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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

Technical Assistance and Training Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations on Technical Assistance and Training Grants. This action is being taken by FmHA to establish a new grant program for technical assistance for solid waste disposal facilities. The intended effect of this action is to expand existing regulations to include the new technical assistance grant program.

EFFECTIVE DATE: February 5, 1992.

FOR FURTHER INFORMATION CONTACT: Donna H. Roderick, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, room 6328, Washington, DC 20250, telephone: (202) 720-9589.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy will be less than $100 million. There will be no significant increase in costs or prices for consumers, individual industries, organizations, governmental agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete in domestic or export markets.

Intergovernmental Review

This program is listed in the Catalog of Federal Domestic Assistance under number 10.436, Technical Assistance and Training Grants. The program is excluded from coverage under the provisions of Executive Order 12372, therefore, intergovernmental consultation with State and local officials is not required.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The Administrator of Farmers Home Administration has determined that this action will not have a significant economic impact on a substantial number of small entities because, in terms of the total number of entities, less than 25 will be affected annually.

Background

This action extends FmHA's regulations for making technical assistance and training grants, by providing for solid waste management grants. These grants will assist nonprofit organizations in providing technical assistance to rural communities for solid waste management. According to the provisions of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101-624, the grants will be used to assist communities in the elimination of pollution of water resources and the improvement of solid waste disposal facilities.

FmHA amends subpart J of part 1942 to bring FmHA Technical Assistance and Training grant regulations into compliance with Public Law 101-624.

On July 11, 1991, an interim rule was published in the **Federal Register** (56 FR 31535) for a 60-day review and comment period. Forty-six comments were received from the public review process. The comments focused on two aspects of the interim rule.

First, forty-six commenters requested that the word "regional" be defined. The interim rule stated that preapplications proposing to provide for regional technical assistance would receive funding priority. Although the interim rule did not define "regional," the existing technical assistance and training regulations suggested that "regional" encompassed multi-State areas. The comments uniformly suggested that "regional," in the context of the solid waste management grants, should include multi-jurisdictional areas within a State, rather than being limited to multi-State areas. The Agency agrees with these comments. Therefore, FmHA has defined "regional" at Section 1942.454 of the final rule as any multi-jurisdictional area including multi-State or any multi-jurisdictional area within a State.

Second, thirty-one comments were received concerning whether eligibility for solid waste management grants was limited to private, nonprofit organizations. Pursuant to its enabling statute, applicants for technical assistance and training grants are limited to private non-profit entities. By amending the technical assistance regulations in the interim rule, the private non-profit eligibility criteria was incorporated into the solid waste management grant program. The enabling statute for the solid waste management grants does not limit eligible applicants only to private non-profit entities, and the comments suggested uniformly that applicants eligible for the solid waste management grants should include public entities as well. The Agency agrees with these comments. Therefore, FmHA has expanded the eligibility criteria at § 1942.457 of the final rule to recognize that public bodies, including local governmental-based multi-jurisdictional organizations are eligible for these grants. Priority for solid waste management grants will be given to these organizations within available funds. In expanding the eligibility provisions to include public non-profits, § 1942.463 of the regulation was also revised to include guidance on establishing that the public entity is legally authorized, in a manner similar to the interim regulation's review of the private non-profit's legal existance and authority.

Finally, two administrative revisions were made to the interim rule. First, the procedural reference for audit requirements has been revised in § 1942.475, to refer to another section of part 1942–A. Second, language pertaining to the paperwork reduction project was added, to § 1942.500.

Lists of Subjects in 7 CFR Part 1942

Community development, Community facilities, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended by adopting the interim rule published on July 11, 1991 (56 FR 31535) as a final rule with the following amendments:

PART 1942—ASSOCIATIONS

1. The authority citation for part 1942 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart J—Technical Assistance and Training Grants

2. Section 1942.454 is amended by adding a definition in alphabetical order for "Regional" to read as follows:

§ 1942.454 Definitions.

* * * * *

Regional—For purposes of the Solid Waste Management grant program, as implemented through this subpart, regional is defined as any multi-jurisdictional area including multi-State or any multi-jurisdictional area within a State.

* * * * *

3. Section 1942.457 is revised to read as follows:

§ 1942.457 Eligibility.

(a) Entities eligible for Technical Assistance and Training (TAT) grants are private nonprofit organizations that have been granted tax exempt status by the Internal Revenue Service (IRS) of the United States.

(b) Entities eligible for Solid Waste Management (SWM) grants are nonprofit organizations, including:

(1) Private nonprofit organizations that have been granted tax exempt status by the IRS; and,

(2) Public bodies including local governmental-based multi-jurisdictional organizations.

(c) Applicants for either TAT or SWM grants must also have the proven ability, background, experience, legal authority and actual capacity to provide technical assistance and/or training on a regional basis to associations as provided in § 1942.453 of this subpart.

4. Section 1942.463 is amended by revising paragraph (b)(1) to read as follows:

§ 1942.463 Preapplications.

* * * * *

(b) * * *

(1) Evidence of applicant's legal existence and authority in the form of certified copies of organizational documents and a certified list of directors and officers with their respective terms.

* * * * *

5. Section 1942.464 is amended by revising paragraph (b) to read as follows:

§ 1942.464 Priority.

* * * * *

(b) Preapplications received from local governmental-based, multi-jurisdictional organizations for the SWM grant program will be given priority within the available funds.

6. Section 1942.475 is revised to read as follows:

§ 1942.475 Audit.

The grantee will provide an audit report prepared in accordance with § 1942.17(q)(4) of subpart A of part 1942 of this chapter within 90 days after project completion.

7. Section 1942.500 is revised to read as follows:

§ 1942.500 OMB control number.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575–0123. Public reporting burden for this collection of information is estimated to vary from 15 minutes to 4 hours per response, with an average of 1 hour 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 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 (OMB #0575–0123), Washington, DC 20503.

Dated: January 2, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–2696 Filed 2–4–92; 8:45 am]

BILLING CODE 3410–07–M

7 CFR Part 1980

Business and Industrial Loan Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) revises its regulation to clarify the processing of changes in terms and conditions for guarantee required for loan closing. FmHA revises its regulation to grant authority to State Directors with loan approval authority, the authority to approve changes in terms and conditions for guarantee and substitution of new eligible lenders. The intended effect of this action will enhance delivery to rural business entities and lenders.

EFFECTIVE DATE: February 5, 1992.

FOR FURTHER INFORMATION CONTACT: Beverly I. Craver, Business and Industry Loan Specialist, FmHA, USDA, room 6327, 14th and Independence Avenue, SW., Washington, DC 20250. Telephone (202) 690–3805.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal management, making publication for comment unnecessary.

Intergovernmental Review

The program impacted by this action is listed in the Catalog of Federal Domestic Assistance under number 10.422, Business and Industrial Loans and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983). FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1940–J.

Environmental Impact Statement

The action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this

proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Background

The current regulation for the FmHA guaranteed loan program requires that all changes in terms and conditions initially agreed upon by the lender, business and FmHA must be submitted to the National Office for review and concurrence. In addition the current regulation requires that any transfer of lenders must also be approved by the National Office.

The regulation is being revised to allow State Directors to approve changes in terms and conditions and transfer of lenders if the loan is within their loan approval authority.

List of Subjects in 7 CFR Part 1980

Loan programs—Agriculture, Business and Industry.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart E—Business and Industrial Loan Program

2. Section 1980.453 ADMINISTRATIVE is amended by revising paragraph A. to read as follows:

§ 1980.453 Review of requirements.

* * * * *

Administrative:

A. The State Director will negotiate with the lender and proposed borrower any changes made to the initially issued or proposed Form FmHA 449-14. For loans requiring National Office concurrence, a copy of Form FmHA 449-14 and any amendments thereto will be included when the loan file is submitted to the National Office for review. When the National Office recommends modifications or additions to Form FmHA 449-14, the State Director will further negotiate these recommendations with the lender and proposed borrower. If, as a result of these further negotiations, the lender, proposed borrower or State Director presents alternate conditions which would result in a change in the scope of the proposed project and if the loan exceeds the State Director's loan approval authority, the State Director will submit these conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA 449-14 and any amendments thereto. If the loan is within the State Director's loan approval authority, the State Director may approve such changes.

* * * * *

3. Section 1980.454 is amended by changing the words "B&I Chief" to "B&I or C&BP Chief" in the second sentence of paragraph (e) and by revising paragraphs (a), and (c), and the introductory text of Administrative paragraph F to read as follows:

§ 1980.454 Conditions precedent to issuance of the Loan Note Guarantee.

* * * * *

(a) *Transfer of lenders.* The FmHA State Director may approve a substitution of a new eligible lender in place of a former lender who holds an outstanding Conditional Commitment for Guarantee (where the Loan Note Guarantee has not yet been issued and the loan is within the State Director's loan approval authority) provided there are no changes in the borrower's ownership or control, loan purposes, scope of project and loan conditions in the Form FmHA 449-14 and the loan agreement remains the same. To effect such a substitution, the former lender will provide FmHA with a letter stating the reasons it no longer desires to be a lender for the project. For loans in excess of the State Director's loan approval authority, National Office concurrence is required. The State Director will submit a recommendation concerning the transfer of lenders along with the lender's letter stating the reasons it no longer desires to be a lender for the project. The substituted lender will execute a new Part "B" of Form FmHA 449-1. If approved by FmHA, the State Director will issue a letter or amendment to the original Form FmHA 449-14 reflecting the new lender and the new lender will acknowledge acceptance of the letter or amendment in writing.

* * * * *

(c) *Changes in terms and conditions in Form FmHA 449-14.* It is the intent of FmHA that once the Form FmHA 449-14 is issued and accepted by the lender, the commitment is not to be modified as to the scope of the project, overall facility concept, project purpose, use of proceeds or terms and conditions. Should changes be requested by the lender, the State Director will negotiate with the lender and proposed borrower any proposed changes to the originally accepted Form FmHA 449-14. If, as a result of these negotiations, the lender, proposed borrower or State Director presents alternate conditions which would result in a change in the scope of the project, and if the loan exceeds the State Director's loan approval authority, the State Director will submit these changes in the conditions by memorandum to the National Office for consideration with a copy of the revised Form FmHA 449-14 and any amendments thereto. Changes to the conditional commitment may be approved by the State Director for loans within their loan approval authority.

* * * * *

Administrative:

* * * * *

F. *Par (c) Changes in terms and conditions in Form FmHA 449-14.* The State Director will review any request for changes to Form FmHA 449-14. Only those changes which do not materially affect the project, its capacity, employment, original projections or credit factors may be approved. Changes in legal entities or where tax considerations are the reason for change will not be approved when modifying any loan guarantee or conditions of guarantee. State Directors may approve these changes in terms and conditions if the loan is within the State Director's loan approval authority and the change will not result in a major change in the scope of the project. Changes in terms and conditions for loans in excess of the State Director's loan approval authority, must be submitted to the National Office with a memorandum of facts and recommendations for review and concurrence.

In order to identify the number and types of action taken, the following procedures are to be followed when requests of this type are approved by FmHA.

* * * * *

Dated: January 3, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-2697 Filed 2-4-92; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 26747; Amdt. No. 1476]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs 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 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on January 17, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS,

ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective March 5, 1992*

Nome, AK—Nome, VOR-A, Orig.
Nome, AK—Nome, NDB B, Orig.
Fort Collins (Loveland), CO—Fort Collins-Loveland Muni, VOR/DME-A, Amdt. 5
Fort Collins (Loveland), CO—Fort Collins-Loveland Muni, NDB RWY 33, Amdt. 3
Fort Collins (Loveland), CO—Fort Collins-Loveland Muni, ILS RWY 33, Amdt. 4
Fort Collins (Loveland), CO—Fort Collins-Loveland Muni, VOR/DME RNAV RWY 15, Amdt. 3
Fort Collins (Loveland), CO—Fort Collins-Loveland Muni, VOR/DME RNAV RWY 33, Amdt. 4
Washington, IA—Washington Muni, VOR/DME-A, Amdt. 3
Washington, IA—Washington Muni, VOR/DME, RNAV RWY 31, Amdt. 3
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 23L, Amdt. 3, CANCELLED
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 23R, Amdt. 3, CANCELLED
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 5L, Amdt. 3
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 5R, Amdt. 4
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 23L, Orig.
Cleveland, OH—Cleveland-Hopkins Intl, NDB RWY 23R, Orig.
Cleveland, OH—Cleveland-Hopkins Intl, ILS RWY 5R, Amdt. 14
Cleveland, OH—Cleveland-Hopkins Intl, ILS RWY 23L, Amdt. 14
Cleveland, OH—Cleveland-Hopkins Intl, ILS RWY 28, Amdt. 20
Cleveland, OH—Cleveland-Hopkins Intl, RADAR-1, Amdt. 31, CANCELLED
Cleveland, OH—Cleveland-Hopkins Intl, VOR/DME RNAV RWY 10, Amdt. 11
Cleveland, OH—Cleveland-Hopkins Intl, VOR/DME RNAV RWY 18, Amdt. 10
Cleveland, OH—Cleveland-Hopkins Intl, VOR/DME RNAV RWY 36, Amdt. 10
Philadelphia, PA—Philadelphia Intl, VOR/DME-A, Amdt. 1
Mitchell, SD—Mitchell Muni, VOR RWY 30, Amdt. 2
Winchester, VA—Winchester Regional, LOC RWY 32, Amdt. 3
Lake Geneva, WI—Americana, VOR RWY 23, Amdt. 6, CANCELLED

** * * Effective February 6, 1992*

Rangeley, ME—Rangeley Muni, NDB-A, Amdt. 2

** * * Effective January 9, 1992*

Wilmington, NC—New Hanover Intl, RADAR-1, Amdt. 6

** * * Effective January 8, 1992*

Longview, TX—Gregg County, NDB RWY 13, Amdt. 14
Longview, TX—Gregg County, ILS RWY 13, Amdt. 10

** * * Effective January 7, 1992*

Fort Worth, TX—Meacham Field, LOC BC RWY 34R, Amdt. 7

** * * Effective January 6, 1992*

Pellston, MI—Pellston Regional Airport of Emmet County, VOR/DME RWY 5, Amdt. 10

[FR Doc. 92-2724 Filed 2-4-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26745; Amdt. No. 1475]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPS) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPS, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

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 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC) /Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure indentification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to

FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessay, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA 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 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on January 17, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC No.	SIAP
01/06/92	AR	West Memphis	West Memphis Muni	FDC 2/0061	NDB Rwy 17 Amdt 8.
01/06/92	AR	West Memphis	West Memphis Muni	FDC 2/0062	NDB-B Amdt 1.
01/06/92	AR	West Memphis	West Memphis Muni	FDC 2/0063	VOR/DME-A Amdt 4.
01/06/92	MI	Escanaba	Delta County	FDC 2/0047	ILS/DME Rwy 9 Amdt 3. This Corrects TL 92-02.
01/07/92	IL	Canton	Ingersoll	FDC 2/0070	VOR-A Amdt 7.
01/07/92	IL	Canton	Ingersoll	FDC 2/0071	NDB Rwy 36 Amdt 2.
01/10/92	MD	Salisbury	Salisbury-Wicomico Co Regional	FDC 2/0128	RNAV Rwy 23 Amdt 3.
01/10/92	MD	Salisbury	Salisbury-Wicomico Co Regional	FDC 2/0129	RNAV Rwy 5 Amdt 3.
01/13/92	OH	Akron	Akron-Canton Regional	FDC 2/0187	ILS Rwy 23 Amdt 9.
01/14/92	KS	Dodge City	Dodge City Regional	FDC 2/0190	ILS Rwy 14 Orig.
01/14/92	MO	Cassville	Cassville Muni	FDC 2/0203	VOR Rwy 8 Amdt 1.
01/14/92	MO	Sikeston	Sikeston Muni	FDC 2/0201	VOR Rwy 20 Amdt 2.
01/14/92	MO	West Plains	West Plains Muni	FDC 2/0202	NDB Rwy 36 Orig.
01/14/92	PA	Harrisburg	Capital City	FDC 2/0214	ILS Rwy 8 Amdt 10.
01/14/92	TN	Columbia/Mount Pleasant	Maury County	FDC 2/0229	NDB Rwy 23 Amdt 3.
01/14/92	TN	Jackson	McKellar-Sipes Regional	FDC 2/0236	LOC BC Rwy 20 Amdt 5.
12/30/91	NE	Norfolk	Norfolk/Karl Stefan Memorial	FDC 1/6466	ILS Rwy 1 Amdt 3.

NFDC Transmittal Letter Attachment

West Memphis

West Memphis Muni
Arkansas
NDB RWY 17 AMDT 8 . . .
Effective: 01/06/92

FDC 2/0061/AWM/ FI/P West Memphis Muni, West Memphis, AR. NDB RWY 17 AMDT 8 . . . Delete Note, "activate VASI RWY 35–CTAF." This becomes NDB RWY 17 AMDT 8A.

