Dec. 14	1	2
South Duck Zone	Oct. 3-Oct. 6 &	1	2
	Oct. 14-Dec. 14	1	2
Brown County Subzone	Sept. 26-Nov. 30	1	2
(special season)	Dec. 1-Dec. 31	2	4
Remainder of Exterior Zone	Sept. 26-Dec. 14	1	2
White-fronted			
Horicon Zone	Sept. 26-Dec. 4	2	4
Collins Zone	Sept. 26-Nov. 20 &	2	4
	Nov. 30-Dec. 4	2	4
Exterior Zone:			
Mississippi River Subzone:			
North Duck Zone	Oct. 3-Oct. 11 &	2	4
	Oct. 17-Dec. 4	2	4
South Duck Zone	Oct. 3-Oct. 6 &	2	4
	Oct. 14-Dec. 4	2	4
Remainder of Exterior Zone	Sept. 26-Dec. 4	2	4
Light Geese			
Horicon Zone	Sept. 26-Dec. 14	7	14
Collins Zone	Sept. 26-Nov. 20 &	7	14
	Nov. 30-Dec. 14	7	14
Exterior Zone:			
Mississippi River Subzone:			
North Duck Zone	Oct. 3-Oct. 11 &	7	14
	Oct. 17-Dec. 14	7	14
South Duck Zone	Oct. 3-Oct. 6 &	7	14
	Oct. 14-Dec. 14	7	14
Remainder of Exterior Zone	Sept. 26-Dec. 14	7	14
Brant	Same as for whitefronts	7	14

(1) Geese taken in Illinois and Missouri and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle may not be transported, shipped or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

(2) Harvests of Canada geese will be limited as follows:

Illinois:
- Southern Illinois Quota Zone - 39,500
- Rend Lake Quota Zone - 11,850
- Remainder of State - 27,650

Indiana:
- Posey County - 6,000
- Remainder of State - 13,000

Kentucky:
- Western Zone:
  - Ballard Reporting Area - 14,560
  - Henderson/Union Reporting Area - 4,260
  - Remainder of Western Zone - 3,580

Michigan:
- Allegan County Goose Management Unit - 5,000
- Muskegon Wastewater Goose Management Unit - 1,000
- Saginaw County Goose Management Unit - 4,000
- Tuscola/Huron Goose Management Unit - 2,000
- Remainder of State - 42,600

Minnesota: Lac qui Parle Zone - 6,000

Missouri: Swan Lake Zone - 10,000

Tennessee:
- Northwest Zone:
  - Reelfoot Subzone - 6,200
  - Remainder of Northwest Zone - 2,700
- Southwest Zone - 500

Wisconsin:
- Horicon Zone - 49,500
- Collins Zone - 1,700
- Exterior Zone - 20,000

When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, the Swan Lake Zone in Missouri, Posey County in Indiana, the Lac qui Parle Zone in Minnesota, the Ballard and Henderson/Union Reporting Areas in Kentucky, the Reelfoot Subzone in Tennessee, and the Allegan County, Muskegon Wastewater, Fish Point, and Saginaw County Goose Management Units in Michigan, will have been filled, the season for taking Canada geese in the respective area will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

(3) In Indiana, in Lagrange and Steuben Counties and on the Jasper-Pulaski and Kankakee Fish and Wildlife Areas, the bag and possession limits for Canada geese shall be 1 and 2, respectively.

(4) In Louisiana, in the Southwest Zone, during the experimental Canada goose season, the daily bag limit is 2 Canada and white-fronted geese in the aggregate, no more than 1 of which may be a Canada goose. The possession limit is twice the daily bag limit. A special permit is required by the State.

(5) In Michigan, the seasons for white-fronted geese, light geese, and brant are concurrent with the seasons for Canada geese, except in the Southern Michigan Goose Management Unit, where the January 9 through February 7 special season is for Canada geese only.

(6) In Minnesota, the daily bag limit is 15 and the possession limit is 30, coots, moorhens, and gallinules in the aggregate.

(7) In Ohio, in the Pymatuning Area, the restrictions of the duck bag limit for Pennsylvania apply.

(8) In Ohio, in the Lake Erie and Northeast SJBP Zones, the Canada goose limits are 1 daily and 2 in possession.

(9) In Tennessee, see State regulations for permit requirements and additional restrictions.

CENTRAL FLYWAY

Definitions

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Geese: Includes all species of geese and brant.

Dark Geese: Includes Canada geese, white-fronted geese, and brant.

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Flywaywide Restrictions

Duck Limits: The daily bag limit may include no more than 2 mallards (no more than 1 of which may be a female), 1 mottled duck, 1 pintail, 1 redhead, and 2 wood ducks. The possession limit is twice the daily bag limit. In the High Plains Mallard Management Unit, the daily bag limit may include 3 drake mallards.

Canvasbacks: All areas of the Flyway are closed to canvasback hunting.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

Point System--Ducks and Mergansers: The daily bag limit is reached when the point value of the last bird taken added to the sum of the point values of the other birds already taken during that day reaches or exceeds 100 points. The possession limit is the maximum number of birds of species and sex which could have legally been taken in 2 days.

The point values assigned to the species and sexes are as follows:

100 points	50 points	35 points
Female mallard	Male mallard (Low Plains)	Male mallard (High Plains)
Mottled duck	Wood duck	All other permitted species of ducks and mergansers
Pintail		
Redhead		
Hooded merganser		

States selecting the point system bag limits on designated species are listed in the table below.

	Season Dates	Limits Bag	Limits Possession
Colorado			
Ducks	Oct. 3-Oct. 11 & Nov. 7-Nov. 29 & Dec. 16-Jan. 3	Point system	
Coots	Same as for ducks	15	30
Dark Geese:			
Northern Front Range Unit	Oct. 3-Oct. 16 & Oct. 31-Jan. 31	3	6
South Park Unit (1)	Oct. 3-Oct. 16 & Oct. 31-Jan. 3	2	4
San Luis Valley Unit (1)	Oct. 31-Jan. 3	2	4
North Park Unit	Oct. 3-Oct. 16	2	4
Arkansas Valley Unit	Nov. 11-Jan. 31	3	6
Remainder of State in Central Flyway	Oct. 31-Jan. 31	3	6
Light Geese:			
Northern Front Range Unit	Oct. 31-Jan. 31	5	10
South Park Unit (1)	Oct. 31-Jan. 3	2	4
San Luis Valley Unit (1)	Oct. 31-Jan. 3	2	4
North Park Unit	Closed		--
Arkansas Valley Unit	Nov. 11-Feb. 14	5	10
Remainder of State in Central Flyway	Oct. 31-Jan. 31	5	10
Kansas			
Ducks (2)		Point system	
High Plains	Oct. 17-Nov. 8 & Nov. 21-Dec. 6 & Dec. 26-Jan. 6		
Low Plains	Oct. 31-Nov. 13 & Nov. 21-Dec. 6 & Dec. 26-Jan. 3		
Coots	Same as for ducks	15	30
Dark Geese (3)		2	4
Canada	Nov. 21-Dec. 18 & Dec. 19-Jan. 24	1 2	2 4
White-fronted	Nov. 21-Jan. 24	1	2
Light Geese:			
Unit 1	Oct. 24-Feb. 7	10	20
Unit 2	Oct. 24-Feb. 7	10	20

	Season Dates	Limits Bag	Limits Possession
Montana			
Ducks:		Point system	
Zone 1	Oct. 3-Nov. 10 & Dec. 12-Dec. 23		
Zone 2	Oct. 3-Oct. 11 & Nov. 12-Dec. 23		
Coots	Same as for ducks	15	30
Geese			
Sheridan County:			
Dark Geese	Oct. 3-Jan. 17	2	4
Light Geese	Oct. 3-Jan. 17	5	10
Remainder of State in Central Flyway:			
Dark Geese	Oct. 3-Jan. 17	4	8
Light Geese	Oct. 3-Jan. 17	5	10
Nebraska			
Ducks		Point system	
High Plains	Oct. 17-Nov. 24 & Dec. 23-Jan. 3		
Low Plains			
Zones 1 and 2	Oct. 31-Nov. 1 & Nov. 7-Dec. 13		
Zones 3 and 4	Oct. 3-Oct. 4 & Oct. 24-Nov. 29		
Coots	Same as for ducks	15	30
Dark Geese		2	4
North Unit			
Canada	Nov. 14-Jan. 31	2	4
White-fronted	Nov. 14-Jan. 31	1	2
East Unit			
Canada	Oct. 10-Nov. 13 & Nov. 14-Dec. 13 & Dec. 14-Dec. 27	1 2 1	2 4 2
White-fronted	Oct. 10-Dec. 27	1	2
West Unit			
Canada	Oct. 17-Nov. 13 & Nov. 14-Dec. 13 & Dec. 14-Jan. 3	1 2 1	2 4 2
White-fronted	Oct. 17-Jan. 3	1	2
Light Geese	Oct. 3-Jan. 17	10	20

	Season Dates	Limits Bag	Limits Possession
New Mexico			
Ducks:		Point system	
Zone 1	Oct. 17-Nov. 6 & Dec. 19-Jan. 17		
Zone 2	Nov. 28-Jan. 17		
Coots	Same as for ducks	15	30
Dark Geese (4)	Oct. 17-Jan. 31	3	6
Light Geese:			
Middle Rio Grande Valley Unit	Nov. 14-Feb. 28	10	20
Remainder of State	Nov. 14-Feb. 28	5	10
North Dakota			
Ducks:			
Statewide	Oct. 3-Nov. 8 &	3	6
	Nov. 14-Nov. 15	3	6
High Plains (male mallards only)	Dec. 16-Dec. 27	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Dark Geese:		2	4
Statewide:			
Canada	Oct. 3-Oct. 16 &	1	2
	Oct. 17-Nov. 15	2	4
White-fronted	Oct. 3-Nov. 15	2	4
Missouri River Zone	Nov. 16-Dec. 13	1	2
Light Geese	Oct. 3-Dec. 13	10	20
Oklahoma			
Ducks:		Point System	
High Plains	Oct. 17-Nov. 24 & Dec. 12-Dec. 23		
Low Plains:			
Zone 1	Oct. 24-Nov. 15 & Dec. 12-Dec. 27		
Zone 2	Nov. 14-Nov. 29 & Dec. 12-Jan. 3		
Coots	Same as for ducks	15	30
Dark Geese:		2	4
Canada	Nov. 14-Jan. 31	2	4
White-fronted	Nov. 14-Jan. 31	1	2
Light Geese	Oct. 31-Feb. 14	10	20

	Season Dates	Limits Bag	Limits Possession
South Dakota			
Ducks and Mergansers:			
High Plains	Oct. 3-Nov. 10 &	3	6
	Dec. 12-Dec. 23	3	6
Low Plains:			
North Zone	Oct. 3-Nov. 10	3	6
Middle Zone	Oct. 10-Nov. 17	3	6
South Zone	Oct. 24-Dec. 1	3	6
Coots	Same as for ducks	15	30
Dark Geese:		2	4
Missouri River Unit:			
Canada	Oct. 3-Nov. 6 &	1	2
	Nov. 7-Dec. 20	2	4
White-fronted	Oct. 3-Dec. 20	1	2
Remainder of State:			
Canada	Oct. 3-Dec. 20	1	2
White-fronted	Oct. 3-Dec. 20	1	2
Light Geese	Oct. 3-Dec. 20	7	14
Texas			
Ducks:			
High Plains	Nov. 21-Jan. 10	3	6
Low Plains	Nov. 14-Nov. 29 &	3	6
	Dec. 26-Jan. 17	3	6
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
Geese:			
East Tier:			
Dark Geese:			
Canada	Oct. 31-Jan. 10 &	1	2
	Jan. 11-Jan. 17	2	4
White-fronted	Oct. 31-Jan. 10	1	2
Light Geese	Oct. 31-Feb. 14	10	20
West Tier:			
Dark Geese	Oct. 17-Jan. 31	3	6
Light Geese	Oct. 17-Jan. 31	5	10
Wyoming			
Ducks and Mergansers	Oct. 3-Oct. 19 &	3	6
	Nov. 14-Nov. 30 &	3	6
	Dec. 12-Dec. 28	3	6
Coots	Same as for ducks	15	30
Dark Geese:			
Area 1	Oct. 3-Nov. 30	2	4
Area 2	Oct. 24-Nov. 30 &	3	6
	Dec. 1-Jan. 3	2	4
Area 3	Oct. 3-Dec. 31	2	4
Area 4	Nov. 14-Nov. 30 &	2	4
	Dec. 1-Dec. 31 &	3	6
	Jan. 1-Jan. 17	3	6
Area 5	Jan. 4-Jan. 10	3	6