West Memphis

West Memphis Muni
Arkansas
NDB–B AMDT 1 . . .
Effective: 01/06/92

FDC 2/0062/AWM/ FI/P West Memphis Muni, West Memphis, AR. NDB–B AMDT 1 . . . Change missed approach to read . . . climb to 1800 then left turn direct AWM NDB and hold. Circling MDA 720/HAA 508 CAT C. Delete note, "activate VASI RWY 35–CTAF." This becomes NDB–B AMDT 1A.

West Memphis

West Memphis Muni
Arkansas
VOR/DME–A AMDT 4 . . .
Effective: 01/06/92

FDC 2/0063/AWM/ FI/P West Memphis Muni, West Memphis, AR. VOR/DME–A AMDT 4 . . . Circling MDA 700/HAA 488 CAT A. Circling MDA 720/HAA 508 CAT C. MSA from Gilmore VOR/DME . . . 360–090 2500; 090–360 1900. Delete note, "activate VASI RWY 35–CTAF." This becomes VOR/DME–A AMDT 4A.

Canton

Ingersoll
Illinois
VOR–A AMDT 7 . . .

Effective: 01/07/92
FDC 2/0070/CTK/ FI/P Ingersoll, Canton, IL. VOR-A AMDT 7 . . . Delete note, "activate MIRL RWYS 9-27, 18-36, REIL RWY 36 and VASI RWYS 9, 27, 18, 36-CTAF. This is VOR-A AMDT 7A.

Canton

Ingersoll
Illinois
NDB RWY 36 AMDT 2 . . .
Effective: 01/07/92
FDC 2/0071/CTK/ FI/P Ingersoll, Canton, IL. NDB RWY 36 AMDT 2 . . . Delete note, "activate MIRL RWYS 9-27, 18-36, REIL RWY 36 and VASI RWYS 9, 27, 18, 36-CTAF." This is NDB RWY 36 AMDT 2A.

Dodge City

Dodge City Regional
Kansas
ILS RWY 14 ORIG . . .
Effective: 01/14/92
FDC 2/0190/DDC/ FI/P Dodge City Regional, Dodge City, KS. ILS RWY 14 ORIG . . . Add fix name EARPP AT IAF DDC R-073/15DME. This becomes ILS RWY 14 ORIG A.

Salisbury

Salisbury-Wicomico Co Regional
Maryland
RNAV RWY 23 AMDT 3 . . .
Effective: 01/10/92
FDC 2/0128/SBY/ FI/P Salisbury-Wicomico Co Regional, Salisbury, MD. RNAV RWY 23 AMDT 3 . . . Delete RWY lights note. This becomes RNAV RWY 23 AMDT 3A.

Salisbury

Salisbury-Wicomico Co Regional
Maryland
RNAV RWY 5 AMDT 3 . . .
Effective: 01/10/92
FDC 2/0129/SBY/ FI/P Salisbury-Wicomico Co Regional, Salisbury, MD. RNAV RWY 5 AMDT 3 . . . Delete RWY lights note. This becomes RNAV RWY 5 AMDT 3A.

Escanaba

Delta County
Michigan
ILS/DME RWY 9 AMDT 3 . . .
Effective: 01/06/92
This corrects TL 92-02
FDC 2/0047/ESC/ FI/P Delta County, Escanaba, MI. ILS/DME RWY 9 AMDT 3 . . . Delete notes, "when control zone . . . thru . . . increase MDA's 240 feet.", "activate MALSR . . . thru . . . VASI RWYS 18-36 CTAF.", "alternate minimums NA . . . thru . . . weather reporting service." Add note, "if local altimeter not received, use Marquette altimeter setting and increase all MDA's 240 feet." Alternate minimums standard, CAT D 700-2. This is ILS/DME RWY 9 AMDT 3A.

Sikeston

Sikeston Muni
Missouri
VOR RWY 20 AMDT 2 . . .
Effective: 01/14/92
FDC 2/0201/SIK/ FI/P Sikeston Muni, Sikeston, MO. VOR RWY 20 AMDT 2 . . . NDB RWY 20 AMDT 7 . . . Delete note . . . activate MIRL RWYS 2/20, and REIL RWY 20-CTAF. This becomes VOR RWY 20 AMDT 2A, NDB RWY 20 AMDT 7A.

West Plains

West Plains Muni
Missouri
NDB RWY 36 ORIG . . .
Effective: 01/14/92
FDC 2/0202/UNO/ FI/P West Plains Muni, West Plains, MO. NDB RWY 36 ORIG . . . Delete note . . . Activate HIRL RWY 36-CTAF. This becomes NDB RWY 36 ORIG A.

Cassville

Cassville Muni
Missouri
VOR RWY 8 AMDT 1 . . .
Effective: 01/14/92
FDC 2/0203/94K/ FI/P Cassville Muni, Cassville, MO. VOR RWY 8 AMDT 1 . . . Delete note . . . Activate MIRL RWYS 8/26 123.0. This becomes VOR RWY 8 AMDT 1A.

Norfolk

Norfolk/Karl Stefan Memorial
Nebraska
ILS RWY 1 AMDT 3 . . .
Effective: 12/30/91
FDC 1/6466/OFK/ FI/P Norfolk/Karl Stefan Memorial, Norfolk, NE. ILS RWY 1 AMDT 3 . . . MA INST . . . Climb to 4000 then RT direct OFK VOR/DME and hold. TRML RTES OFK and OLU to SLAYS INT . . . MIM ALT 4000. This becomes ILS RWY 1 AMDT 3A

Akron

Akron-Canton Regional
Ohio
ILS RWY 23 AMDT 9 . . .
Effective: 01/13/92
FDC 2/0187/CAK/ FI/P Akron-Canton Regional, Akron, OH. ILS RWY 23 AMDT 9 . . . Add note, "autopiolot coupled approach NA." This is ILS RWY 23 AMDT 9A.

Harrisburg

Capital City
Pennsylvania
ILS RWY 8 AMDT 10 . . .
Effective: 01/14/92
FDC 2/0214/CXY/ FI/P Capital City, Harrisburg, PA. ILS RWY 8 AMDT 10 . . . Circling MDA/HAA 1160/813 ALL CATS, VIS CAT A/B 2, C 2 1/2, CAT D 2 3/4. ALTN MINS CAT A/B 900-2, C/D 900-2 3/4. This becomes ILS RWY 8 AMDT 10A

Columbia/Mount Pleasant

Maury County
Tennessee
NDB RWY 23, AMDT 3 . . .
Effective: 01/14/92
FDC 2/0229/MRC/ FI/P Maury County, Columbia/Mount Pleasant, TN. NDB RWY 23, AMDT 3 . . . S-23 MDA 1320/HAT 643 ALL CATS. VIS 3/4 CAT A,B; 1 3/4 CAT C; 2 CAT D. Circling MDA 1320/HAA 643. VIS 1 CAT A.B. MDA 1360/HAA 683 CAT C, D. VIS 2 CAT C; 2 1/4 CAT D. Change note to read, if LCL ALTM not received use Nashville ALSTG and increase all MDA's 200 ft. INOP table does not apply. This becomes NDB RWY 23, AMDT 3A.

Jackson

McKellar-Sipes Regional
Tennessee
LOC BC RWY 20 AMDT 5 . . .
Effective: 01/14/92
FDC 2/0236/MKL/ FI/P McKellar-Sipes Regional, Jackson, TN. LOC BC RWY 20 AMDT 5 . . . Add note . . . disregard GS indications. This becomes LOC BC RWY 20 AMDT 5A.

[FR Doc. 92-2725 Filed 2-4-92; 8:45 am]
BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 146

Privacy Act of 1974; Implementation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: This final rule adds 17 CFR 146.13 entitled "Inspector General Exemptions" to exempt a system of records entitled "Office of the Inspector General Investigative Files" from certain sections of the Privacy Act of 1974, 5 U.S.C. 552a, pursuant to subsections (j)(2) and (k)(2). By relieving the Office of the Inspector General (OIG) of certain restrictions under the Privacy Act, the exemptions will help ensure that the OIG may efficiently and effectively perform investigations and other authorized duties and activities.

EFFECTIVE DATE: February 5, 1992.

FOR FURTHER INFORMATION CONTACT: Judith A. Ringle, Esq., Office of the General Counsel, Commodity Futures

Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254-7110.

SUPPLEMENTARY INFORMATION: Elsewhere in today's Federal Register, the Commodity Futures Trading Commission (Commission) is publishing the system notice for a new system of records, Office of the Inspector General Investigative Files, under the Privacy Act, 5 U.S.C. 552a, as amended. The Commission published notice of the proposed system of records in the Federal Register on July 16, 1991 (56 FR 32407). Accompanying the proposed system notice was a proposed rule to exempt the system of records from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a(j) and (k). The proposed rule was also published in the Federal Register on July 16, 1991 (56 FR 32358).

One comment was received in response to the proposed rule. According to the commentator, it is not appropriate to grant an exemption pursuant to 5 U.S.C. 552a(j)(2). Subsection (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), provides that the head of an agency may promulgate rules to exempt any system of records within the agency from certain requirements of the Privacy Act, provided that the system is maintained by "the agency or component thereof which performs as its principal function any activity pertaining to enforcement of criminal laws" and includes specific documents pertaining to the investigation and enforcement of criminal laws. The commentator asserts that enforcement of criminal laws is not the principal function of an Inspector General. The commentator suggested, however, that the (j)(2) exemption could be applied to a record system maintained by an identifiable criminal investigation subunit of the Inspector General.

We do not agree with the commentator that the OIG does not perform as one of its principal functions any activity pertaining to the enforcement of criminal laws. The Inspector General Act of 1978, 5 U.S.C. App. 3, authorizes the Inspector General to conduct investigations to detect fraud and abuse in the programs and operations of the Commission and to assist in the prosecution of participants in such fraud or abuse, and the Commission's OIG does so.

Given the present small size of the Commission's OIG, creation of a separate criminal investigative subunit as suggested by the commentator would not seem to be very efficient. As stated in the Commission's notice of proposed rulemaking (56 FR 32358 (July 16, 1991)), the (j)(2) and (k)(2) exemptions will be narrowly applied so that only records pertaining to criminal and civil law enforcement investigative matters will be covered as appropriate under those two exemptions. Accordingly, we decline to undertake the organizational and staffing requirements which would be necessitated by the creation of a criminal investigative subunit.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of rules on small entities. It is not anticipated that the rule would impose any new burden on small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule herein, as promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 17 CFR Part 126

Privacy Act.

For the reasons set out in the preamble, part 146 of chapter I of title 17 of the Code of Federal Regulations is amended as follows:

PART 146—RECORDS MAINTAINED ON INDIVIDUALS

1. The authority citation for part 146 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a); sec. 101(a), Pub. L. 93-463, 88 Stat. 1389 (7 U.S.C. 4a(j)).

2. Section 146.13 is added as follows:

§ 146.13 Inspector General exemptions.

(a) Pursuant to section (j) of the Privacy Act of 1974, the Commission has deemed it necessary to adopt the following exemptions to specified provisions of the Privacy Act:

(1) Pursuant to, and limited by 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General of the Commission entitled "Office of the Inspector General Investigative Files," shall be exempted from the provisions of 5 U.S.C. 552a (except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i)) and from 17 CFR 146.3, 146.4, 146.5, 146.6 (b), (d) and (e), 146.7 (a), (c) and (d), 146.8, 146.9, 146.10, 146.11(a) (7), (8) and (9), insofar as the system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to section (k) of the Privacy Act of 1974, the Commission has deemed it necessary to adopt the following exemptions to specified provisions of the Privacy Act:

(1) Pursuant to, and limited by 5 U.S.C. 552(k)(2), the system of records maintained by the Office of the Inspector General of the Commission entitled "Office of the Inspector General Investigative Files," shall be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f) and from 17 CFR 146.3, 146.4, 146.5, 146.6(d), 146.7(a), 146.8, 146.9, 146.11(a) (7), (8) and (9), insofar as it contains investigatory materials compiled for law enforcement purposes.

Issued in Washington, DC, on January 29, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-2565 Filed 2-4-92; 8:45 am]

BILLING CODE 6351-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 209

RIN 3220-AA95

Railroad Employer's Reports and Responsibilities

AGENCY: Railroad Retirement Board.

ACTION: Interim final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations to increase the amount of earnings required to be reported under § 209.12(b). This amendment is necessary to reflect increases in the tax and benefit bases.

DATES: Effective date February 5, 1992. The Board will consider comments received by the public up to March 6, 1992.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513, (FTS 386-4513), TDD (312) 751-4701, TDD (FTS 386-4701).

SUPPLEMENTARY INFORMATION: Benefits under the Railroad Retirement Act (RRA) are financed by an employment tax imposed under the Railroad Retirement Tax Act (RRTA) upon wages paid by railroad employers. The tax has two components, a tier I level and a tier II level. The tier I level is the same as the tax imposed by the Federal Insurance Contributions Act (FICA) and is used to finance what are the equivalent of social security benefits payable under the RRA. The amount of compensation subject to tax is based upon the contribution and benefit base

as defined in section 230 of the Social Security Act (see 26 U.S.C. 3231(e)(2)(B). The contribution base generally rises each year to reflect increases in the national wage rate. In order to estimate future revenues the Board has required employers to report gross earnings, up to $100,000, of a one-percent sample of their employees (20 CFR 209.12). The $100,000 ceiling is now inadequate for this purpose. Moreover, since the contribution base for the Hospital Insurance Program (Medicare) portion of the tier I tax is $125,000 for 1991 and will be $130,200 for 1992, the increased maximum is necessary for making computations with respect to the financial interchange between the railroad retirement and social security/medicare trust funds. Railroad retirement beneficiaries are covered under Medicare by virtue of section 7(d) of the RRA.

Consequently, the Board is amending its regulations to require reports of gross earnings of up to $300,000. This amount is sufficiently high to permit future revenue projections based upon an increasing contribution base. A reference to the Health Care Financing Administration is being added to § 209.12 to reflect the fact that information gathered under § 209.12 is used in financial interchange calculations between the railroad retirement trust funds and Medicare trust funds.

In order for the amendment increasing the amount of reportable earnings to be effective with the respect to the 1991 reports, due by March 1, 1992, the Board is publishing this rule as an interim final rule. However, the Board does invite comments on the change.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. The information collections associated with these amendments have been approved by the Office of Management and Budget under Control Number 3220-0132.

List of Subjects in 20 CFR Part 209

Railroad employees, Railroad retirement, Railroads.

For the reasons set out in the preamble, title 20, chapter II is amended as follows:

PART 209—RAILROAD EMPLOYERS' REPORTS AND RESPONSIBILITIES

1. The authority citation for part 209 continues to read as follows.

Authority: 45 U.S.C. 231f.

§ 209.12 [Amended]

2. Section 209.12(a)(1) is amended by inserting after the word "Administration" the following; "and the Health Care Financing Administration"

3. Section 209.12(b) is amended by inserting "$300,000" in place of "$100,000".

Dated: January 27, 1992.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-2570 Filed 2-4-92 8:45 am]

BILLING CODE 7905-01-M

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20 CFR Part 259

RIN 3220-AA88

Initial Determinations and Appeals From Initial Determinations With Respect to Employer Status and Employee Status

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends part 259 of its regulations to provide that determinations with respect to employer and employee status under the Railroad Retirement Act (RRA) and Railroad Unemployment Insurance Act (RUIA) shall be made directly by the three-member Board. Under present regulations determinations with respect to employer and employee status are delegated to the Deputy General Counsel subject to administrative review by the three-member Board. The Board hereby removes this delegation and places original jurisdiction over such questions at the Board level. The Board believes that this change will make the decision making process with respect to employer and employee status questions more efficient.

EFFECTIVE DATE: February 5, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513, (FTS 386-4513), TDD (312) 751-4701, TDD (FTS 386-4701).

SUPPLEMENTARY INFORMATION: Part 259 presently delegates authority for initial and reconsideration determinations with respect to employer and employee status under the RRA and RUIA to the Board's Deputy General Counsel. His or her determinations on such questions are final unless a party to a determination appeals such determination to the three-member Board.

The Board hereby removes this delegation. Under amended part 259 a person seeking a determination with respect to employer or employee status will file a request with the office of the Secretary to the Board. The General Counsel will be responsible for making initial investigations with respect to the employer and employee status of any person and will submit to the Board a recommended decision with respect to the coverage of that person under the RRA or RUIA. Following receipt of the General Counsel's recommendation the Board will issue a coverage determination (§ 259.1). Any party aggrieved by this determination, as defined in § 259.2, may file a request for reconsideration of the Board's determination with the Office of the Secretary to the Board. The Board shall then issue a decision on reconsideration (§ 259.3). Such a decision is final and is subject to judicial review as provided for in § 259.5 or to reopening under § 259.6.