	Season Dates	Limits Bag	Possession
Wyoming (cont.)			
Light Geese	Oct. 3-Dec. 31	5	10

(1) In Colorado, in the South Park and San Luis Valley Units, the bag limit is 2 dark and light geese in the aggregate. The possession limit is twice the daily bag limit.
(2) In Kansas, in the High Plains Mallard Management Unit, the daily bag limit may include no more than 2 mallards and the possession limit may include no more than 4 mallards.
(3) In Kansas, exceptions to the dark goose season are as follows: Marais des Cygne Valley Unit, South Flint Hills Unit, Central Flint Hills Unit, and Southeast Unit - Season dates are December 19, 1992 through January 10, 1993. Dark goose permits issued by the Kansas Department of Wildlife and Parks are required. The permit must be signed, dated, and affixed to the leg of the goose immediately following the kill and before moving the carcass from the site of the kill. The permit must remain attached to the goose until prepared for consumption. A permit may not be transferred to another person nor may a permit be carried by someone in the absence of the individual to whom the permit has been issued. In the Marais des Cygne Valley Unit, unlimited permits are available, with a maximum of two permits per individual and one goose per permit. Shooting hours in this unit shall be one-half hour before sunrise to 1:00 p.m. There are 400 permits available in the South Flint Hills Unit, 250 permits available in the Central Flint Hills Unit, and 200 permits available in the Southeast Unit with a maximum of one permit per individual per Unit and one goose per permit.
(4) In New Mexico, the season for dark geese is closed in Sandoval, Sierra, Valencia, Sorocco, and Bernalillo Counties.

PACIFIC FLYWAY

Definitions

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Light Geese: Includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Dark Geese: Includes Canada geese, white-fronted geese, emperor geese, and brant.

Flywaywide Restrictions

Duck and Merganser Limits: Daily bag limits for ducks (including mergansers) may include no more than 3 mallards but only 1 female mallard, 1 pintail, and either 2 redheads or 2 canvasbacks, or 1 of each. The possession limit is twice the daily bag limit.

Goose Limits:

Aleutian Canada Geese: The season is closed throughout the Flyway.

Cackling Canada Geese: The season is closed in California, Oregon, and Washington.

Light Geese and Dark Geese: Unless otherwise noted, seasons and limits for light geese are either singly or in the aggregate; and seasons and limits for dark geese are either singly or in the aggregate, except in Washington, Oregon, and California where there are separate seasons and limits on brant.

Coots and Common Moorhen Limits: Daily bag and possession limits are 25 in the aggregate for the two species.

	Season Dates	Limits Bag	Possession
Arizona			
Ducks (1):			
North Zone	Oct. 9-Dec. 6	4	8
South Zone	Oct. 9-Oct. 18 &	4	8
	Nov. 16-Jan. 3	4	8
Coots and moorhens	Same as for ducks	25	25
Geese:		5	5
White-fronted	Closed	--	--
Canada: (2)			
GMU 22 & 23	Nov. 15-Jan. 17	2	2
Remainder of State	Oct. 17-Jan. 17	2	2
Light: (2)			
GMU 22 & 23	Nov. 15-Jan. 17	3	3
Remainder of State	Oct. 17-Jan. 17	3	3
California			
Ducks:			
Northeastern Zone	Oct. 10-Dec. 7	4	8
Colorado River Zone	Oct. 9-Oct. 18 &	4	8
	Nov. 16-Jan. 3	4	8
Southern Zone	Oct. 24-Nov. 14 &	4	8
	Dec. 5-Jan. 10	4	8
Southern San Joaquin Zone	Nov. 14-Jan. 10	4	8
Balance-of-State Zone	Oct. 24-Nov. 14 &	4	8
	Dec. 5-Jan. 10	4	8
Coots and moorhens			
Northeastern Zone	Same as for ducks	25	25
Colorado River Zone	Same as for ducks	25	25
Southern Zone	Oct. 24-Jan. 10	25	25
Southern San Joaquin Zone	Same as for ducks	25	25
Balance-of-State Zone	Oct. 24-Jan. 10	25	25
Geese:			
Northeastern Zone:		3	6
Canada Geese	Oct. 10-Jan. 10	2	4
White-fronted Geese	Oct. 10-Nov. 1	2	4
Light Geese	Oct. 10-Jan. 10	3	6

	Season Dates	Limits Bag	Limits Possession
California (cont.)			
Colorado River Zone:		5	5
Canada Geese	Oct. 17-Jan. 17	2	2
White-fronted Geese	Closed	--	--
Light Geese	Oct. 17-Jan. 17	3	3
Southern Zone:		6	6
Dark Geese		3	3
Canada	Oct. 17-Jan. 10	2	2
White-fronted Geese	Oct. 10-Jan. 10	3	3
Light Geese	Oct. 10-Jan. 10	3	3
Balance-of-State Zone:		3	3
Dark Geese (3)		1	1
Canada:			
Del Norte & Humboldt	Closed	--	--
Sacramento Valley	Closed		--
San Joaquin Valley	Oct. 24-Nov. 22	1	1
Remainder of Zone	Oct. 24-Jan. 10	1	1
White-fronted:			
Sacramento Valley	Oct. 24-Nov. 30	1	1
Remainder of Zone	Oct. 24-Dec. 27	1	1
Light Geese	Oct. 24-Jan. 10	3	3
Brant	Nov. 1-Nov 30	2	4
Colorado			
Ducks	Oct. 3-Oct. 15 &	4	8
	Nov. 7-Nov. 29 &	4	8
	Dec. 12-Jan. 3	4	8
Coots	Same as for ducks	25	25
Geese.			
LaPlata County	Closed	--	--
Delta/Montrose Area	Nov. 7-Jan. 10	2	4
Gunnison/Saguache Area (4)	Oct. 24-Jan. 10	1 per season	
Dolores/Montezuma Area (4)	Nov. 7-Jan. 10	1 per season	
Remainder of State	Oct. 3-Oct. 16 &	2	4
	Oct. 24-Jan. 10	2	4
Idaho			
Ducks:			
Zone 1	Oct. 24-Dec. 21	4	8
Zone 2	Oct. 10-Nov. 29 &	4	8
	Dec. 26-Jan. 2	4	8
Zone 3	Oct. 10-Oct. 17 &	4	8
	Nov. 14-Jan. 3	4	8
Coots	Same as for ducks	25	25

	Season Dates	Limits Bag	Limits Possession
Idaho (cont.)			
Geese:			
Zones 1 and 4	Oct. 3-Jan. 3	3	6
Zone 2 (5)		3	6
Dark	Oct. 3-Jan. 3	2	4
Light	Oct. 3-Jan. 3	3	6
Zone 3			
Dark	Oct. 3-Oct. 16 &	1	2
	Oct. 17-Jan. 3	2	4
Light	Oct. 3-Jan. 3	3	6
Zone 5	Oct. 10-Jan. 10	3	6
Montana			
Ducks	Oct. 3-Oct. 18 &	4	8
	Nov. 3-Nov. 29 &	4	8
	Dec. 19-Jan. 3	4	8
Coots	Same as for ducks	25	25
Geese (6):			
East of the Divide			
Dark	Oct. 3-Jan. 3	6	6
Light	Oct. 3-Jan. 3	3	6
West of the Divide		3	6
Dark	Oct. 3-Jan. 3	5	6
Light	Oct. 3-Jan. 3	2	4
		3	6
Nevada			
Ducks:			
Clark County	Nov. 21-Jan. 17	4	8
Remainder of State	Nov. 14-Dec. 13	4	8
Coots and moorhens	Same as for ducks	25	25
Dark Geese:			
Clark County	Nov. 21-Jan. 17	2	4
Remainder of State	Oct. 17-Jan. 17	3	6
Light Geese:			
Clark County	Nov. 21-Jan. 17	3	3
Remainder of State (7)	Oct. 17-Jan. 17	3	3
New Mexico			
Ducks (8)	Oct. 3-Oct. 18 &	4	8
	Nov. 29-Jan. 10	4	8
Coots	Same as for ducks	15	30
Moorhens	Same as for ducks	2	4
Geese:			
North Zone			
Dark	Jan. 2-Jan. 17	2	4
Light	Jan. 2-Jan. 17	1	2
South Zone			
Dark	Oct. 17-Jan. 10	2	4
Light	Oct. 17-Jan. 10	1	2

	Season Dates	Limits Bag	Limits Possession
Oregon			
Ducks:			
Zone 1			
Columbia Basin Unit	Oct. 17-Oct. 24 &	4	8
	Nov. 14-Jan. 10	4	8
Remainder of Zone 1	Oct. 17-Oct. 24 &	4	8
	Nov. 14-Jan. 3	4	8
Zone 2	Oct. 10-Nov. 29 &	4	8
	Dec. 19-Dec. 26	4	8
Coots	Same as for ducks	25	25
Geese			
Western Zone (9)	Oct. 17-Jan. 17	3	6
Eastern Zone:			
Columbia Basin			
Dark Geese	Oct. 17-Jan. 17	3	6
Light Geese	Oct. 17-Jan. 17	3	6
Lake, Klamath, and Harney Counties (10			
Dark Geese	Oct. 10-Jan. 17	4	8
Light Geese	Oct. 10-Jan. 17	3	6
Malheur County	Oct. 3-Nov. 15 &	3	6
	Nov 16-Jan. 3	2	4
Remainder of Eastern Zone:			
Dark Geese	Oct. 17-Jan. 17	3	6
Light Geese	Oct. 17-Jan. 17	3	6
Brant (4)	Jan. 2-Jan. 17	2	4
Utah			
Ducks			
Zone 1	Oct. 3-Nov. 30	4	8
Zone 2	Nov 6-Jan. 3	4	8
Coots	Same as for ducks	25	25
Goose		5	6
Light	Oct 3-Jan. 3	3	6
Dark			
Washington County (11)	Oct. 17-Jan. 17	2	4
Remainder of State	Oct. 3-Jan. 3	2	4
Washington			
Ducks			
East Zone	Oct 17-Oct. 25 &	4	8
	Nov. 15-Jan. 10	4	8
West Zone	Oct. 17-Oct. 25 &	4	8
	Nov. 16-Jan. 3	4	8
Coots	Same as for ducks	25	25
Washington (cont.)			
Geese:			
East Zone (12):			
Columbia Basin	Oct. 17-Jan. 17	3	6
Remainder of East Zone	Oct. 17-Jan. 17	3	6
West Zone:			
Lower Columbia River Area (13)	Nov. 28-Jan. 17	3	6
Skagit Area	Oct. 17-Jan. 3	3	6
Remainder of West Zone	Oct. 17-Jan. 17	3	6
Brant (14)	Dec. 5-Dec. 20	2	4
Wyoming			
Ducks	Oct. 3-Nov. 29	4	8
Coots	Same as for ducks	25	25
Dark Geese	Oct. 3-Dec. 24	3	6