The Board published these amendments to part 259 in proposed form on June 24, 1991 (56 FR 28732), and invited comments by August 23, 1991. No comments were received. However, based upon its own internal review the Board added new paragraph (b) to § 259.3. This new paragraph makes it clear that, as under present part 259, an individual must seek reconsideration of an adverse initial decision in order to preserve the right to judicial review. Furthermore, § 259.7 was amended to clarify that an initial decision or decision on reconsideration under this part is not automatically stayed pending review of that decision either on reconsideration or judicial review.

In addition, references to the Deputy General Counsel have been changed to General Counsel to reflect an internal reorganization. References to the Secretary to the Board have also been added to designate the official with whom submissions under this part must be filed.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections imposed by these amendments.

List of Subjects in 20 CFR Part 259

Railroad employees, Railroad retirement, Railroad unemployment insurance, Railroads.

For the reasons set out in the preamble, title 20, chapter II, part 259 of the Code of Federal Regulations is amended as follows:

PART 259—INITIAL DETERMINATIONS AND APPEALS FROM INITIAL DETERMINATIONS WITH RESPECT TO EMPLOYER AND EMPLOYEE STATUS

1. The authority citation for part 259 is revised to read as follows:

Authority: 45 U.S.C. 231f; 45 U.S.C. 362(l).

2. Section 259.1 is revised to read as follows:

§ 259.1 Initial determinations with respect to employer and employee status.

(a) All requests for a determination with respect to employer or employee status shall be filed with the Secretary to the Board.

(b) The General Counsel of the Railroad Retirement Board or his or her designee shall make the initial investigations with respect to:

(1) The status of any person as an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act and the rules and regulations issued thereunder; and

(2) The status of any individual or group of individuals as an employee or employees of an employer covered under the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(c) Upon completion of this investigation the General Counsel, or his or her designee, shall submit to the Board the results of the investigation together with a recommendation concerning the coverage determination. The Board shall make the initial determination with respect to the status of any person as an employer or as an employee under the Railroad Retirement Act and Railroad Unemployment Insurance Act. The Secretary to the Board shall promptly notify the party or parties, as defined in § 259.2 of this part, and other interested persons or entities of the Board's determination.

3. Section 259.3 is revised to read as follows:

§259.3 Reconsideration of initial determinations with respect to employer or employee status.

(a) A party to an initial decision issued under § 259.1 shall have the right to request reconsideration of that decision. A request for reconsideration shall be in writing and must be filed with the Secretary to the Board within one year following the date on which the initial determination was issued. Where a request for reconsideration has been timely filed, the Secretary to the Board shall notify all other parties to the initial determination of such request. The party who requested reconsideration and any other party shall have the right to submit briefs or written argument, as well as any documentary evidence pertinent to the issue under consideration. The General Counsel or his or her designee shall review the material furnished all parties and shall submit it to the Board with a recommendation as to the determination upon reconsideration. The Board shall then issue a determination with respect to the request for reconsideration. The Secretary to the Board shall promptly notify all parties and other interested persons or entities of the determination upon reconsideration.

(b) A party who claims to be aggrieved by an initial decision of the Board but who fails to timely request reconsideration under this section shall forfeit any further right to appeal under this part.

§ 259.4 [Amended]

4. Section 259.4 is amended by removing the work "rendering a determination" in the first sentence and substituting therefor "performing his or her responsibilites", and by replacing "Deputy General Counsel" with "General Counsel" each time it appears.

§ 259.5 [Removed]

5. Section 259.5 is removed.

§259.6 [Redesignated at 259.5]

6. Section 259.6 is redesignated at 259.5

§ 259.7 [Redesignated as § 259.6]

7. Section 259.7 is redesignated at 259.6 and is revised to read as follows:

§259.6 Finality of determinations issued under this part.

Any determination rendered by the Board at the initial or reconsideration stages shall be considered a final determination and shall be binding with respect to all parties unless reversed on reconsideration or upon judicial review. A final determination may be reopened at the request of a party who was, or could have been, a party to the final determination when the party alleges that the law or the facts upon which the final determination was based have changed sufficiently to warrant a contrary determination. Such a request shall be submitted to the Secretary to the Board, who shall consider such request as a request for an initial determination under § 259.1.

By Authority of the Board.

Dated: January 27, 1992.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-2571 Filed 2-4-92; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1 91-170]

Safety Zone Regulations: Kill Van Kull, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: On January 10, 1992, the Coast Guard published a temporary final rule (57 FR 1106). The signature date was inadvertently changed.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: All other provisions of the temporary final rule remain unchanged.

Correction: On page 1108, change signature date to November 14, 1991 in lieu of January 6, 1992.

Dated: January 31, 1992.

A.F. Bridgman, Jr.,

Chief, Regulation and Administrative Law Division, Coast Guard Liaison.

[FR Doc. 92-2745 Filed 2-4-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD1 91-168]

Safety Zone Regulations: Kill Van Kull, New York and New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: On January 10, 1992, the Coast Guard published a temporary final rule (57 FR 1108). The signature date was inadvertently changed.

FOR FURTHER INFORMATION CONTACT: MST1 S. Whinham of Captain of the Port, New York (212) 668-7934.

SUPPLEMENTARY INFORMATION: All other provisions of the temporary final rule remain unchanged.

Correction: On page 1109, change signature date to November 5, 1991 in lieu of January 6, 1992.

Dated: January 31, 1992.

A.F. Bridgman, Jr.,

Chief, Regulation and Administrative Law Division, Coast Guard Liaison.

[FR Doc. 92-2746 Filed 2-4-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AF56

Reducing the Minimal Active Duty Service Eligibility Requirement for Outpatient Dental Services for Veterans Who Served on Active Duty During the Persian Gulf War

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern the eligibility of veterans for outpatient dental services. The Veteran's Programs and Benefits Act reduced from 180 days to 90 days the minimum active duty service eligibility requirement for outpatient dental services for a condition or disability which is service-connected but noncompensable for veterans who served on active duty during the Persian Gulf War.

EFFECTIVE DATE: This amendment is effective April 6, 1991, the effective date of the Act upon which it is based.

FOR FURTHER INFORMATION CONTACT: Monica J. Wilkins, Policies and Procedures Division (161B2), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; Phone: (202) 535-7439.

SUPPLEMENTARY INFORMATION: The Veteran's Programs and Benefits Act, Public Law 102-25 enacted April 6, 1991, amended 38 U.S.C. 612(b) to change the criteria governing eligibility of veterans for outpatient dental services for a condition or disability which is service-connected but noncompensable. Specifically, that law reduced from 180 days to 90 days the minimum active duty service eligibility requirement for outpatient dental services for a condition or disability which is service-connected but noncompensable for veterans who served on active duty during the Persian Gulf War.

This final regulatory amendment does not meet the criteria for a major rule as that term is defined by Executive Order 12291, Federal Regulation. This regulatory amendment will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

Since this amendment conforms VA regulations to the law, prior publication for public notice and comment is unnecessary and will not be done; consequently, this change is not a rule subject to the Regulatory Flexibility Act. In any case the Secretary hereby certifies that this regulation will not have a significant economic impact on the substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 United States Code 601-612. This regulatory amendment incorporates into VA regulations the new statutory criteria for eligibility for Class II dental benefits for veterans of the Persian Gulf War. Any economic impact on small entities will be the result of the law, not this regulatory amendment.

The Catalog of Federal Domestic Assistance Number is 64.011.

List of subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: December 30, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 105 Stat. 88, 38 U.S.C. 612, unless otherwise noted.

2. In § 17.123, paragraph (b)(1)(i)(A), is revised to read as follows:

§ 17.123 Authorization of outpatient dental treatment.

* * * * *

(b) *Class II.* (1)(i) * * *

(A) They served on active duty during the Persian Gulf War and were discharged or released, under conditions other than dishonorable, from a period of active military, naval, or air service of not less than 90 days, or they were discharged or released under conditions other than dishonorable, from any other period of active military, naval, or air service of not less than 180 days;

* * * * *

[FR Doc. 92-2758 Filed 2-4-92; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RI-4-1-5255; A-1-FRL-4099-9]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Revised Regulations for Controlling Volatile Organic Compound Emissions and Adoption of a Continuous Emissions Monitoring Regulation; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This correction clarifies EPA's rationale for approving a State Implementation Plan (SIP) revision for the State of Rhode Island. This revision was approved in a Final Rulemaking Notice (FRN) which was published in the Federal Register on September 30, 1991 (56 FR 49414). The intended effect of that rulemaking was to approve Rhode Island's revised volatile organic compound (VOC) regulations and to approve Rhode Island's continuous emission monitoring (CEM) regulation. A paragraph was inadvertently excluded from the SUPPLEMENTARY INFORMATION section of that rule; therefore, the purpose of this correction is to state and explain the excluded portion of the FRN. This additional paragraph further explains EPA's rationale for approving the emission trading ("bubble") provisions of the SIP revision.

EFFECTIVE DATE: February 5, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Judge at (617) 565-3248; FTS 835-3248.

SUPPLEMENTARY INFORMATION: On September 30, 1991, a FRN was published in the Federal Register (56 FR 49414) approving a SIP revision for the State of Rhode Island. The FRN approved Rhode Island's revised VOC regulations and Rhode Island's CEM regulation. A paragraph which elaborated on EPA's rationale for approving that SIP revision was inadvertently excluded from the SUPPLEMENTARY INFORMATION section of the FRN. The following paragraph was omitted from the FRN and further explains EPA's rationale for approving the emission trading ("bubble") provisions of the SIP revision:

EPA notes that it has considered the following factors in its decision to approve the emissions trading ("bubble") provisions of regulation numbers 15, 19, and 21: 1. These

regulations cover a limited set of source categories (or a limited number of sources in the case of the non-CTG RACT rule); 2. Rhode Island has a demonstrated record of issuing enforceable bubble orders under its generic bubble rule prior to EPA's 1988 SIP call; and 3. The regulations clearly require a facility to monitor and keep records adequate to determine actual emissions. This provides the basis for each bubble order issued under the regulations to specify the method for determining actual emissions under the bubble. In light of these factors, EPA is prepared to approve the emission trading provisions in these regulations, and this approval does not serve as a precedent for emissions trading rules with broader application.

EPA is publishing this notice without prior proposal because the Agency views this correction as noncontroversial and anticipates no adverse comments.

Final Action

EPA is clarifying a FRN which was published in the **Federal Register** on September 30, 1991 (56 FR 49414). This notice is intended to further explain EPA's rationale for approving the emission trading ("bubble") provisions of a SIP revision for Rhode Island.

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).

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.

Dated: January 23, 1992.

Julie Belaga,

Regional Administrator, Region I.

[FR Doc. 92–2661 Filed 2–4–92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 9F3811/R1139; FRL-4006-5]

RIN 2070-AB78

Pesticide Tolerances for Myclobutanil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the fungicide myclobutanil and certain of its metabolites in or on certain raw agricultural commodities. This regulation to establish maximum permissible levels of combined residues of myclobutanil and certain of its metabolites in or on the commodities was requested in petitions submitted by the Rohm & Haas Co.

EFFECTIVE DATE: This regulation becomes effective January 16, 1992.

ADDRESSES: Written objections, identified by the document control number [PP 9F3811/R1139] may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, rm. M-3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan T. Lewis, Product Manager (PM) 21, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305-6900.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of January 9, 1990 (55 FR 779), which announced that the Rohm & Haas Co. of Independence Mall West, Philadelphia, PA 19105, had submitted pesticide petition (PP) 9F3811 to EPA proposing the establishment of tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for the fungicide myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile] and both the free and bound forms of its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile in or on stone fruits group (except cherry) at 2.0 parts per million (ppm) and cherry at 5.0 ppm.

Subsequently, Rohm & Haas amended the petition by deleting the request for stone fruit groups and requesting tolerances for peaches and nectarines at 2 ppm and cherries (sweet and sour) at 5.0 ppm.

Additionally, the Agency requested that Rohm & Haas amend the petition by proposing a tolerance of 4 ppm in/on cherries. Rohm & Haas did amend the petition by requesting that the tolerance for cherries be reduced to 4.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in support of the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the tolerances include the following:

1. A 1-year dog feeding study using doses of 0, 10, 100, 400, and 1,600 ppm (equivalent to doses of 0, 0.34, 3.09, 14.28, and 54.22 milligrams/kilogram (mg/kg) body weight (bwt)/day in males, and 0, 0.40, 3.83, 15.68, and 58.20 mg/kg bwt/day in females). The no-observed-effect level (NOEL) is 100 ppm (3.09 mg/kg/day for males and 3.83 mg/kg/day for females) based upon hepatocellular hypertrophy, and the lowest observed effect level (LOEL) is 400 ppm (14.28 mg/kg/day for males and 15.68 mg/kg/day for females).

2. A 2-year chronic feeding/carcinogenicity study in rats using dietary concentrations of 0, 50, 200, and 800 ppm (equivalent to doses of 0, 2.49, 9.84, and 39.21 mg/kg bwt/day in males and 0, 3.23, 12.86, and 52.34 mg/kg bwt/day in females). The NOEL for chronic effects other than carcinogenicity is 2.49 mg/kg/day, and the LOEL is 9.84 mg/kg/day based on testicular atrophy in males. No other significant effects were observed in either sex at dose levels ranging from 50 to 800 ppm (2.49 to 39.21 mg/kg bwt/day in males and 3.23 to 52.34 mg/kg bwt/day in females) over a 2-year period. In addition, no carcinogenic effects were observed in either sex at any of the dose levels tested. Based on the toxicological findings, the Maximum Tolerated Dose (MTD) selected for testing (based on the 90-day feeding study) was not high enough to fully characterize the compound's carcinogenic potential, and for this reason the rat study (both sexes) was required to be repeated and must be submitted to the Agency by April 1993.

3. A 2-year carcinogenicity study in mice using dietary concentrations of 0, 20, 100, and 500 ppm (equivalent to doses of 0, 2.7, 13.7, and 70.2 mg/kg bwt/day in males and 0, 3.2, 16.5, and 85.2 mg/kg bwt/day in females). The NOEL for chronic effects other than carcinogenicity was 20 ppm (or 3.2 mg/kg/day in females and 2.7 mg/kg/day in males). The LOEL was 100 ppm (13.7 mg/kg bwt/day in males and 16.5 mg/kg bwt/day in females) (slight increase in liver mixed function oxidase). Microscopic changes in the liver were evident in both sexes at 500 ppm (70.2 mg/kg bwt/day in males and 85.2 mg/kg bwt/day in females). There were no carcinogenic effects in either sex at any dose level tested.

The selected dose (500 ppm) (70.2 mg/kg bwt/day in males and 85.2 mg/kg bwt/day in females) is satisfactory for evaluating the carcinogenic potential in male mice. However, this dose was less

than an MTD level in the female mice and, therefore, not sufficiently high to fully evaluate the compound's carcinogenic potential. Therefore, the female portion of the mouse carcinogenicity study was required to be repeated and must be submitted to the Agency by April 1993.

4. A rabbit teratology study was negative for developmental effects at all dose levels up to 200 mg/kg/day, the highest dose level tested. The NOEL for maternal toxicity was 20.0 mg/kg/day, and the NOEL for developmental toxicity was 60.0 mg/kg/day.

5. A rat teratology study was negative for developmental effects up to and including 469 mg/kg/day (highest dose level tested). The NOEL for maternal toxicity was 313 mg/kg/day, and the NOEL for developmental toxicity was 31 mg/kg/day.

6. A two-generation rat reproduction study with a NOEL of 16 mg/kg/day for reproductive effects and a NOEL of 4 mg/kg/day for systemic effects.

7. A reverse mutation assay (Ames), point mutation in CHO/HGPRT cells, *in vitro* and *in vivo* (mouse) cytogenetic assays, unscheduled DNA synthesis, and a dominant-lethal study in rats, all of which were negative for mutagenic effects.

Myclobutanil was not carcinogenic in either the rat or mouse chronic/oncogenic feeding studies. In the mouse study, increases in liver mixed-function oxidase activity, hepatic microsomal protein content, and absolute and relative liver weights were observed in both sexes at 500 ppm in the diet (highest level tested). In addition, increased incidence of hepatocellular basophilic, clear-cell, eosinophilic, and vacuolated cell foci were also observed in both sexes at this dose level as well as increased incidence of multifocal hepatocellular vacuolation at terminal sacrifice. At the interim sacrifices and in animals that died prior to terminal sacrifice, but not at the terminal sacrifice, increased incidence of hepatocellular centrilobular hypertrophy, Kupffer cell pigmentation and periportal punctate vacuolation, and individual cell hepatocellular necrosis were also observed at 500 ppm, but primarily in males. These effects were not considered to be of sufficient toxicological significance to indicate that the animals were tested at the MTD. However, in the 90-day feeding study in mice, body weight gains in males at 1,000 ppm (150 mg/kg bwt/day) (the lowest dose tested) were 37-percent less than those of the controls. Body weight gains of females were unaffected at this dose level. Therefore, although 500 ppm (75 mg/kg bwt/day) in the mouse chronic study was considered to be sufficiently high for an adequate negative study in males, it was not considered to be high enough for females.