(1) In Arizona, the daily limit may include no more than either 1 female mallard or 1 Mexican-like duck, but not both; and not more than 2 female mallards, 2 Mexican-like ducks, or 1 of each, may be in possession.
(2) In Arizona, in Yuma County, La Paz County, Game Management Units (Units) 13B, 15, and that portion of Unit 16 lying within Mohave County, the bag and possession limit is 2 and 4 for Canada geese and 3 and 6 for light geese, respectively.
(3) In California, the dark goose limits may be expanded to 2 per day and 4 in possession provided they are Canada geese.
(4) State permit is required.
(5) In Idaho, the season on light geese is closed in Fremont and Teton Counties.
(6) In Montana, check State regulations for special seasons/exceptions in Freezeout Lake WMA; Canyon Ferry; Flathead; Deer Lodge County; and Missoula County.
(7) In Nevada, there is no open season on light geese in Ruby Valley within Elko and White Pine Counties, White River Valley of Nye County, and Pahranagat Valley of Lincoln County.
(8) In New Mexico, the bag limit for ducks may include no more than 1 redhead and 1 canvasback.
(9) In Oregon, the Northwest Area is closed to all goose hunting, except for the special permit goose season on designated portions of the special permit goose area from November 14 to January 17. See State regulations for specific boundary descriptions, times, days, and other conditions of the special permit season.
(10 In Oregon, in Klamath, Lake, and Harney Counties, the white-fronted goose season does not open until October 24 and the dark goose limits may contain not more than 2 white-fronted geese per day. Possession limits are separate for dark and light geese.
(11) In Utah, the Washington County season is for Canada geese only.
(12) In Washington, in State Goose Area 1, hunting is only on Saturdays, Sundays, Wednesdays, and certain holidays. In State Goose Area 2, hunting is only on Saturdays, Sundays, Tuesdays, Wednesdays, and certain holidays. See State regulations for details.
(13) In Washington, bag limits are 2 geese per day and 4 in possession. See State regulations for specific conditions of permit hunts and closures for Canada geese.
(14) In Washington, brant may be hunted in Skagit, Pacific, and Whatcom Counties only; and only on December 5, 6, 8, 9, 10, 12, 13, 15, 17, 19, and 20.

4. Section 20.106 is amended as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 21, 1992, Federal Register (57 FR 38202).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Note: The following seasons are in addition to the seasons published previously in the August 27, 1992, Federal Register (57 FR 39072).

	Season Dates	Limits Bag	Limits Possession
CENTRAL FLYWAY			
	* * * * *		
Oklahoma (1)	Oct. 17-Jan. 17	3	6
	* * * * *		
Texas (1)			
Zone A	Nov. 14-Feb. 14	3	6
Zone B	Dec. 5-Feb. 14	3	6
Zone C	Jan. 2-Feb. 7	3	6
	* * * * *		

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

* * * * *

5. Section 20.107 is revised to read as follows:

§20.107 Seasons, limits, and shooting hours for tundra (whistling) swans.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the September 22, 1992, Federal Register (57 FR 43856).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

NOTE: Successful permittees must immediately validate their harvest by that method required in State regulations.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
North Carolina	Nov. 2-Jan. 30	State Permit Only	
Virginia	Nov. 3-Jan. 31	State Permit Only	
CENTRAL FLYWAY			
Montana	Oct. 3-Jan. 3	State Permit Only	
North Dakota	Oct. 3-Nov. 29	State Permit Only	
PACIFIC FLYWAY			
Montana	Oct. 17-Jan. 3	State Permit Only	
Nevada	Oct. 17-Jan. 17	State Permit Only	
Utah	Oct. 3-Jan. 3	State Permit Only	

8. Section 20.109 is revised to read as follows.

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise restricted by State regulations. Area descriptions were published in the Federal Register on August 21, 1992, (57 FR 38202) and September 22, 1992, (57 FR 43856).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Daily bag limit	3 migratory game birds, singly or in the aggregate.
Possession limit	6 migratory game birds, singly or in the aggregate

These limits apply to falconry during both regular hunting seasons and extended falconry seasons - unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Florida	
Mourning and white-winged doves	Oct. 26-Nov. 20 & Dec. 7-Dec. 11 & Jan. 11-Jan. 17
Rails and common moorhens	Oct. 19-Nov. 24
Woodcock	Nov. 24-Dec. 11 & Jan. 26-Mar. 10
Ducks and coots	Nov. 1-Nov. 19 & Dec. 1-Dec. 9 & Jan. 16-Feb. 28
Georgia	
Sea Ducks	Nov. 16-Nov 25 & Jan. 11-Feb. 28
Ducks, mergansers, gallinules and coots	Nov. 16-Nov. 25 & Nov. 30-Dec. 15 & Jan. 11-Feb. 28
Maine	
Ducks, mergansers, and coots North Zone	Oct. 24-Nov. 10 & Nov. 23-Jan. 20
South Zone	Oct. 19-Nov. 25 & Dec. 14-Jan. 21
Maryland	
Mourning doves	Oct. 25-Nov. 17 & Dec. 8-Dec. 20
Rails	Nov. 10-Dec. 16
Woodcock	Oct. 5-Oct. 13 & Nov. 22-Dec. 6 & Dec. 13-Jan. 19
Ducks	Nov. 28-Dec. 14 & Jan. 10-Mar. 10
Canada Geese	Jan. 23-Mar. 10
Brant	Jan. 21-Mar. 10
Massachusetts	
Ducks and coots: Berkshire Zone	Oct. 6-Oct. 8 & Nov. 8-Jan. 20
Central Zone	Oct. 6-Oct. 12 & Oct. 25-Nov. 10 & Nov. 29-Jan. 20
Coastal Zone	Oct. 6-Oct. 18 & Oct. 29-Dec. 13 & Jan. 3-Jan.20

	Extended Falconry Dates
New Hampshire	
Ducks, mergansers, and coots	
Inland Zone	Oct. 26-Nov. 24 & Dec. 6-Jan. 21
Coastal Zone	Oct. 12-Nov. 24 & Dec. 21-Jan. 21
New Jersey	
Woodcock	
North Zone	Oct. 1-Oct. 9 & Nov. 14-Jan 15
South Zone	Oct. 1-Nov. 6 & Nov. 29-Dec. 11 & Dec. 25-Jan. 15
Ducks	
North Zone	Oct. 1-Oct. 16 & Oct. 26-Nov. 22 & Dec. 15-Jan. 15
South Zone	Oct. 1-Oct. 23 & Nov. 1-Nov. 25 & Dec. 18-Jan. 15
Coastal Zone	Oct. 1-Oct. 30 & Nov. 8-Dec. 11 & Jan. 3-Jan. 15
New York	
Ducks and coots	
Long Island Zone	Nov. 1-Nov. 19
Northeastern Zone	Oct. 1-Oct. 2 & Oct. 18-Oct. 30
Southeastern Zone	Oct. 1-Oct. 9 & Oct. 19-Oct. 31
Western Zone	Oct. 1-Oct. 7 & Oct. 16-Oct. 31