The main toxicological effect seen in the rat chronic feeding study was testicular atrophy, seen at both the mid- and high-dose levels (9.84 and 39.21 mg/kg bwt/day in males). Increases in liver mixed-function oxidase activity and in liver weights were also observed in the study. Again, these effects were not considered to be adequate evidence that the animals were tested at the MTD.

Both studies need to be repeated because an MTD was not achieved. However, no preneoplastic lesions were observed in either study to suggest possible carcinogenic activity, and myclobutanil did not induce either genotoxic effects or chromosomal aberrations in a series of mutagenicity tests. In addition, no strong structural activity correlation to other carcinogens has been found. Under these circumstances, EPA concludes that no significant carcinogenic risk is posed by these tolerances for the timeframe involved in receiving and reviewing the repeated cancer studies.

The acceptable daily intake (ADI) based on the 2-year rat chronic feeding study (NOEL of 2.49 mg/kg bwt/day), and using a hundredfold uncertainty factor, is calculated to be 0.025 mg/kg bwt/day. The theoretical maximum residue contribution from previously established tolerances and tolerances established here is 0.002217 mg/kg bwt/day and utilizes 8.865 percent of the ADI.

The nature of the residue is adequately understood, and adequate analytical methods, gas liquid chromatography using nitrogen/phosphorus and electron capture detectors, are available for enforcement. Prior to their publication in the Pesticide Analytical Manual, Vol. II, the enforcement methodology is being made available in the interim to anyone who is interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128C, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-5232.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

The tolerances will expire on October 1, 1994. Based on the reviews of the rat and mouse oncogenicity studies, the Agency will determine whether establishing permanent tolerances is appropriate.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or a request for a hearing with the Hearing Clerk at the address given above. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by therequestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims of facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested.

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

The Office of Management and Budget has exempted this rule from the requirement of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agriculture commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 16, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended in part 180 as follows:

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

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

2. Section 180.443 is amended in paragraph (a) in the table therein by adding and alphabetically inserting the raw agricultural commodities "cherries (sweet and sour)," "nectarines," and "peaches" so that the table reads as follows:

§ 180.443 Myclobutanil; tolerances for residues.

(a) * * *

Commodity	Parts per million	Expiration date
Apples	0.5	None.
Cherries (sweet and sour).	4.0	Oct. 1, 1994.
Grapes	1.0	None.
Nectarines	2.0	Oct. 1, 1994.
Peaches	2.0	Oct. 1, 1994.

* * * * *

[FR Doc. 92-2540 Filed 2-4-92; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 271

[FRL-4097-6]

State of Florida; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Florida has applied for final authorization of revisions to its hazardous waste program for rules promulgated between July 1, 1988 and June 30, 1989, otherwise known as Non-HSWA Cluster V, under the Resource Conservation and Recovery Act (RCRA). The requirements contained in this revision application are in Supplementary Information, section B of this document. The Environmental Protection Agency (EPA) has reviewed Florida's application and has made a decision, subject to public review and comment, that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Florida's hazardous waste program revisions. Florida's application for program revision is available for public review and comment.

DATES: Final Authorization for Florida shall be effective April 6, 1992 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Florida's program revision application must be received by the close of business March 6, 1992.

ADDRESSES: Copies of Florida's program revision application are available during the hours 8 a.m. to 5 p.m. at the following addresses for inspection and copying: Florida Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, Phone 904-488-0300; U.S. EPA Region IV, Library, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone 404-347-4216, Pricilla Pride, Librarian. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. EPA, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone 404-347-2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260-266, 268, 124 and 270.

B. State of Florida

Florida initially received final authorization for its base RCRA program on February 12, 1985 (50 FR 3908, January 29, 1985). Florida has received authorization for revisions to its program through Non-HSWA Cluster II. Florida received authorization for Radioactive Mixed Waste on February 12, 1991. Today, Florida is seeking approval of its program revision for Non-HSWA Cluster V in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Florida's application, and has made an immediate final decision that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to the State of Florida. The public may submit written comments on EPA's immediate final decision up until March 6, 1992. Copies of Florida's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Florida has adopted by reference the following **Federal Register** (FR) in Non-HSWA Cluster V with the exception of 9/28/88 53 FR 37912, Permit Modification for Hazardous Waste Management Facilities and 3/7/89 54 FR 9596, Changes to Interim Status Facilities for Hazardous Waste Management Permits; Modifications of Hazardous Waste Management Permits; Procedures for Post-Closure Permitting.

Check-list	FR date and page No.	Description
49	7/19/88 53 FR 27290	Identification and listing of hazardous waste; treatability studies sample exemption.
52	9/2/88 53 FR 34079	Hazardous waste management system; standards for hazardous waste storage and treatment tank systems.
53	9/13/88 53 FR 35412	Identification and listing of hazardous waste; and designation of reportable quantities and notification.
55	10/11/88 53 FR 39720	Statistical methods for evaluating ground water monitoring data from hazardous waste facilities.
56	10/31/88 53 FR 43878	Identification and listing of hazardous waste; removal of iron dextran from the list of hazardous wastes.
57	10/31/88 53 FR 43881	Identification and listing of hazardous waste; removal of strontium sulfide from list of hazardous waste.
58	11/8/88 53 FR 45089	Standards for generators of hazardous wastes; manifest renewal.
59	1/9/89 54 FR 615	Miscellaneous units; standards applicable to owners and operators. Technical correction.

Check-list	FR date and page No.	Description
60	1/30/89 54 FR 4286	Amendment to requirements for hazardous waste incinerator permits.

The State of Florida has demonstrated and certified that its authority to regulate the revised program set forth in Non-HSWA Cluster V as specified at § 403.72(1) Florida Statutes (FS), Rule 17-730(1) Florida Administrative Code (FAC), 403.704 FS, 17-730.020 FAC, 403.721 FS, 17-730.180 FAC, 403.72 FS, 17-730.210 FAC, 120.53 FS, 403.061 FS, and 17-730.900 FAC as amended through August 13, 1991, is equivalent to federal requirements of the RCRA at 40 CFR 260, 261, 264, 265 and 270 and sections 1006, 3001 through 3007, 3010, 3014 through 3019, and 7004 of RCRA.

On the effective date of final authorization, Florida will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the Federal program. EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Florida is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Florida's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised.

Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under section 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92-2157 Filed 2-4-92; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[FRL-4097-5]

State of Florida Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Florida has applied for final authorization of revisions to its hazardous waste program for rules promulgated between July 1, 1986 and June 30, 1987, otherwise known as Non-HSWA Cluster III, under the Resource Conservation and Recovery Act (RCRA). The requirements contained in this revision application are in Supplementary Information, section B of this document. The Environmental Protection Agency (EPA) has reviewed Florida's application and has made a decision, subject to public review and comment, that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Florida's hazardous waste program revisions. Florida's application for program revision is available for public review and comment.

DATES: Final Authorization for Florida shall be effective April 6, 1992 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Florida's program revision application must be received by the close of business March 6, 1992.

ADDRESSES: Copies of Florida's program revision application are available during the hours 8 a.m. to 5 p.m. at the following addresses for inspection and copying: Florida Department of Environmental Regulation, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, Phone: 904-488-0300; U.S. EPA Region IV, Library, 345 Courtland St., NE., Atlanta, Georgia 30365, Phone: 404-347-4216, Pricilla Pride, Librarian. Written comments should be sent to Narindar Kumar at the address listed below.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. EPA, 345 Courtland Street NE., Atlanta, Georgia 30365, Phone: 404-347-2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements

promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–266, 268, and 270.

B. State of Florida

Florida initially received final authorization for its base RCRA program on February 12, 1985 (50 FR 3908, January 29, 1985). Florida has received authorization for revisions to its program through Non-HSWA Cluster II. Florida received authorization for Radioactive Mixed Waste on February 12, 1991. Today, Florida is seeking approval of its program revision for Non-HSWA Cluster III in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Florida's application, and has made an immediate final decision that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to the State of Florida. The public may submit written comments on EPA's immediate final decision up until March 6, 1992. Copies of Florida's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Florida has adopted the following **Federal Registers** in Non-HSWA Cluster III by reference:

Check-lists	FR date and page No.	Description
27	7/11/86 51 FR 25350	Liability coverage corporate guarantee.
28	7/14/86 51 FR 25422	Standards for HW storage and treatment tank systems.
28	8/15/86 51 FR 29430	Standards for HW storage and treatment tank systems; correction.
35	3/16/87 52 FR 8072	Revised manual SW 846; amended incorporation by reference.
36	3/19/87 52 FR 8704	Closure/post-closure care for interim status surface impoundments.
37	6/5/87 52 FR 21306	Definition of solid waste technical correction.
38	6/22/87 52 FR 23447	Amends part B information requirements for land disposal facilities.
38	9/9/87 52 FR 33936	Development of corrective action programs after permitting hazardous waste land disposal facilities; corrections.
46	4/22/88 53 FR 13382	Technical correction; identification and listing of hazardous waste.

The State of Florida has demonstrated and certified that its authority to regulate the revised program set forth in Non-HSWA Cluster III, as specified at §§ 120.53, 403.061, 403.72, .721, .722, .724, Florida Statutes (FS) and Rules 17–730.020, .021(1), .030(1), .160, .180(3), .181, .250, .280, .900(2), Florida Administrative Code (FAC) as amended through August 13, 1990, is equivalent to federal requirements of the RCRA at 40 CFR 260.11, 261, 261.33 and appendix VIII, 262, 264, 265, 265.228, 266.20, 270.6(a) and 270.14(c), and sections 1006, 2002, 3001, 3004, 3005, 3007, 3010, 3014, 3017–19, and 7004 of RCRA.

On the effective date of final authorization, Florida will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the Federal program. EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Florida is not authorized to operate the Federal program on Indian lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Florida's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised.

Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92–2158 Filed 2–4–92; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-38

[FPMR Temp. Reg. G-55]

Passenger Sedans/Station Wagons Replacement Standard

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This regulation establishes a minimum replacement standard of 3 years or 60,000 miles for passenger sedans and station wagons instead of the current replacement standard for such vehicles which is 6 years or 60,000 miles. The General Services Administration's Interagency Fleet Management System has operated on the shorter standard for some years and has experienced a decrease in operating costs while providing a higher level of vehicle performance. It is appropriate that other agencies now have the same opportunity. The result of this action will be that executive agencies will have the option to replace their passenger sedans and station wagons on a more timely basis (potentially as frequently as 3 years or 60,000 miles) if they deem it to be in their best interests and cost beneficial. By issuance of this temporary regulation, GSA is extending the potential benefits of a shorter replacement cycle to all Federal agencies.

DATES: *Effective date:* February 5, 1992.

Expiration date: June 30, 1993.

Comments due on or before: March 31, 1992.

ADDRESSES: Comments should be addressed to: General Services Administration (FBF), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. Sean Allan, Fleet Management Division (703-305-6278).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR 101-38

Government property management, Motor vehicles.

(Sec. 205(c) 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR chapter 101, the following temporary regulation is added to the appendix at the end of subchapter G to read as follows:

January 28, 1992.

Federal Property Management Regulations Temporary Regulation G-55

To: Heads of Federal agencies.

Subject: Passenger sedans/station wagons replacement standard.

1. *Purpose.* This regulation allows agencies to use a minimum replacement standard of 3 years or 60,000 miles for passenger sedans and station wagons.

2. *Effective date.* This regulation is effective February 5, 1992.

3. *Expiration date.* This regulation expires June 30, 1993, unless sooner superseded or incorporated into the permanent regulations of the General Services Administration (GSA).

4. *Applicability.* This regulation applies to all executive agencies.

5. *Background.* Prior to this regulation, GSA's Interagency Fleet Management System (IFMS) was granted a waiver from the current 6 years or 60,000 mile replacement cycle for passenger sedans and station wagons contained in 41 CFR 101-38.402(a). The use of a 3 year or 60,000 mile replacement cycle has proven to be a success. Operating costs were reduced while vehicle performance levels were enhanced. This regulation allows all executive agencies to use a 3 year or 60,000 mile replacement cycle if they consider it to be more beneficial than the current replacement cycle standard. By issuance of this temporary regulation, GSA is extending the potential benefits of a shorter replacement cycle to all Federal agencies. The rule is being issued as a temporary regulation pending the completion of the motor vehicle study now being conducted by the President's Council on Management Improvement. That study is expected to provide additional information about appropriate vehicle replacement standards for eventual incorporation into the permanent regulations.

6. *Explanation of changes.* Section 101-38.402 is amended by revising paragraph (a) to read as follows:

§ 101-38.402 Replacement standards.

(a) Table of minimum replacement standards.

TABLE OF MINIMUM REPLACEMENT STANDARDS

Vehicle description	Life expectancy	
	Years	Miles
Passenger vehicles:		
Sedans/Station Wagons	3	60,000
Ambulances	7	60,000

TABLE OF MINIMUM REPLACEMENT STANDARDS—Continued

Vehicle description	Life expectancy	
	Years	Miles
Buses:		
Intercity-Type	N/A	280,000
City-Type	N/A	150,000
School-Type	N/A	80,000
Truck:		
Less than 12,500 pounds GVWR	6	50,000
12,500—23,999 GVWR	7	60,000
24,000 pounds and over	9	80,000
4- or 6-wheel drive vehicle	6	40,000

* * * * *

7. *Agency comments and assistance.* Comments or inquiries concerning the effect or impact of this regulation should be submitted to the General Services Administration (FBF), Washington, DC 20406, not later than March 31, 1992, for consideration and possible incorporation into a permanent regulation.

8. *Effect on other directives.* This regulation supersedes the provisions of § 101-38.402(a).

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-2736 Filed 2-4-92; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 90-623; FCC 91-381]

Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission adopted a Report and Order that replaced structural separation requirements with a comprehensive system of strengthened nonstructural safeguards, including cost accounting safeguards applicable to the Bell Operating Companies (BOCs) and other Tier 1 local exchange carriers (LECs), to govern provision of enhanced services by the BOCs. The Commission also preempted certain forms of state regulation that would thwart or impede federal actions affecting provision of enhanced services by AT&T, the BOCs, and independent local telephone companies. The Commission initiated this proceeding in response to the United States Court of Appeals for the Ninth Circuit's decision in *California* v.

FCC, which vacated Computer III (51 FR 24350 (July 3, 1986)). The Commission's action in this proceeding is intended to permit the BOCs to provide enhanced services pursuant to safeguards that will both effectively protect against cross-subsidization and discrimination, and encourage efficient use of BOC resources to provide enhanced services that will best serve the public interest.

EFFECTIVE DATE: February 1, 1992. Decisions in this Report and Order concerning removal of structural separation requirements and adoption of nonstructural safeguards, including the amendments to part 64, are effective February 1, 1992. The elimination of the capitalization plan requirement, the prohibition against the regulated BOC company and its affiliates from performing software development for one another, and the prohibition against integrated planning and development are effective January 1, 1992. Preemption decisions adopted in the Report and Order are effective March 6, 1992.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, (202) 632-4047, Suzanne Tetreault, (202) 632-6363, Melissa Newman, (202) 632-9342, or Deborah Dupont, (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 91-381, adopted November 21, 1991, and released December 20, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422.

Public reporting burdens for the collection of information are estimated as follows: 1600 hours average burden per response for cost allocation manual; 500 hours average burden per response for audit report; 300 hours average burden per response for occasional and quarterly updates and revisions. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information Resources Branch, room 416, Paperwork Reduction Project (3060-0470), Washington, DC, 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0470), Washington, DC, 20503.

Summary of the Report and Order

1. On June 6, 1990, the United States Court of Appeals for the Ninth Circuit in *California* v. *FCC* vacated and remanded three Commission decisions in Computer III. The Court found that the Commission had not sufficiently justified its decision to replace structural separation with nonstructural safeguards for BOC provision of enhanced services. The Court also held that the Commission had not adequately justified its preemption of certain kinds of state regulation. In response to the Court's decision, the Commission on December 13, 1990, adopted a Notice of Proposed Rulemaking (56 FR 04782 (February 6, 1991)) proposing to institute a set of strengthened nonstructural safeguards to govern BOC provision of enhanced services. The Commission also proposed to preempt some areas of state regulation affecting provision of enhanced services by AT&T, the BOCs, and independent local telephone companies.

2. The Commission strengthened existing cost accounting safeguards applicable to all Tier 1 LECs, including the BOCs, by: (1) Establishing on a permanent basis nonregulated treatment of enhanced services for accounting and cost allocation purposes, (2) requiring independent auditors to provide the same level of assurance as that undertaken in a financial statement audit engagement in their reports on carriers' cost allocation manual and results, (3) directing the Common Carrier Bureau to analyze the cost allocation practices of carriers to determine ways to obtain greater uniformity in carriers' cost procedures and practices and promulgate uniformity requirements, (4) requiring carriers to quantify the effects of changes in their cost allocation manuals, and (5) directing the Common Carrier Bureau to monitor the materiality thresholds used by independent auditors to ensure that they are suitable.