	Extended Falconry Dates
New York (cont.)	
Geese	
Long Island Zone	Nov. 1-Nov. 19
Northeastern Zone (1)	Oct. 1-Oct. 2
Southeastern Zone (2)	Oct. 1-Oct. 20
Western Zone (3)	Oct. 5-Oct. 31
Pennsylvania	
Mourning doves	Oct. 11-Oct. 30 & Nov. 29-Dec. 16
Ducks	
North Zone	Oct. 25-Nov. 8 & Nov. 24-Jan. 24
South Zone	Nov. 1-Nov. 22 & Dec. 17-Feb. 9
Northwest Zone	Oct. 18-Nov. 8 & Dec. 3-Jan. 26
Lake Erie Zone	Nov. 29-Dec. 16 & Dec. 27-Feb. 23
Canada Geese	
North Zone	Dec. 19-Jan. 25
South Zone	Nov 3-Nov. 10
Erie, Mercer, and Butler	Oct. 25-Nov. 8 & Jan. 5-Jan. 16
Crawford	Dec. 20-Jan. 16
Brant	Oct. 12-Nov. 22 & Jan. 12- Jan. 26
South Carolina	
Ducks, mergansers, and coots	Oct. 6-Nov. 24 & Nov 29-Dec. 25

	Extended Falconry Dates
Virginia	
Doves	Dec. 23-Jan. 28
Rails	Dec. 14-Jan. 19
Woodcock	Dec. 14-Dec. 15 & Jan. 3-Mar. 3
Ducks, mergansers, coots, moorhens, and gallinules	Nov. 13-Nov. 24 & Dec. 4-Dec. 25 & Jan. 17-Feb. 28
Canada Geese	Nov. 13-Nov. 15 & Dec. 9-Dec. 13 & Jan. 21-Feb. 28
Brant	Nov. 13-Nov. 29 & Dec. 27 only & Jan. 21-Feb. 28
MISSISSIPPI FLYWAY	
Arkansas	
Mourning doves	Oct. 19-Dec. 4
Ducks, mergansers, and coots	Nov. 30-Dec. 11 & Jan. 4-Feb. 28
Illinois	
Mourning doves	Oct. 31-Dec. 16
Rails	Nov. 10-Dec. 16
Woodcock	Sept. 1-Sept. 30 & Dec. 5-Dec. 16
Ducks, mergansers, and coots	
North Zone	Oct. 15-Oct. 16 & Nov. 16-Dec. 13 & Feb. 1-Mar. 10
Central Zone	Oct. 15-Oct. 30 & Nov. 30-Dec. 13 & Feb. 1-Mar. 10

	Extended Falconry Dates
Illinois (cont.)	
South Zone	Oct. 15-Nov. 13 & Feb. 1-Mar. 10
Geese	
North Zone	
Northeastern Zone	Oct. 12-Oct. 16 & Jan. 4-Jan. 17
Remainder of North Zone	Oct. 3-Oct. 16 & Jan. 4-Jan. 17
Central Zone	
Northeastern Zone	Oct. 12-Oct. 30
Remainder of Central Zone	Oct. 3-Oct. 30
South Zone	Oct. 17-Nov. 13
Indiana	
Mourning doves	Oct. 17-Nov. 5 & Jan. 1-Jan. 27
Woodcock	Sept. 1-Sept. 25
Ducks, mergansers, and coots	
North Zone	Sept. 26-Oct. 16 & Oct. 20-Nov. 12 & Dec. 10-Jan. 1
South Zone	Oct. 10-Oct. 29 & Nov. 2-Dec. 4 & Jan. 1-Jan. 8
Ohio River Zone	Oct. 10-Nov. 25 & Nov. 30-Dec. 15 & Jan. 11-Jan. 15

	Extended Falconry Dates
Iowa	
Rails	Sept. 1-Sept. 4 & Nov. 14-Dec. 16
Woodcock	Sept. 1-Sept. 11 & Nov. 16-Dec. 16
Ducks and mergansers	Sept. 1-Oct. 2 & Oct. 7-Oct. 23 & Nov. 30-Dec. 10
Geese	
Southwest Zone	Sept. 13-Oct. 9
Rest of State	Sept. 6-Oct. 2
Kentucky	
Ducks, mergansers, and coots	
West Zone	Nov. 3-Nov. 25 & Nov. 30-Dec. 15 & Jan. 11-Jan. 31
East Zone	Nov. 3-Nov. 25 & Nov. 30-Dec. 22 & Jan. 18-Jan. 31
Geese	
Western Goose Zone	
Fulton County	Nov. 3-Nov. 25
Remainder of Zone	Nov. 3-Nov. 25
Remainder of State	Nov. 3-Dec. 12

	Extended Falconry Dates
Michigan	
Rails, snipe, and woodcock	Sept. 7-Sept. 14 & Nov. 15-Dec. 22
Ducks, mergansers, coots, and moorhens	
North Zone	Sept. 7-Oct. 2 & Nov. 2-Dec. 22
Middle Zone	Sept. 7-Oct. 9 & Nov. 9-Dec. 22
South Zone	Sept. 7-Oct. 16 & Nov. 13-Nov. 26 & Nov. 30-Dec. 22
Minnesota	
Rails, snipe, and woodcock	Nov. 5-Dec. 16
Ducks, mergansers, coots, and moorhens	Sept. 1-Oct. 2 & Oct. 12-Oct. 14 & Nov. 2-Nov. 5 & Nov 9-Dec. 16
Canada and White-fronted geese	
West-Central Zone	Nov. 12-Dec. 16
Southeast Zone (4)	Dec. 12-Dec. 16
Remainder of State	Nov 22-Dec. 16
Mississippi	
Mourning doves	Nov. 11-Nov. 29 & Jan. 30-Mar 1
Ducks, mergansers, and coots	Nov. 28-Dec. 14 & Jan. 23-Mar 10
Missouri	
Mourning doves	Oct. 31-Dec. 16
Ducks, mergansers, and coots	
North Zone	Sept. 12-Sept. 20 & Oct. 3-Oct. 30 & Nov. 30-Jan. 8
Middle Zone	Sept. 12-Sept. 20 & Oct. 3-Nov. 6 & Dec. 7-Jan. 8

	Extended Falconry Dates
Missouri (cont.)	
South Zone	Sept. 12-Sept. 20 & Oct. 3-Nov. 27 & Dec. 28-Jan. 8
Ohio	
Ducks, mergansers, and coots	
North Zone	Nov. 29-Dec. 7 & Feb. 8-Feb. 28
South Zone	Jan. 21-Feb. 26
Ohio River Zone	Jan. 21-Feb. 26
Tennessee	
Ducks, mergansers, and coots	
Reelfoot Zone	Nov. 6-Nov. 13 & Nov. 16-Dec. 11 & Jan. 9-Feb. 15
State Zone	Nov. 6-Dec. 4 & Dec. 8-Dec. 18 & Jan. 15-Feb. 15
Wisconsin	
Rails, snipe, moorhens, and gallinules	
North Zone	Sept. 1-Oct. 2 & Oct. 12-Oct. 16 & Nov. 7-Dec. 16
South Zone	Sept. 1-Oct. 2 & Oct. 7-Oct. 13 & Nov. 9-Dec. 16
Woodcock	Sept. 1-Sept. 11 & Nov. 16-Dec. 16
Ducks, mergansers, and coots	
North Zone	Sept. 1-Oct. 2 & Oct. 12-Oct. 16 & Jan. 30-Mar. 10
South Zone	Sept. 1-Oct. 2 & Oct. 7-Oct. 13 & Feb. 1-Mar. 10

	Extended Falconry Dates
CENTRAL FLYWAY	
Colorado	
Ducks, mergansers, and coots	Sept. 1-Sept. 4 & Sept. 14-Oct. 2 & Oct. 12-Nov. 4
Montana (5)	
Ducks, mergansers, and coots	
Zone 1	Sept. 12-Oct. 2 & Nov. 11-Dec. 11 & Dec. 24-Dec. 27
Zone 2	Sept. 12-Oct. 2 & Oct. 12-Nov. 11 & Dec. 24-Dec. 27
Nebraska	
Ducks, mergansers, and coots	
High Plains	Sept. 28-Oct. 16 & Nov. 25-Dec. 22 & Jan. 4-Jan. 12
Low Plains	
Zones 1 and 2	Sept. 28-Oct. 30 & Nov. 2-Nov. 6 & Dec. 14-Jan. 12
Zones 3 and 4	Sept. 28-Oct. 2 & Oct. 5-Oct. 23 & Nov. 30-Jan. 12

	Extended Falconry Dates
New Mexico	
Doves	Oct. 1-Nov. 4 & Nov. 29-Nov. 30
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Sandhill cranes	
Regular Season Area	Jan. 18-Jan. 31
Ducks, coots, moorhens, and snipe:	
Zone 1	Oct. 12-Oct. 16 & Nov. 7-Dec. 18
Zone 2	Oct. 26-Nov. 27 Jan. 18-Jan. 31
North Dakota	
Ducks, mergansers, coots, and snipe	Sept. 1-Oct. 2
Oklahoma	
Ducks, mergansers, and coots	
High Plains	Nov. 25-Dec. 11 & Dec. 24-Jan. 22
Low Plains	
Zone 1	Oct. 17-Oct. 23 & Nov. 16-Dec. 11 & Dec. 28-Jan. 22
Zone 2	Oct. 17-Nov. 13 & Nov. 30-Dec. 11 & Jan. 4-Jan. 22

	Extended Falconry Dates
South Dakota	
Ducks, mergansers, and coots	
High Plains	Sept. 4-Oct. 2 & Nov. 11-Dec. 7
Low Plains	
North Zone	Sept. 4-Oct. 2 & Nov. 11-Dec. 19
Middle Zone	Sept. 4-Oct. 9 & Nov. 18-Dec. 19
South Zone	Sept. 4-Oct. 23 & Dec. 2-Dec. 19
Texas	
Mourning and white-winged doves	Nov. 14-Dec. 20
Rails and gallinules	Nov. 14-Dec. 20
Ducks, mergansers, and coots	
High Plains	Jan. 11-Feb. 26
Low Plains	Nov. 30-Dec. 25 & Jan. 18-Feb. 19
Woodcock	Feb. 1-Feb. 26
Wyoming	
Rails	Sept. 1-Sept. 12
Ducks, mergansers, and coots	Sept. 1-Oct. 2 & Oct. 22-Nov. [illegible]

	Extended Falconry Dates
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 11-Oct. 27
Ducks and mergansers	
North Zone	Sept. 1-Oct. 8
South Zone	Jan. 4-Feb. 20
Snipe	Jan. 18-Feb. 6
California	
Ducks and mergansers	
Northeastern Zone	Dec. 8-Jan. 24
Colorado River Zone	Jan. 4-Feb. 20
Southern Zone	Nov. 15-Dec. 4 & Jan. 11-Feb. 7
Balance-of-State Zone	Nov. 15-Dec. 4 & Jan. 11-Feb. 7
Southern San Joaquin Zone	Oct. 24-Nov. 13 & Jan. 11-Feb. 7
Coots	
Northeastern Zone	Dec. 8-Jan. 24
Colorado River Zone	Jan. 4-Feb. 20
Southern Zone	Jan. 11-Feb. 7
Balance-of-State Zone	Jan. 11-Feb. 7
Southern San Joaquin Zone	Jan. 11-Feb. 27
Canada Geese	
Northeastern Zone	Jan. 11-Jan. 24
Southern Zone	Jan. 11-Jan. 31
Balance-of-State Zone (6)	Jan. 11-Feb. 7