3. The Commission concluded that, based on its experience of nearly four years and on the record on remand, its comprehensive system of cost accounting safeguards effectively protects ratepayers against cross-subsidization by the BOCs, and is a realistic and reliable alternative to structural separation. This system consists of five principal parts: (1) The establishment of effective accounting rules and cost allocation standards; (2) the requirement for telecommunications carriers to file cost allocation manuals reflecting the established rules and standards; (3) the requirement for audits by independent auditors of carrier cost allocations, requiring a positive opinion on whether carriers' allocations comply with their cost allocation manuals; (4) the establishment of detailed reporting requirements and the development of an automated system to store and analyze the data; and (5) the performance of on-site audits by FCC staff.

4. The Commission also concluded that the implementation of local exchange carrier price cap regulation as of January 1, 1991, is a significant regulatory development since the BOC Separation Order (49 FR (January 10, 1984)) that serves as an effective complement to these cost-accounting safeguards by reducing BOC incentives to cross-subsidize since carriers are not able automatically to recoup misallocated nonregulated costs by raising basic service rates.

5. The Commission also established nonstructural safeguards against BOC discrimination in provision of basic services to competing enhanced services providers. The Commission readopted the Computer III nondiscrimination reporting requirements as effective protections against discrimination in the installation, maintenance, and quality of basic services, and the Computer III network disclosure rules to ensure that competing enhanced service providers obtain critical network information in a timely fashion. The Commission determined that these safeguards, along with Open Network Architecture (ONA), would effectively protect against discrimination. The Commission determined that fundamental changes in the ONA requirements are not necessary in order to rely on them for protection against discrimination.

6. The Commission eliminated the capitalization plan requirement as no longer justified in light of the implementation of affiliate transaction rules and the burdens associated with the requirement. Similarly, the Commission eliminated the prohibition against a BOC regulated company and any nonregulated affiliates performing software development for one another because the affiliate transaction rules adequately protect ratepayers from any disproportionate spreading of the costs of software development onto regulated activities.

7. The Commission modified the Computer III rules relating to customer proprietary network information (CPNI) to require that, for customers with more than twenty lines, Bell Operating Company personnel involved in marketing enhanced services must

obtain authorization from the customer before gaining access to its CPNI. This requirement must be implemented within six months from the date of release of the Commission's order. The Commission concluded that this change was needed to better balance considerations of efficiency, competitive equity, and privacy. The new rule will preserve the benefits of the old rules for the further development of enhanced services for the mass market, while providing additional safeguards with respect to those customers whose CPNI might provide the greatest competitive advantage to the BOCs and raise competitive issues for the customers themselves. The CPNI rules for enhanced services as they apply to customers other than those with more than twenty lines remain unchanged.

8. Given the effectiveness of its comprehensive system of nonstructural safeguards against cross-subsidization and discrimination, the Commission concluded that there are no significant public interest detriments from reliance on them, rather than a Computer II (45 FR 31319 (May 13, 1980)) regime of structural separation. The Commission found that its system of nonstructural safeguards would provide substantial benefits by permitting the BOCs to realize fully their significant potential to provide an efficient, broad-based delivery of enhanced services to the public, especially to the mass market. The Commission permitted the BOCs to provide enhanced services pursuant to its nonstructural safeguards instead of the Computer II structural separation requirements.

9. The Commission determined that it would review its nonstructural safeguards after the seven BOCs have operated under a full ONA environment for three years. The Commission stated that the review will enable it to evaluate whether nonstructural safeguards have been effective in promoting a competitive enhanced services marketplace while permitting the BOCs to provide enhanced services more efficiently on an integrated basis, and whether any changes are necessary given our obligation to reevaluate regulations in light of changing conditions.

10. The Commission preempted some state regulation applicable to the provision of enhanced services by AT&T, the BOCs, and independent telephone companies. The Commission preempted: (1) State requirements for structural separation of the facilities and personnel used to provide the intrastate portion of jurisdictionally mixed enhanced services because it is not economically or technically feasible for carriers to provide the interstate enhanced and basic services using the same facilities and personnel, while at the same time complying with state requirements that the carriers provide the same enhanced services on an intrastate basis using facilities and personnel structurally separate from those used to provide intrastate basic services; (2) state CPNI rules that require prior authorization where such authorization is not required under federal rules because such state rules would negate the federal opportunity for access to CPNI without prior authorization, and (3) state network disclosure rules that require initial disclosure at a time different from the federal rule because state rules requiring a different timing of intitial disclosure would negate the timing of the federal rule. The Commission did not preempt state structural separation requirements for purely intrastate enhanced services, and state requirements that intrastate enhanced services be provided by a separate legal entity with separate books of account.

Ordering Clauses

1. Accordingly, *It Is Ordered,* That pursuant to authority contained in sections 1, 4, 201–205, 218, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154, 201–205, 218, and 220, part 64 *Is Amended* As set forth below.

2. *It Is Further Ordered,* That the policies, rules, and requirements set forth herein *Are Adopted.*

3. *It Is Further Ordered,* That the Chief, Common Carrier Bureau is delegated authority to act upon matters pertaining to implementation of the policies, rules, and requirements as set forth herein.

4. *It Is Further Ordered,* That the decisions of this Report and Order concerning removal of structural separation and adoption of nonstructural safeguards, including the amendments to part 64, *Shall Be Effective* February 1, 1992.[1]

5. *It Is Further Ordered,* That the elimination of the capitalization plan requirement, the prohibition against the regulated BOC company and its affiliates from performing software development for one another, and the prohibition against integrated planning and development *Is Effective* January 1, 1992.[2]

6. *It Is Further Ordered,* That the preemption decisions adopted herein *Shall Be Effective* thirty days after publication of this Report and Order in the **Federal Register.**

List of Subjects in 47 CFR Part 64

Communications common carriers; Computer technology.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Amendments to the Code of Federal Regulations

Title 47 of the CFR, part 64, is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 201, 218, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218.

2. New § 64.903 is added to read as follows:

§ 64.903 Cost Allocation Manuals.

(a) Each local exchange carrier with annual operating revenues of $100 million or more shall file with the Commission a manual containing the following information regarding its allocation of costs between regulated and nonregulated activities:

(1) A description of each of the carrier's nonregulated activities;

(2) A list of all the activities to which the carrier now accords incidental accounting treatment and the justification therefor;

(3) A chart showing all of the carrier's corporate affiliates;

(4) A statement identifying each affiliate that engages in or will engage in transactions with the carrier and

[1] The Commission ordered an effective date of February 1, 1992, in order to permit the timely filing of petitions for structural relief by the BOCs on or about February 1, 1992, when federal ONA tariffs are scheduled to become effective. Petitions for structural relief could not be filed on that date unless our establishment herein of the procedures and preconditions for filing such petitions were effective by that date. Accordingly, we find good cause that the effective date should be less than thirty days from publication in the Federal Register. *See* Section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. § 553(d)(3).

[2] The publication of a substantive rule which relieves a restriction may be made less than thirty days before its effective date. *See* section 553(d)(1) of the Administrative Procedure Act, 5 U.S.C. 553(d)(1). The Commission's decisions to remove the capitalization plan requirement, the prohibition against the regulated BOC company and its affiliates performing software development for one another, and the prohibition against integrated planning and development fall within that provision.

describing the nature, terms and frequency of each transaction;

(5) A cost apportionment table showing, for each account containing costs incurred in providing regulated services, the cost pools with that account, the procedures used to place costs into each cost pool, and the method used to apportion the costs within each cost pool between regulated and nonregulated activities; and

(6) A description of the time reporting procedures that the carrier uses, including the methods or studies designed to measure and allocate non-productive time.

(b) Each carrier shall ensure that the information contained in its cost allocation manual is accurate. Carriers must update their manuals at least quarterly, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at least 60 days before the carrier plans to implement the changes. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Chief, Common Carrier Bureau may suspend and such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or to prescribe a different procedure.

(c) The Commission may be order require any other communications common carrier to file and maintain a cost allocation manual as provided in this section.

(3) New § 64.904 is added to read as follows:

§ 64.904 Independent Audits.

(a) Each local exchange carrier required by this part or by Commission order to file a cost allocation manual shall have performed annually, by an independent auditor, an audit that provides a positive option on whether the applicable data shown in the carrier's annual report required by § 43.21(f)(2) of this chapter presents fairly, in all material respects, the information of the carrier required to be set forth therein in accordance with the carrier's cost allocation manual, the Commission's Joint Cost Orders issued in conjuction with CC Docket No. 86-111 and the Commission's rules and regulations including sections 32.23, 32.27, 64.901 and 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau.

(b) The report of the independent auditor shall be filed at the time that the local exchange carrier files the annual report required by § 43.21(f)(2) of this chapter.

[FR Doc. 92-2678 Filed 2-4-92; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 910650-1218]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NMFS closes the commercial fishery in the exclusive economic zone (EEZ) for king mackerel from the eastern zone of the Gulf migratory group. NMFS has determined that the commercial quota for Gulf group king mackerel from the eastern zone was reached on January 30, 1992. This closure is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATES: Closure is effective on January 31, 1992, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf Mexico and the South Atlantic, as amended, was developed by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils) under authority of the Magnuson Fishery Conservation and Management Act and is implemented by regulations at 50 CFR part 642. Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1, 1991, through June 30, 1992) set the commercial allocation at 1.84 million pounds divided into quotas of 1.27 million pounds for the eastern zone and 0.57 million pounds for the western zone.

Under § 642.22(a), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota has been reached, or is projected to be reached, by publishing a notice in the **Federal Register.** NMFS has determined that the commercial quota of 1.27 million pounds for the eastern zone of the Gulf migratory group of king mackerel was reached on January 30, 1992. Hence, the commercial fishery for Gulf group king mackerel from the eastern zone is closed effective January 31, 1992, through June 30, 1992, the end of the fishing year.

NMFS previously determined that the commercial quota of 0.57 million pounds of king mackerel from the western zone was reached on September 28, 1991, and closed this segment of the fishery on September 29, 1991 (56 FR 49853, October 2, 1991). NMFS also previously determined that the recreational allocation of 3.91 million pounds for Gulf migratory group king mackerel was reached on January 12, 1992. The recreational bag limit for this group was reduced to zero on January 13, 1992 (57 FR 1662, January 15, 1992).

With closure of the commercial fishery in the eastern zone, all commercial fisheries are closed and the recreational bag limit is zero for Gulf migratory group king mackerel in the EEZ through June 30, 1992. During the closure, Gulf migratory group king mackerel may not be harvested from or possessed in the EEZ and such king mackerel taken in the EEZ may not be purchased, bartered traded, or sold. The latter prohibition does not apply to trade in king mackerel from the Gulf migratory group that were harvested, landed, and bartered, traded, or sold prior to the closure and held in cold storage by a dealer or processor.

Other Matters

This action is required by 50 CFR 642.22(a) and complies with Executive Order 12291.

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

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 30, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-2701 Filed 1-30-92; 4:43 pm]
BILLING CODE 3510-22-M

50 CFR Part 650

[Docket No. 51222-6240]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Temporary adjustment of the meat count/shell height standards.

SUMMARY: NMFS issues this notice to implement a temporary adjustment of the meat count and shell height standards for the Atlantic sea scallop fishery. This action increases the average meat count standard to 33 meats per pound (MPP) (33 meats per 0.45 kilogram (kg)) and the shell height standard to 3 7/16 inches (87 millimeters (mm)).

EFFECTIVE DATES: February 1, 1992, through June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Resource Policy Analyst, Fishery Management Operations, NMFS Northeast Regional Office, 508/281-9273.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR part 650 implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) authorize the Director, Northeast Region, NMFS (Regional Director), to adjust temporarily the meat count/shell height standards (standards) upon finding that specific criteria are met. These criteria, which appear at § 650.22(c), include the finding that: (1) The objective of the FMP would be achieved more readily, or would be better served, through an adjustment of the standards; (2) the recommended alteration in the standards would not reduce expected catch over the following year by more than 5 percent from that which would have been expected under the prevailing standard; (3) the recommended standards for meat count and shell height are consistent with each other; and (4) 50 percent of the harvestable biomass is at scallop sizes smaller than those consistent with the prevailing standards, and a temporary relaxation of the standards would not jeopardize future recruitment to the fishery. Adjustments of the standards may remain in effect for up to twelve months.

After consideration of the criteria, the Regional Director made a recommendation to adjust the standards. In accordance with the regulations, comments on this recommendation were solicited from the New England Fishery Management Council (Council), which voted to support the Regional Director's recommendation, and public hearings were held on January 15, 1992, and January 21, 1992. Attendance at the public hearings was low, and only four members of the industry commented. The comments were not for or against the recommendation, but were generally critical of the use of the standards as management measures. The Council is currently working on a draft of Amendment 4 to the Atlantic Sea Scallops FMP. The amendment proposes to change the primary scallop-management strategy from a meat count management system to an effort-control program.

Two written comments were also received on the recommendation, one from an industry association and one from the city government of New Bedford, MA. The comments were in support of the recommended adjustment.

After consideration of the full record, including: (1) Comments from the public, (2) comments from the Council, (3) available resource and assessment information, and (4) available information on the fishery and the industry, the Regional Director is adjusting the standards to 33 MPP (33 meats per 0.45 kg) with a corresponding shell height standard of 3 7/16 inches (87 mm) for the period February 1, 1992, through June 30, 1992.

This adjustment to the standards coincides with the end of the 10 percent spawning season adjustment approved under Amendment 2 to the FMP (53 FR 23634, June 23, 1988). This action was also taken in 1990 and 1991 at the end of the spawning season adjustment period. Survey information shows that although abundance and recruitment values for the sea scallop resource are among record highs, the resource is dominated by small scallops. This makes attaining an average MPP standard difficult because of the scarcity of large scallops available for mixing. Vessel costs increase because additional time and fuel must be spent in search of large scallops, discard mortality of small scallops increases, and landings decrease despite high resource abundance. These factors conflict with the objectives of the FMP and criterion 1.

This action meets criterion 2 because it is not expected to reduce catch over the following year by more than 5 percent. In addition, the meat count and shell height will remain consistent, thereby, conforming with criterion 3.

Criterion 4 states that 50 percent of the harvestable biomass must be at sizes smaller than the prevailing standard (30 MPP). Recent survey results show that 81 percent of the harvestable biomass consists of scallops smaller than 30 MPP. Thus this portion of criterion 4 is met. Criterion 4 also states that a temporary relaxation of the standards must not jeopardize future recruitment to the fishery. Sea scallops have their first significant spawning at age four. Age four sea scallops range from approximately 30 count to 50 count. The Regional Director recognizes that caution must be exercised when recommending a temporary adjustment to the meat count standard within this range. It is unlikely, however, that an adjustment of this magnitude, for a five month period, will jeopardize future recruitment to the fishery.

This temporary adjustment will be effective February 1, 1992, through June 30, 1992. During this period, the meat count standard will be 33 MPP (33 meats per 0.45 kg) and the shell height standard 3 7/16 inches (87 mm). On July 1, 1992, the standards will revert to 30 MPP (30 meats per 0.45 kg) and 3½ inches (89 mm) shell height. This adjustment will allow the sea scallop fishery to remain economically viable while the predominately small sea scallops, which grow rapidly, reach harvestable sizes under the 30 MPP standard.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: January 30, 1992.

David S. Crestin

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-2700 Filed 1-30-92; 4:42 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 24
Wednesday, February 5, 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

Agricultural Stabilization and Conservation Service

7 CFR Part 703

Wetlands Reserve Program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes regulations to implement the Wetlands Reserve Program (WRP) provided for in Title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act), enacted on November 28, 1990. Under the WRP, the Agricultural Stabilization and Conservation Service (ASCS) is authorized to purchase easements from eligible owners who agree to restore eligible farmed and converted wetlands.

DATES: Comments must be received on or before March 6, 1992, in order to be assured of consideration.

ADDRESSES: Comments should be mailed to Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013, phone (202) 720-6221.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512-1 and has been classified as "major." It has been determined that these provisions may result in: An annual effect on the national economy of $100 million or more; major increases in costs or prices for consumers, individual industries, State or local agencies, or geographic regions; significant adverse effects on competition, employment, investment, productivity, innovation; a substantial effect on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. However, a preliminary regulatory impact analysis has been prepared and is available upon request.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

It has been determined by an environmental assessment that this action will not have any significant adverse impacts on the quality of the human environment. Therefore, an environmental impact statement is not needed.

Copies of a draft of the findings of no significant impact are available upon written request.

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

At this time, a title and number for the Wetlands Reserve Program has not yet been assigned for purposes of inclusion in the Catalog of Federal Domestic Assistance.

The information collection requirements of the proposed rule at 7 CFR part 703 will be submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1980.

The public reporting burden for the information collections that would be required for compliance with these regulations are estimated to vary from 6 minutes to 9 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.