	Extended Falconry Dates
California (cont.)	
White-fronted Geese	
Northeastern Zone	Nov. 2-Jan. 24
Southern Zone	Jan. 11-Jan. 24
Balance-of-State Zone (6)	
Sacramento Valley	Dec. 1-Feb. 7
Remainder of Zone	Dec. 28-Feb. 7
Brant	
Northeastern Zone	Oct. 10-Oct. 31 & Dec. 1-Jan. 24
Southern Zone	Oct. 24-Oct. 31 & Dec. 1-Feb. 7
Balance-of-State Zone	Oct. 24-Oct. 31 & Dec. 1-Feb. 7
Light Geese	
Northeastern Zone	Jan. 11-Jan. 24
Southern Zone	Jan. 11-Jan. 24
Balance-of-State Zone	Jan. 11-Feb. 7
Colorado	
Ducks, mergansers, and coots	Sept. 19-Oct. 2 & Oct. 16-Nov. 6 & Nov. 30-Dec. 11
Idaho	
Mourning doves	Oct. 1-Nov. 30 & Feb. 23-Mar. 10
Ducks, mergansers, and coots	Sept. 1-Oct. 2 & Feb. 23-Mar. 10
Geese	Sept. 1-Sept. 14

	Extended Falconry Dates
Montana (5)	
Ducks and coots	Oct. 19-Nov. 2 & Nov. 30-Dec. 18 & Feb. 25-Mar. 10
Geese	Sept. 26-Oct. 2 & Jan. 4-Jan. 10
Nevada (7)	
Ducks, mergansers, coots, moorhens, and snipe	Jan. 12-Feb. 28
New Mexico	
Doves	Oct. 1-Nov. 4 & Nov. 29-Nov. 30
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Ducks, coots, moorhens, and snipe	Jan. 11-Feb. 27
Geese	
North Zone	Oct. 17-Jan. 1 & Jan. 18-Jan. 31
South Zone	Jan. 11-Jan. 31
Oregon	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons (8)	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Ducks, mergansers, and coots	
Columbia Basin	Oct. 1-Oct. 16 & Jan. 11-Feb. 4
Remainder	
Zone 1	Oct. 1-Oct. 16 & Jan. 4-Feb. 4
Zone 2	Sept. 26-Oct. 9 & Dec. 27-Jan. 15 &
Snipe	Sept. 26-Oct. 9

[FR Doc. 92-23503 Filed 9-25-92; 8:45 am]

BILLING CODE 4310-55-C

	Extended Falconry Dates
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Ducks, mergansers, and coots	
Zone 1	Dec. 1-Jan. 17
Zone 2	Jan. 4-Feb. 20
Light Geese	Jan. 4-Jan. 17
Dark Geese	
Washington County	Oct. 3-Oct. 16
Remainder	Jan. 4-Jan. 17
Washington	
Mourning doves	Sept. 1-Oct. 16 & Dec. 1-Dec. 31
Ducks, mergansers, coots, and snipe	
West Zone	Oct. 26-Oct. 31 & Nov. 8-Nov. 14 & Jan. 4-Feb. 7
East Zone	Jan. 29-Mar. 10
Geese	Jan. 18-Jan. 31
Wyoming	
Rails and snipe	Sept. 1-Sept. 12
Ducks, mergansers, and coots	Sept. 1-Oct. 2 &

(1) In New York, in the Northeastern Zone, there is no extended falconry season for light geese.
(2) In New York, in the Southeastern Zone, the extended falconry season for light geese and brant is October 3 through October 9, 1992.
(3) In New York, in the Western Zone, the extended falconry season for light geese and brant is October 6 through October 7, 1992.
(4) In Minnesota, in the Twin Cities Metro Zone and Olmsted County, the extended falconry season for Canada geese is December 12 through December 14, 1992.
(5) In Montana, the bag limit is 2 and the possession limit is 6.
(6) In California, the falconry season for Canada geese is closed in Del Norte and Humbolt Area, the Sacramento Valley Area, and in the San Joaquin Valley Area.
(7) In Nevada, the bag limit is 2 and the possession limit is 4.
(8) In Oregon, no more than 1 pigeon daily in bag or possession.

federal register

Monday
September 28, 1992

Part III

The President

Memorandum of September 25—Memorandum for the Secretary of Transportation and the United States Trade Representative

Notice of September 25—Continuation of Emergency Regarding Export Control Regulations

Federal Register
Vol. 57, No. 188
Monday, September 28, 1992

Presidential Documents

Title 3—

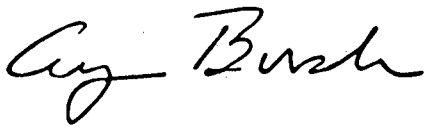
The President

Memorandum of September 25, 1992

Memorandum for the Secretary of Transportation [and] the United States Trade Representative

Pursuant to section 6 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. 10922(*l*)(1) and (2), I hereby extend for an additional 2 years both the moratorium imposed by that section and all actions taken by me or my predecessor under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by persons of, a contiguous foreign country. This action preserves the *status quo* and will maintain the moratorium through September 19, 1994, unless earlier revoked or modified.

This memorandum shall be published in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 25, 1992.

[FR Doc. 92-23890
Filed 9-25-92; 12:17 pm]
Billing code 3195-01-M

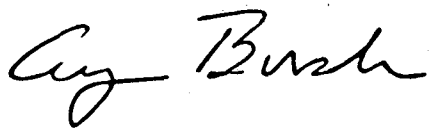
Presidential Documents

Notice of September 25, 1992

Continuation of Emergency Regarding Export Control Regulations

On September 30, 1990, consistent with the authority provided me under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*), I issued Executive Order No. 12730. In that order, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States in light of the expiration of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401, *et seq.*). Because the Export Administration Act has not been renewed by the Congress, the national emergency declared on September 30, 1990, and extended on September 26, 1991, must continue in effect beyond September 30, 1992. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency in order to deal with the threat posed by the unrestricted access of foreign parties to United States goods, technology, and technical data and by the existence of certain boycott practices of foreign nations.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
Washington, September 25, 1992.

[FR Doc. 92-23889
Filed 9-25-92; 12:16 pm]
Billing code 3195-01-M

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
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1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

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