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

Discussion of Program

The WRP is authorized by Title XII of The Food Security Act of 1985 (the 1985 Act) as amended by the 1990 Act. Under the WRP, ASCS may purchase easements from persons agreeing to restore farmed or converted wetlands. The 1990 Act creates an umbrella program called the Agricultural Resource Conservation Program (ARCP) which includes the Environmental Conservation Acreage Reserve Program (ECARP). ECARP includes the Conservation Reserve Program and the Wetlands Reserve Program. On April 19, 1991, Commodity Credit Corporation published a notice in the **Federal Register** (56 FR 15980) containing final regulations which would add to the Code of Federal Regulations a new part (7 CFR part 1410) for the CRP program. General provisions for the ARCP were included as subpart A of part 1410 and specific regulations for the CRP were set out as subpart B. This rule proposes that a new part (7 CFR part 703) be established for WRP.

Maximum Acreage Enrollment, Land Eligibility, and Easement Priorities

Section 1237 of the 1985 Act sets a 1991-95 enrollment goal of a maximum 1 million acres for the WRP, but provides further that enrollment through 1991 may not exceed 200,000 acres, enrollment through 1992 may not exceed 400,000 acres, enrollment through 1993 may not exceed 600,000 acres, enrollment through 1994 may not exceed 800,000 acres and enrollment through 1995 may not exceed 1,000,000 acres.

Section 1237 specifies that eligible land will include farmed or converted wetlands, but not wetlands converted after December 23, 1985, together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the wetland values merit inclusion in the program taking into account the cost of restoring the wetlands. ASCS is also permitted to include in the program: (1) Farmed wetlands and adjoining lands that are enrolled in the Conservation Reserve Program with the highest wetland functions and values and that are likely to return to production at the end of the CRP contract; (2) other wetlands that would not otherwise be eligible if it is determined that inclusion in the program would add to the value of the easement; and (3) riparian areas that link wetlands that are protected by easements or by some other device or circumstance that achieves the same purpose as an easement. In addition prior converted

wetlands enrolled in the CRP may be eligible to be included in the WRP if there is a high probability the wetlands can be restored.

Nationwide, eight pools will be established that correspond with the county boundaries of Soil Conservation Service's (SCS) Major Land Resource Regions (MLRR's). Bids accepted generally will be based on a ratio of acres of hydric cropland soils in a particular pool area compared to the acres of hydric cropland soils in the other pool areas. If bids are not accepted which equal the total allocated acreage within a pool area, ASCS may, at ASCS's discretion, redistribute any remaining acreage in such pool to other pools. Section 1237 prohibits acquiring WRP easements for land that contains timber stands established under the CRP.

With respect to owner eligibility, section 1237E of the 1985 Act, provides that no easement shall be created in the WRP on land that has changed ownership in the preceding 12 months unless: (1) The new ownership was acquired by will or succession as a result of the death of the previous owner; or, (2) the Secretary determines that the land was acquired under circumstances that give adequate assurances that such land was not acquired for the purpose of placing it in the WRP.

Section 1237A provides that the easements purchased under the WRP shall be in a recordable form and shall be for 30 years, permanent, or the maximum duration allowed under applicable State laws. Section 1237C(c) provides that in determining the acceptability of offers, consideration may be given to the extent to which the purposes of the program can be accomplished on the land, the productivity of the land and the on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities. In addition, section 1237C(d) provides that to the extent practicable, taking into consideration costs and future agricultural and food needs, the Secretary shall give priority to obtaining permanent easements before shorter term easements and, in consultation with the Secretary of the Interior, shall place priority on acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife. In order to accomplish this goal the proposed regulation provides at § 703.12 that permanent easements will be preferred whenever possible. The proposed rule at § 703.10 provides that the duration of the easement is one of the factors which will be evaluated in rating bids to be accepted into the program. ASCS's intention is that a bid which offers less than a permanent easement shall be substantially lower in priority than a bid offering a permanent easement.

A formula will be used to determine a ranking for bid acceptance when an excess of eligible bids are received during any given signup period. ASCS's intention in ranking the bids is to enroll the wetlands that provide the greatest environmental benefits for the government money expended on restoration and easement purchase. Initially, the prioritization formula will emphasize management factors that ensure the effectiveness of the restored wetland when compared to a site's particular wetland functions and values. The weight of particular factors may change if credible new information is developed that characterizes the environmental benefits of wetlands by their specific functions and values.

Further, if it is determined that special circumstances exist which increase the value of the area to be accepted and the wetland to be restored, the SCS Stated Conservationist, upon the recommendations of the Fish and Wildlife Service (FWS) and the local SCS office, may request acceptance of no more than five percent of the total acreage enrolled in the State during each signup period irrespective of the ranking. Each request for such acceptance will be considered on a case-by-case basis taking into consideration the information submitted by SCS for each such request.

The proposed regulations implement the owner and land eligibility provisions in proposed §§ 703.6–703.9. In order to assure maximum benefits from the expenditure of WRP funds, the rules set out crop-history requirements and other provisions which include limiting the eligibility of "adjacent lands" to buffer areas that in each case may neither, for the particular easement, average more than 100 feet wide nor be more than twice the area of the restored wetland. Specifications are also set out in the proposed regulation for the wetland functional values which may be considered relevant by ASCS in determining whether particular parcels should be accepted for enrollment in the program. In proposed §§ 703.10–703.11, the regulation provides for a bid system to be used to determine enrollment and those sections provide for the use of priorities in assessing bids, as is provided in the statute. Proposed § 703.12 provides specifically that to the extent practicable all easements shall be permanent easements unless it is determined by ASCS upon evaluation of offers that accepting an offer for a shorter period, which still meets the minimum length requirements of the statute, is necessary for accomplishment of the national program goals in individual cases.

With respect to fiscal year 1992 only, WRP shall be available to producers only in the following states: California, Iowa, Louisiana, Minnesota, Mississippi, Missouri, New York, and North Carolina. These states have been determined to be those which will provide the eligible acres necessary to enroll approximately 50,000 acres.

Producer Requirements

Section 1237A of the 1985 Act provides that an owner of land placed in the program must: (1) Grant an easement on the land; (2) implement a Wetlands Reserve Plan of Operation (WRPO); (3) provide for the creation and recordation of a deed restriction covering the easement; and (4) ensure consent to the easement from persons holding a security interest in the property. The 1985 Act requires, in addition, that the easement will permit: (1) Repairs, improvements, and inspection on such lands that are necessary to maintain existing public drainage systems and; (2) landowners to control public access on the easement area while identifying access routes to be used for wetland restoration activities, management and monitoring. Section 1237A requires that the easement: (1) Prohibits the alteration of wildlife habitat and other natural features of the land unless specifically permitted by the WRPO; (2) permits spraying with chemicals or mowing of the land as permitted by the WRPO to comply with Federal or State noxious weed laws or Federal or State emergency pest treatment programs. The 1985 Act provides further that the Secretary may impose other conditions as needed and authorizes the Secretary to permit compatible uses of the property which are deemed consistent with the primary purposes of the easement. Section 1237B requires generally that participants must comply with all program requirements and specifies that as a condition for participation, the participant must agree to the permanent retirement of any existing cropland base and allotment history for such land under production adjustment programs administered by the Secretary.

Section 1237A provides that in the case of any violation of the terms and conditions of the easement or related

agreement, the easement shall remain in force and the owner may be required to refund all or part of any payment made for such easement, together with interest. With respect to WRPO's, section 1237A provides that such WRPO's will be developed and agreed to at the local level by representatives of the SCS and the FWS, United States Department of Interior, in conjunction with the landowner. However, if agreement between SCS and FWS cannot be reached at the local level, the WRPO shall be developed by the State Conservationist in consultation with FWS.

In the proposed rule, §§ 703.12 and 703.15 set out the obligations of WRP participants. The proposed regulations require participants to control weeds or pests to the extent specified in the WRPO taking into consideration the needs of wildlife and water quality. As proposed, each participant would, prior to submitting a bid for participation in the program, be required to have an approved WRPO which would set out the manner in which the land would be restored to a wetland status and other measures which would be required for the property.

Under § 703.12 participants are required to be responsible for the long-term management of the easement in accordance with the terms of the easement and related agreements including the WRPO. However, participants will continue to have the option, at their sole discretion, to enter into an agreement with a Federal, State, or private conservation entity to secure management assistance or other commitment of action from such entities that the landowner determines to be in their interest. Arranging for a conservation entity to become the owner of record of the land, including the management responsibilities associated with the easement area, is one potential option available to the present owner as a means of transferring long-term management responsibility. Whenever a landowner expresses a desire to enter into such third party management or other commitment to action, that request will be considered simultaneously with the WRPO and other easement establishment efforts.

Section 703.15 of the proposed rule sets out provisions which authorize ASCS to permit certain uses to be considered compatible uses of the property in appropriate cases. Those uses can include hunting and fishing, and, in addition, timber production under an approved management and harvesting plan. Compatible uses may also include haying or grazing if allowed by the WRPO in a manner consistent with the easement. Provisions for remedies for ASCS in the event of a program or easement violation are set out in § 703.29 of the proposed regulations.

Payments

WRP payments are subject to advance appropriations under the WRP and ASCS may make easement payments and cost-share payments. With respect to easement payments, section 1237A of the 1985 Act provides that the easement payment may not exceed the amount which is equal to the difference between the fair market value of the land less the fair market value of the land encumbered by the easement. Easements will be accepted based on the market value of the agricultural land. A formula to determine the value of the land will be used based on the average market value of agricultural land in a county adjusted for: (1) Soil productivity, (2) landowner cost of wetland restoration; (3) long term easement area operation; maintenance, and replacement costs; (4) long term costs of providing for an easement access route; (5) cost of limitations on uses of surrounding lands, if any; and (6) any other factors authorized by ASCS. This section provides further that the payments may be made on an annual basis, in equal or unequal amounts, for a period which may not be less than 5 years or more than 20 years. This section also provides: (1) In the case of permanent easements, a lump sum payment to be made; and (2) that the total amount of easement payments made to a person for any year under the WRP may not exceed $50,000, except that such limitation will not apply with respect to payments for permanent easements. With respect to cost-share payments, section 1237C of the 1985 Act provides that, for non-permanent easements, the Secretary shall authorize cost-shares equal to not less than 50 percent nor more than 75 percent of the cost of carrying out the establishment of restoration measures and practices and the protection of the wetland functions and values, as set forth in the WRPO, to the extent that the Secretary determines that cost-sharing is appropriate and in the public interest. As § 703.13 the proposed rule provides that cost sharing for easements which are less than permanent may receive cost shares at a rate as low as 50 percent while easements which are permanent may receive cost shares at a rate which is no less than 75 percent of eligible costs. It is ASCS's intention to use a 50 percent cost share rate on less than permanent easements and a 75 percent rate on permanent easements.

Unlike Conservation Reserve Program (CRP) payments, WRP payments are not subject to the "swampbuster" and "sodbuster" provisions of Title XII of the 1985 Act under which participants may lose eligibility for USDA benefits as the result of prohibited activities related to wetlands and highly erodible lands. Section 1237D of the 1985 Act provides that WRP payments are not subject to a budget sequester order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. In the proposed regulations, provisions for payments are made in § 703.13. Those provisions specifically authorize withholding a portion of the easement payments otherwise due pending installation of the practices agreed to in the WRPO. In addition, the rules provide that cost-share payments may be made under the WRP only for the establishment or installation of the eligible restoration practices. With respect to the limitation on payments for non-permanent easements, § 703.14 proposes payment limitation determinations be made in accordance with 7 CFR part 1497.

Miscellaneous Provisions

The proposed regulations contain other miscellaneous provisions to implement the program provided for in the 1985 Act. These provisions cover, among other matters, assignments of payments and the transfer of the enrolled property. In the case of a land transfer, the easement will "run with the land" and, therefore, all parties having or acquiring an interest of any kind in the property are subject to the easement.

List of Subjects in 7 CFR Part 703

Administrative practices and procedures, Compliance procedures, Easements, Natural resources, Technical assistance and Wetlands Reserve Plan of Operations (WRPO).

Proposed Rule

Accordingly, it is proposed that Title VII of the Code of Federal Regulations be amended as follows:

A new part 703 is added to subchapter A to read as follows:

PART 703—WETLANDS RESERVE PROGRAM

Sec.
703.1 Applicability.
703.2 Administration.
703.3 Definitions.
703.4 Maximum county acreage.
703.5 Maximum acreage limitation.
703.6 Eligible person.

Sec.
703.7 Eligible land.
703.8 Additional land eligibility provisions.
703.9 Transfer of lands from the CRP to the WRP.
703.10 Easement priority.
703.11 Statement of intention to participate; submission of bids.
703.12 Obligations of the landowner.
703.13 Payments to landowners by ASCS.
703.14 Payment limitation.
703.15 Wetlands Reserve Plan of Operations.
703.16 Easement modifications.
703.17 Transfer of land.
703.18 Monitoring and enforcement of easement terms and conditions.
703.19 Violations.
703.20 Performance based upon advice or action of the Department.
703.21 Access to land under agreement.
703.22 Program payments and provisions relating to tenants and sharecroppers.
703.23 Payments not subject to claims.
703.24 Assignments.
703.25 Appeals.
703.26 Scheme and device.
703.27 Filing of false claims.
703.28 Miscellaneous.
703.29 Other provisions.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801 *et seq.*

§ 703.1 Applicability.

(a) The regulations in this part govern the Wetlands Reserve Program (WRP). With respect to fiscal year 1992 only, WRP shall be available to producers only in the following States: California, Iowa, Louisiana, Minnesota, Mississippi, Missouri, New York, and North Carolina. These states have been determined to have the highest incidence of:

(1) Significant acreage of hydric cropland;

(2) Potential capacity for restoration;

(3) Diversity in kinds of wetlands; or

(4) Substantial benefits for migratory birds.

(b) Under the Wetlands Reserve Program, ASCS will purchase easements from eligible persons who have eligible land with respect to which they agree to restore and protect farmed wetlands or converted wetlands and eligible adjacent lands. Such voluntary easements will be for the purpose of restoring the hydrology and vegetation, and protecting the functions and values of wetlands for wildlife habitat, water quality improvement, flood water retention, ground water recharge, open space, aesthetic values, and environmental education.

§ 703.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees ("State committees" and "county committees", respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Administrator of ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

(f) (1) The eligibility of the land for inclusion in the WRP will be based on the likelihood of successful wetland restoration and the merit of including the land in the program, taking into account the cost of the restoration. The development of the WRPO and detailed designs to implement the planned practices to achieve the desired objectives shall be made by the Soil Conservation Service (SCS) in consultation with the Fish and Wildlife Service (FWS), except that no determination by the SCS shall compel ASCS to execute an easement contract which ASCS does not determine will serve the purposes of the program established by this part.

(2) ASCS shall consult with the SCS and FWS for such other technical assistance in the implementation of the WRP as is determined by ASCS to be necessary.

(g) ASCS shall consult with the Forest Service (FS) or the State Forestry Agency for such assistance as is determined by ASCS to be necessary for developing and implementing WRPO which include tree planting practices.

(h) ASCS may consult with the Extension Service (ES) to coordinate the related information and education program as deemed appropriate to implement the WRP.

§ 703.3 Definitions.

(a) The terms defined in part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters or sugar cane planted or produced in a State or alfalfa and other multiyear grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be considered planted to an agricultural commodity during a crop year if, as determined by ASCS, an action of the Secretary prevented land from being planted to the commodity during the crop year.

Annual payment means, unless the context indicates otherwise, the payment specified in the WRP agreement which is made annually to a participant to compensate such participant for placing eligible land in the WRP.

Applicant means a person who submits to ASCS an intention to participate in a WRP easement.

ASCS means the Agricultural Stabilization and Conservation Service.

Bid means, unless the context indicates otherwise, the total payment requested by the owner for granting an easement.

Conservation District (CD) means a subdivision of a State organized pursuant to an applicable State Conservation District Law or in instances where a conservation district does not exist, the State Conservationist of the Soil Conservation Service.

Cost-share payment means the payment made by ASCS to assist program participants in establishing the practices required in a WRPO.

CRP means the Conservation Reserve Program provided for in 7 CFR parts 704 and 1410 and in this part.

Deputy Administrator means the ASCS Deputy Administrator for State and County Operations (DASCO).

Easement area means the land on which the approved restoration practices are required.

Easement contract means the instrument for participation which will be required of all persons participating in the program.

Easement farm means the area of land, including the easement area which has been conveyed by the most current deed recorded in the land records of the

county where the easement area is located.

FWS means the Fish and Wildlife Service of the United States Department of the Interior.

Local ASCS office means the county office of the Agricultural Stabilization and Conservation Service serving the county or combination of counties in the area in which the landowner's farm or ranch is located.

Non-permanent easement means an easement for the maximum duration permitted by State law or for 30 years.

Participant means a landowner who has an approved easement contract.

Permanent easement means an easement in perpetuity.

Practice means the wetland and easement area development restoration measures agreed to in the WRPO to accomplish the desired program objectives.

Riparian areas means areas of land, which are directly influenced by free water in the soil, that occur along streams, rivers, and other water bodies. They are distinctly different from the surrounding lands because of unique soil and vegetation characteristics. They may be identified by distinctive vegetative communities which are reflective of soil conditions normally wetter than adjacent soils.

SCS means the Soil Conservation Service of the United States Department of Agriculture.

Technical assistance means the assistance provided under the WRP to owners by a representative of the Department of Agriculture or the FWS in determining cropland eligibility, suitability for restoration, developing WRPO's, and implementing and certifying practices.

WRP means the Wetlands Reserve Program provided for in this part.

WRPO means the Wetlands Reserve Plan of Operations provided for in this part.

§ 703.4 Maximum county acreage.

(a) Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, the maximum acreage which may be placed in the ECARP may not exceed 25 percent of the total cropland in the county of which no more than 10 percent of the total cropland in the county may be subject to an easement.

(b) The limitation in paragraph (a) of this section shall not apply if ASCS determines that such action will not adversely affect the local economy of the county.

§ 703.5 Maximum acreage limitation.

ASCS will attempt to enroll no more than 1,000,000 acres in the WRP during the 1991–1995 calendar years and the cumulative total acreage enrolled will not exceed:

(a) 200,000 acres through 1991;
(b) 400,000 acres through 1992;
(c) 600,000 acres through 1993;
(d) 800,000 acres through 1994; and
(e) 1,000,000 acres through 1995.

§ 703.6 Eligible person.

To be eligible to offer land for the WRP a person must be the owner of the eligible property for which enrollment is sought and must have been the owner of such land for at least the preceding 12 months prior to the end of the period in which the intent to participate is declared, as provided in this subpart, unless:

(a) It is determined by ASCS that the land was acquired by will or succession as a result of the death of the previous owner; or

(b) It is determined by ASCS that adequate assurances have been presented that the new owner of such land did not acquire such land for the purpose of placing it in the WRP.

§ 703.7 Eligible land.

(a)(1) Except as otherwise provided in this section, land may only be considered eligible for enrollment in the WRP if it is determined by ASCS that the land:

(i) Is wetland farmed under natural conditions, a farmed wetland, or prior converted wetland which is cropland together with adjacent lands determined under this section except that converted wetlands shall not be eligible for enrollment if the conversion was not commended prior to December 23, 1985; and

(ii) Merits inclusion in the program based on the likelihood of successful restoration of the enrolled land and the resultant wetland values when considering restoration cost.

(2) Except in the case of land which qualifies as non-croplands under paragraph (b) of this section, land enrolled in the WRP must also:

(i) Have been annually planted or considered planted to an agricultural commodity in at least 1 of the 5 crop years 1986 through 1990;

(ii) Be suitable for planting to an agricultural commodity at the time of enrollment unless the land is wetlands that have been restored on the land under a CRP contract, or under a Federal or State wetland restoration program without an easement of at least 30 years in which case the land need only to have been planted to an agricultural commodity 2 of the 5 crop years, 1981 through 1985; and

(iii) Not be a wetland mitigated under part 12 of this title.

(b) Non-cropland may qualify as eligible adjacent land is ASCS determines that including such land in the program would contribute significantly to the restoration of adjacent wetlands under paragraph (a) of this section;

(c) Determinations under this section will be made in accordance with the provisions of part 12 of this title, in such manner as may be prescribed by the Deputy Administrator.

(d) Eligible land also includes land which ASCS determines to be:

(1) A riparian area along a stream or other waterway that links wetlands which are protected by an easement or other agreement that achieves the same objective as an easement;

(2) Land adjacent to the restored wetland, which would contribute significantly to the restoration of adjacent wetlands, but not more than an average of 100 feet wide, and not more than twice the area of the restored wetland as needed to protect the functions and values of wetlands restored under this subpart unless DASCO determines a larger area is necessary to meet the objectives of the WRP;

(3) Lands that otherwise meet the requirements of paragraph (a) of this section subject to an existing CRP contract, with the highest wetland functions and values, that are likely to return to production after the expiration of the CRP contract and adjacent lands that otherwise meet the requirements of paragraph (b) of this section;

(4) Prior converted wetlands subject to an existing CRP contract if there is a high probability that the prior converted area can be successfully restored to wetland status and restoration of such areas will meet the requirement of this part; or

(5) Other wetlands of an owner that would not otherwise be eligible if the inclusion of such wetlands in the WRP easement would significantly add to the functions and values of the wetlands to be restored under this subpart.

(e) Notwithstanding any other provision of this section, land which meets the requirements of paragraphs (a) through (d) of this section, shall not be considered eligible land unless it is determined that:

(1) The wetland hydrology and vegetation can be restored to a condition approximating conditions that existed before the production of an agricultural commodity occurred on

such land or to a wetland condition providing significant functions and values for wildlife and improved water quality.

(2) Significant restoration and protection is probable for wetland functions and values of such land. Wetland functions and values shall include but are not limited to:

(i) The improvement of habitat for migratory birds and other wildlife;

(ii) The protection and improvement of water quality;

(iii) The attenuation of water flows due to flood;

(iv) The recharge of ground water;

(v) The protection and enhancement of open space and aesthetic quality; or

(vi) The educational and scientific values of the area.

(f) Eligible land must be configured in a manner which allows the owner to meet the objective of the WRP.

§ 703.8 Additional land eligibility provisions.

Notwithstanding other provisions of this part, land that is eligible for enrollment in the WRP must not be:

(a) Converted wetlands if the conversion was commenced after December 23, 1985;

(b) Land, including pasture land, that contains timber stands or trees established in connection with a CRP contract;

(c) Lands owned or acquired by an agency of the Federal Government; or

(d) Land subject to a deed restriction prohibiting the production of agricultural commodities or the alteration of existing wetland hydrology.

§ 703.9 Transfer of lands from the CRP to the WRP.

Land subject to an existing CRP contract may be offered for acceptance and transfer into the WRP only if:

(a) The land is eligible land for purposes of the WRP as provided in sections 703.7 and 703.8 of this part; and

(b) the application for such transfer is made during the first available WRP signup period and such transfer into the WRP is agreed to by ASCS. If such transfer is requested by the owner and agreed to by ASCS, the CRP contract for the property shall be terminated or otherwise modified subject to such terms and conditions as are mutually agreed. Transfers from CRP to WRP during subsequent WRP signup periods will not be permitted unless the owner agrees to refund all payments received under CRP, as determined appropriate by ASCS.

§ 703.10 Easement priority.

(a) In implementing the WRP, ASCS shall, to the extent practicable, in determining which WRP bids to accept, take into account the costs of obtaining an easement, future agricultural and food needs, and the benefits for protecting and enhancing habitat for migratory birds and other wildlife that would be acquired through purchase of the easement.

(b) A formula will be used to ensure that offers will not be accepted in excess of the value of agricultural land, adjusted for soil productivity; nonland assets idled; landowner cost of wetland restoration; long term easement area operation and maintenance; long term costs for providing easement access route; and any other factors as may be allowed. In evaluating easement offers, different priorities for selection may be established by ASCS form time to time as determined by ASCS in order to accomplish the goals of the WRP.

(c) ASCS will rank the bids based on the environmental benefits per dollar of government expenditures on restoration and easement purchase. The factors for determining the priority for selection may include the following:

(1) Wetland Hydrology Restoration Potential;

(2) Wetlands Location Significance;

(3) Wetlands Functions and Values

(4) Management Risks;

(5) Duration of Easements;

(6) Cost of Restoration and Easement Purchase; and

(7) Any other factors as determined appropriate by ASCS.

§ 703.11 Statement of intention to participate; submission of bids.

(a) A person seeking to enroll land in the WRP must apply for enrollment by stating on an approved ASCS form their intention to participate in the WRP. The statement of intention must be filed with the local county ASC committee during an announced period for such submissions. Such periods may be announced periodically by ASCS.

(b) Following the statement of intention, the application will be considered complete only if such applicant:

(1) Obtains an approved WRPO; and

(2) Submits to ASCS a WRP bid setting out the total amount of easement payments that the person is willing to accept in return for participation in the program and for agreeing to other conditions for participation that may be required by ASCS, including the creation of an easement on the property. Such bids may be made no later than 90 days after the close of the period announced by ASCS for submitting a statement of intention to participate, unless a later date is agreed to by ASCS. No bid may be accepted unless submitted on the approved ASCS form and unless it is determined that the land is eligible and that the submitter of the bid is an eligible person. The determination of which bids to accept shall lie in the exclusive discretion of ASCS.

(c) A person submitting a statement of intention to participate shall not be obligated to submit a bid.

(d) A bid may be submitted only if signed by all owners of the property or their duly authorized representative.

§ 703.12 Obligations of the landowner.

(a) All owners of land for which a WRP bid is accepted by ASCS shall:

(1) Grant to ASCS an approved easement for the land which shall run with the land and shall be in favor of ASCS and its assigns or delegatees which provides that the property shall be maintained in the manner specified by ASCS to ensure that the land is maintained in accordance with the goals and purposes of this part, including the maintenance of the restored wetland and eligible lands as specified in the WRPO for the full life of the easement. Such easement shall:

(i) Be a reserve interest easement that the Deputy Administrator determines is for a sufficient term of time necessary to achieve the purposes of the program. Permanent easements will be accepted and preferred whenever possible. However, the term of the easement shall be at least 30 years or the maximum extent allowed under State law;

(ii) Required that the maintenance of the land in accordance with the easement and with the terms of the WRPO shall be the responsibility of the owners of the property and their successors of any kind, including, but not limited to, the owner's heirs and assigns;

(iii) Grant to ASCS a right of access in favor of ASCS and its delegatees, assigns and successors of any kind, from a public road to the portion of the property which is subject to the provisions of the WRPO. Maintenance of such access shall be the responsibility of the owner and their successors of any kind;

(iv) Reserve to ASCS the right to permit such compatible uses of the easement area as may be identified in the WRPO; and

(v) Reserve to the landowner those compatible uses identified in the WRPO that are permitted to be pursued by the landowner.

(2) Comply with all terms and conditions of the WRPO;

(3) Provide for creating and recording an appropriate deed restriction, as

determined by ASCS, for such land as necessary to meet the requirements of this subpart;

(4) Ensure that the easement granted to ASCS is superior to the rights of all others, which duty shall include, but not be limited to, providing a written statement of consent to such easement and disclaimer by those holding a security interest or any other encumbrance with respect to such land;

(5) Agree to the permanent retirement of the aggregate total of crop acreage bases and allotment history on the farm or ranch to the extent that such crop acreage bases are not supported by the cropping pattern on the farm not including cropland enrolled in WRP;

(6) Not allow the grazing of the land or any other commercial use on the land, except as provided for in the WRPO, or harvesting of any agricultural commodity produced on the land subject to the WRP easement;

(7) Comply with noxious weed laws of the applicable State or local jurisdiction on such land in a manner consistent with the WRPO;

(8) Control on land subject to easement all weeds, insects, pests and other undesirable species to the extent necessary, taking into consideration the needs of water quality and wildlife, in a manner consistent with the objectives of the program and the WRPO;

(9) Establish, maintain, and replace, as specified in the easement contract, the practices required in the WRPO as needed to meet the requirements of the WRPO, the easement contract, and the terms of the easement;

(10) Be responsible for repairs, improvements, and inspections of the WRPO practices as necessary to maintain existing public drainage systems when the land is restored to the condition required by the terms of the WRPO, the easement contract and the easement;

(11) Be permitted to control public access, in accordance with the WRPO, on the land enrolled in the program;

(12) Implement any additional provisions that are desirable, as are required by ASCS in consultation with SCS and FWS in the easement contract, WRPO, or easement, in order to, as determined by ASCS, facilitate the administration of the WRP;

(13) Not plant for harvest an agricultural commodity on the enrolled land for crop years subsequent to the acceptance of a WRP bid by ASCS;

(14) Not alter the vegetation, except to harvest already planted crops or forage, or hydrology on such offered acres subsequent to acceptance of a bid by ASCS except as provided for in the easement or WRPO;

(15) Be responsible for the long-term management of the easement in accordance with the terms of the easement and related agreements including the WRPO provided that owners will have the option to enter into an agreement with governmental or private agencies to assist in the management of the easement area as determined appropriate by ASCS. No ASCS funds will be provided to the designated agencies for management expenses and the responsibility to ASCS for the management of the easement shall in all cases remain with the owner and the owner's successors of any kind regardless of whether such arrangements for third-party management are made with governmental or private agencies, including federal agencies;

(16) Agree that each person on the easement contract with ASCS, or who is subject to the easement, shall be jointly and severally responsible for compliance with the WRPO, the easement contract and the provisions of this subpart and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the WRPO, the easement contract, or provisions of this subpart;

(17) Refrain from taking any action on the easement area unless specifically authorized in the reserve interest easement or the WRPO; and

(18) Secure any necessary local, State and Federal permits prior to commencing restoration of the designated area.

(b) In addition, program participants and their successors of any kind may:

(1) Not alter wildlife habitat and other natural land features of the enrolled land unless authorized by the WRPO;

(2) Apply pesticides or fertilizers on the enrolled land or mow such land, only as provided for in the WRPO; or

(3) Not engage in any activities on lands adjacent to the easement area that will alter, degrade or diminish the values of the land under easement, or engage in any practice including compatible uses that would tend to defeat the purposes of the program.

(c) The activities of any person on the property shall be considered for purposes of this section to be the actions of the program participant, except to the extent that ASCS determines that the activities of such other person were beyond the control of the owner, in which case ASCS may adjust the remedies that are otherwise provided for in this part to the extent determined consistent with program goals. Obligations created by the easement shall run with the land and shall bind all persons having an interest in the property at any time whether such interest is created by death of the owner, sale, assignment, or otherwise.

§ 703.13 Payments to landowners by ASCS.

(a) ASCS will share the cost with landowners of rehabilitating the enrolled acres by establishing the practice identified in the WRPO, or the easement. The amount of the cost-share assistance shall be specified in the easement contract. Eligible costs for such cost-share assistance by ASCS shall only include those costs which the ASCS determines are appropriate, and shall be subject to the following restrictions:

(1) ASCS shall pay:

(i) Not less than 75 percent as determined by ASCS of the actual cost of establishing or installing the practices required by the WRPO or average cost of establishing the practices specified in the WRPO for a permanent easement;

(ii) Not less than 50 percent nor more than 75 percent as determined by ASCS of the actual cost of establishing or installing the practices required by the WRPO or average cost of establishing the practices specified in the WRPO for other than a permanent easement;

(iii) Notwithstanding paragraphs (a)(1)(i) and (ii) of this section, no more than the amount estimated in the easement contract without the approval of the Deputy Administrator.

(2) For purposes of determining average establishment or installation costs ASCS may take into account recommendations of the State and County Conservation Review Groups provided for in § 701.2(a) of this chapter and the determination of average costs shall be the average for the part of the county in which the land is located, except that if such an estimate is not possible, then an estimate for the whole county may be used, or if an estimate for part of the county or the whole county is not readily determinable, an estimate may be used for the State or part of the State in which the land is located;

(3) Cost-share payments may be made only upon a determination by ASCS that an eligible practice or an identifiable unit of the practice has been established in compliance with appropriate standards and specifications;

(4) Cost-share payments may be made only for the establishment or installation of an eligible practice and not for the maintenance of the practice except as specifically permitted in writing by the Deputy Administrator; and

(5) Cost-share payment determinations shall be made by the county ASC committee but no easement

contract may be approved which would allow for total WRP cost-shares in excess of 50 percent of the preeasement fair market value of the property subject to the WRPO without written approval by the State ASC committee or for more than 100 percent of such fair market value without the written approval of the Deputy Administrator.

(b) (1) ASCS shall pay, at the times determined by ASCS, the agreed upon amount for the easement as determined through the acceptance of bids for eligible land through annual payments made in equal or unequal amount over a period not less than 5 years nor more than 20 years; except that in the case of permanent easements the easement payment may be made in a lump sum amount.

(2) ASCS payments shall be made in cash;

(3) In the case of any non-permanent easement, the amount of payments that may be received per person, as determined under part 1497 of this title, shall be limited as provided for in this part;

(4) For all easements, ASCS shall provide in the agreement for withholding a portion of the payments that might otherwise be made pending completion of the restoration plan for the property and ASCS may condition any payment on satisfactory progress toward completion of the plan. Such condition shall provide that, at a minimum, ASCS shall pay no more than 10 percent per year of the total purchase price for the easement pending completion of the restoration of the wetlands;

(5) No payment may be made which would exceed the total amount bid and accepted for the property and payments may only be made if the person on whose account the payment is to be made:

(i) Has agreed to all terms and conditions of the program set out in this part;

(ii) submitted an accepted bid on the standard ASCS-approved form for the WRP; and;

(iii) is in full compliance with the terms and conditions of the WRP easement except to the extent that relief is authorized by this part and is approved under guidelines issued by the Deputy Administrator.

(c) ASCS may make financial assistance available to assist landowners in complying with the terms and conditions of the easement and the WRPO.

§ 703.14 Payment limitation.

With respect to non-permanent easements, the annual amount of payments paid to a person, as determined under part 1497 of this title, shall not exceed $50,000.

§ 703.15 Wetlands Reserve Plan of Operations.

(a) At the time of submitting a bid to enroll land in the WRP, the landowner must have obtained a WRPO for the land which has been approved by ASCS.

(b) The WRPO shall:

(1) Include an aerial photo displaying the land offered for enrollment;

(2) Specify the manner in which the farmed or converted wetlands included in the enrolled land shall be restored, operated and maintained to accomplish the goal of the program together with other practices which may be necessary or appropriate to accomplish the goals of the program, including, where appropriate:

(1) A tree-planting plan for the property; and

(ii) Measures necessary to control weeds, insects or pests.

(3) Specify compatible land uses, if any, reserved to the landowner in the easement and the manner in which these uses are to be carried out, such uses may include among others:

(i) Hunting and fishing;

(ii) Managed timber production including harvesting; and

(iii) Periodic haying or grazing consistent with the goals of the program.

(4) Set out cost estimates of the practices required by the WRPO;

(5) Identify access routes to be maintained for wetland restoration activities and future management and easement monitoring in connection with the land to be enrolled;

(6) Make provisions deemed necessary for maintaining public drainage systems if present or lands subject to the WRPO;

(7) Contain scheduled implementation dates for restoration practices, including dates for the implementation of wetland restorations; and

(8) Contain other provisions or limitations as ASCS, in consultation with the SCS and FWS, determines to be necessary.

(c) SCS and FWS will cooperate and may consult with any other agency or person as deemed necessary on the development of the WRPO with the landowner.

(d) The WRPO must be signed by SCS, FWS, and the landowner before submission of a bid by an applicant. However, if agreement between SCS and FWS at the local level is not reached within 20 working days, the WRPO shall be developed by the State Conservationist of SCS in consultation with FWS.

(e) The WRPO may require that a temporary vegetative or water cover be established on the property if immediate establishment of a permanent cover is not practicable or otherwise desirable.

(f) The terms of an ASCS-approved WRPO shall not relieve the program participant of any obligation or term imposed or provided for in the easement contract, the easement, or this part. The WRPO, where appropriate, may provide for the development of a final engineering plan for the property to be developed by the SCS.

(g) Revisions of the WRPO to enhance or protect the value for which the easement was established may be made at any time at the request of and with the concurrence of the owner, SCS, FWS, and ASCS.

§ 703.16 Easement modifications.

After the easement has been recorded, no change may be made in the easement without the written agreement of the Deputy Administrator who may grant such approval only where such approval is determined necessary or appropriate to achieve the goals of WRP or facilitate the practical administration and management of the easement area or the program.

§ 703.17 Transfer of land.

(a) If a new owner purchases or obtains the right and interest in, or right to occupancy of, the land subject to a WRP easement, such new owner shall be subject to the terms and conditions of the easement. The seller or original owner, who is signatory to the easement contract, shall be entitled to receive all remaining WRP payments, if any. Eligible cost-share assistance shall be paid to the seller or original owner with respect to costs incurred by such seller or original owner.

(b) Upon the transfer of the property, all cost-share payments may be withheld and shall be paid only if the new owner or purchaser becomes a party to the easement contract within 60 days of the recordation of the deed transferring title to the new owner.

(c) Any transfer of the property prior to the filing of the easement shall void any intention to participate, bid, or WRP easement contract unless the new owner agrees to be a party to the intention to participate.

§ 703.18 Monitoring and enforcement of easement terms and conditions.

(a) ASCS or its representative shall be permitted to inspect each easement area at any and all times determined

necessary or appropriate by ASCS to ensure that:

(1) Structural and vegetative restoration work are properly maintained;

(2) The wetlands and adjacent upland habitat is being managed as required in the WRPO, and the terms of the easement; and

(3) Uses of the area are consistent with the terms and conditions of the easement contract, the WRPO and any related agreement.

(b) If an owner or other interested party is unwilling to voluntarily correct, in a timely manner, deficiencies in compliance with the terms of the WRPO, the WRP easement, or any related agreements, ASCS may at the expense of any person who is subject to the WRP easement correct such deficiency. Such ASCS action shall be in addition to other remedies available to ASCS.

(c) Management, monitoring and enforcement responsibilities may be delegated to other Federal or State agencies that have the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities, as determined by ASCS.

§ 703.19 Violations.

(a) If a violation of the terms and conditions of the easement contract, the WRPO or the recorded WRP easement occurs, the easement shall remain in force and ASCS may:

(1) Require the owner to fully restore the easement area, to fulfill the terms and conditions of the easement and WRPO; and

(2) Require the owner, irrespective of whether such owner was the owner to receive such payment, to refund all or part of any payments received together with interest as determined appropriate by ASCS.

(b) If an owner fails to carry out the terms and conditions of an easement, appropriate legal action may be initiated under civil law, or other authorities available to the entity assigned management responsibilities to compel such compliance. The owner of the property shall reimburse ASCS for all costs incurred including but not limited to, legal fees. In addition, such owner shall reimburse ASCS for the loss of wetland value for the time in which the land was out of compliance, which such amount shall at a minimum be equal to the rate which for a full year of non-compliance would equal one-tenth of the total easement payments made with respect to the property.

§ 703.20 Performance based upon advice or action of the Department.

The provisions of part 790 of this chapter, as amended, relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 703.21 Access to land under agreement.

In order to determine eligibility and compliance with respect to this part, representatives of the Department, or designee thereof, shall have the right of access to:

(a) Land which is the subject of an application made in accordance with this part,

(b) Land which is subject to an easement made in accordance with this part, and

(c) Records of the producer which release such land.

§ 703.22 Program payments and provisions relating to tenants and sharecroppers.

(a) Payments received under this part shall be divided in the manner specified in the applicable easement contract.

(b) ASCS shall ensure that producers who would have shared in the risk of producing crops on land subject to such easement receive treatment deemed to be equitable in accordance with § 1413.150 of this title.

§ 703.23 Payments not subject to claims.

Subject to part 1403 of this title, any cost-share or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

§ 703.24 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this title.

§ 703.25 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant in the WRP may obtain a review of any administrative determination rendered under the program in accordance with the administrative appeal regulations provided in part 780 of this chapter.

(b) Determinations concerning land eligibility, development of WRPO's or determining the potential for restoration of an offered area may be reviewed in accordance with procedures established under part 614 of this title or as otherwise established by SCS.

§ 703.26 Scheme and device.

(a) If it is determined by ASCS that a landowner has employed a scheme or device to defeat the purposes of this part, any part of any program payments otherwise due or paid such landowner during the applicable period may be withheld or required to be refunded with interest thereon as determined appropriate by ASCS.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or land payments for easements, and obtaining a payment that otherwise would not be payable.

(c) An owner of land subject to this part who succeeds to the responsibilities under this part shall report in writing to ASCS any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future or conditional interest, reversionary interest or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. A failure of full disclosure will be considered a scheme or device under this section.

§ 703.27 Filing of false claims.

If it is determined by ASCS that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part. False information or false claims include claims for payment for practices which do not meet the specifications of the applicable WRPO. Any amounts paid under these circumstances shall be refunded, together with interest as determined by ASCS, and any amounts otherwise due such participant shall be withheld.

§ 703.28 Miscellaneous.

(a) Except as otherwise provided in this part in the case of death, incompetency, or disappearance of any landowner, any payment due under this part shall be paid to the landowner's successor in accordance with the provisions of part 707 of this chapter.

(b) Any remedies permitted ASCS under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of ASCS as may be permitted by law.

§ 703.29 Other Provisions.

The provisions of 7 CFR part 791 are applicable to this part.

Signed this 28 day of January, 1992 in Washington, DC.

John A. Stevenson,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 92-2664 Filed 2-4-92; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Department of the Army Pamphlet 25-51]

Army Privacy Program

AGENCY: Department of the Army, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Army is amending sections of 32 CFR part 505 to reflect administrative changes made within the Department. On November 21, 1990, (55 FR 48671) the Department of the Army amended its system identification numbers in accordance with the Modern Army Recordkkeeping System (MARKS). These amendments will reflect those changes to the record system identification numbers published in the **Federal Register** on November 21, 1990 (55 FR 48671).

DATES: Comments must be received by March 6, 1992, to be considered by the agency.

ADDRESSES: Send comments to Department of the Army, Directorate for Policy (SAIS-PDD), The Pentagon, Room 1C710, Washington, DC 20310-0107.

FOR FURTHER INFORMATION CONTACT: Mr. William Walker at (703) 697-1276.

SUPPLEMENTARY INFORMATION: The Department of the Army is amending sections of 32 CFR part 505 in accordance with the Privacy Act of 1974, as amended, (5 U.S.C. 552a). The Department of the Army procedural and exemption rules are found at 32 CFR part 505.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, the Department of the Army amends 32 CFR part 505 as follows:

1. The authority citation for 32 CFR part 505 is revised to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 505.1 is amended by revising paragraph (d)(1); paragraph (g)(14); and paragraph (h) as follows:

§ 505.1 General information.

* * * * *

(d)(1) *Responsibilities.* The Director of Information Systems for Command, Control, Communications and Computers, ATTN: SAIS-PDD, Washington, DC 20310-0107, is responsible for issuing policy and guidance for the Army Privacy Program in consultation with the Army General Counsel.

* * * * *

(g) * * *

(14) Commander, United States Total Army Personnel Command: For personnel and personnel-related records of Army members on active duty and current Federal appropriated fund civilian employees. (Requests from former civilian employees to amend a record in an Office of Personnel Management system of records such as the Official Personnel Folder should be sent to the Office of Personnel Management, Assistant Director for Workforce Information, Compliance and Investigations Group, 1900 E Street, NW, Washington, DC 20415-0001.)

* * * * *

(h) *DA Privacy Review Board.* The DA Privacy Review Board acts on behalf of the Secretary of the Army in deciding appeals resulting from the appropriate Access and Amendment Refusal Authority's refusal to amend records. Board membership is comprised of the Administrative Assistant to the Secretary of the Army, the Director of Information Systems for Command, Control, Communications and Computers, and the Judge Advocate General or their representatives. The Access and Amendment Refusal Authority may serve as a non-voting member when the Board considers matters in the Access and Amendment Refusal Authority's area of function specialization. The Director of Information Systems for Command, Control, Communications and Computers chairs the Board and provides the Recording Secretary.

* * * * *

3. Section 505.2 is amended by revising the last sentence in paragraph (h); the parenthetical sentence in paragraph (i)(3)(iv); paragraph (j)(3); and the first sentence in paragraph (l) to read as follows:

§ 505.2 Individual rights of access and amendment.

* * * * *

(h) * * * Thereafter, fees will be computed as set forth in Army Regulation 25-55, The Department of the Army Freedom of Information Act Program.

(i) * * *

(3) * * *

(iv) * * * (for denials made by the Army when the record is maintained in one of OPM's government-wide systems of records notices—described in Department of the Army Pamphlet 25-51, The Army Privacy Program—System Notices and Exemption Rules—an individual's request for further review must be addressed to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415-0001.)

* * * * *

(j) * * *

(3) U.S. Army Criminal Investigations Command reports of investigation (records in system notices A0195-2aUSACIDC, Source Register; A0195-2bUSACIDC, Criminal Investigation and Crime Laboratory Files) may be exempted from the amendment provisions of the Privacy Act. The Commander, U.S. Army Criminal Investigations Command considers requests to amend reports of investigation under AR 195-2, Criminal Investigation Activities, if the individual submits new, relevant, and material facts that are determined to warrant revision of the report. The Commander's action will constitute final action on behalf of the Secretary of the Army under that regulation.

* * * * *

(l) *Privacy case files.* Whenever an individual submits a Privacy Act request, a case file will be established; see system notice A0340-21SAIS, Privacy Case Files. * * *

* * * * *

4. Section 505.4 is amended by revising the last sentence of paragraph (d)(2); parenthetical phrase in the first sentence of paragraph (d)(3); paragraph (d)(4); paragraphs (f)(1) (i) through (xii); adding paragraphs (f)(1) (xiii) through (xvii); revising paragraph (f)(3), introductory text, and paragraphs (f)(3)(i) (D) through (I); adding paragraph (f)(3)(i)(J); revising paragraph (g)(2); and removing paragraph (f)(4) as follows:

§ 505.4 Recordkeeping requirements under the Privacy Act.

* * * * *

(d) * * *

(2) * * * See AR 380-19, Information Systems Security.

(3) * * * (see Chapter IV, AR 25-55). * * *

(4) No comparisons of Army records systems with systems of other Federal or commercial agencies (known as "matching" or "computer matching"

programs) will be performed without prior approval of the Director of Information Systems for Command, Control, Communications and Computers (SAIS–PDD), Washington, DC 20310–0107.

* * * * *

(f) *System notice.* (1)(i) System name: (indicates the general nature of the system of records and, if possible, the general category of individuals to whom it pertains);

(ii) System location: (the office name, organizational identity, routing symbol, and complete mailing address of the location of the system of records);

(iii) Categories of individuals covered by the system: (Individuals on whom records in the system are being maintained);

(iv) Categories of records in the system: (The records maintained in the system);

(v) Authority for maintenance of the system: (Cite the Federal law or Executive Order of the President including the specific provision);

(vi) Purpose(s) (The specific purpose(s) for establishing the system including the use(s) made of the information within the component and the Department of Defense);

(vii) Routine uses of the records maintained in the system, including the categories of users and the purposes of such uses: (List all disclosures of the records made outside the Department of Defense, the recipient of the disclosed information, and the uses the recipient will make of it);

(viii) Policies and practices for storing, retrieving, accessing, retaining and disposing of the records:

(ix) Storage: (State the medium used to store the information in the system);

(x) Retrievability: (Indicate how records may be retrieved from the system);

(xi) Safeguards: (State the categories of component personnel who use the records and those responsible for protecting the records from unauthorized access);

(xii) Retention and disposal: (state the length of time records are maintained by the component in active status; when retired to a Federal Records Center, how long they are kept at the Federal Records Center, and when they are accessioned to the National Archives or destroyed);

(xiii) Notification procedure: (Procedures an individual must follow to determine if a record pertaining to him or her is maintained in the system);

(xiv) Record access procedures: (Course of action an individual must follow to review his/her record and/or obtain a copy of it);

(xv) Contesting record procedures: (Course of action an individual must follow to contest contents and request amendment to his/her records and to appeal initial determinations);

(xvi) Record source categories: (Where the component obtained the information maintained in the system);

(xvii) Exemptions claimed for the system: (Lists the portion of the Privacy Act that authorizes an agency to exempt the system from portions of the Act). See example notice at appendix A to this part.

* * * * *

(3) Report of a new or altered system must include a narrative statement and supporting documentation. Send the report to the Commander, U.S. Army Information Systems Command, ATTN: ASOP–MP, Fort Huachuca, AZ 85613–5000 at least 120 days before the system is operational to allow for internal evaluation and processing through the Office of Management and Budget, the Congress and publication in the **Federal Register** for public comment.

(i) * * *

(D) Authority for maintenance of the system (the federal law or Executive Order of the President including the specific provision);

(E) Probable or potential effect(s) on individual privacy (the component's evaluation of the probable or potential effects of the proposal on the privacy of individuals);

(F) Relationship, if any, to other branches of the Federal Government and to state and local governments (describes the relationship, if any, of the proposal to the other branches of the Federal Government and to state and local governments);

(G) Steps taken to minimize the risk of unauthorized access; (All new manual or automated systems require a risk assessment to consider sensitivity and use of the records, present and projected threats and vulnerabilities, and present and projected cost-effectiveness of safeguards.)

(H) Compatibility of each proposed Routine Use (explain how each proposed routine use satisfies the compatibility requirement);

(I) Office of Management and Budget information collection Requirement; (Provide Office of Management and Budget control numbers, expiration dates, and titles of any Office of Management Budget approved information collection requirements.)

(J) Supporting documentation (consists of system notice for the proposed new or altered system and proposed exemption rule, if applicable).

* * * * *

(4) [Removed]

* * * * *

(g) * * *

(2) Specific reporting requirements will be disseminated each year by the Director of Information Systems for Command, Control, Communications and Computers (SAIS–PDD) in a memorandum to reporting elements.

* * * * *

5. Section 505.5 is amended by revising paragraph (d); and paragraphs (e)a.(l); b.(1); c.(1); d.(1); e.(1); f.(1); g.(l); h.(1); i.(l); removing and reserving j.; revising k.(1); l.(l); m.(l); n.(l); o.(l); p.(l); q.(l); r.(1); removing and reserving s.; revising t.(1); u.(l); removing and reserving v.; revising w.(l); x.(l); y.(l); z.(l); aa.(l); redesignating "ab.3.(1)" as "ab.(1)" and revising redesignated ab.(1); redesignating "ac.4.(l)" as "ac.(1)" and revising redesignated ac.(l); revising ad.(l); ae.(l); af.(l); ag.(l); ah.(l); ai.(l); aj.(l) and ak.(l) to read as follows:

§ 505.5 Exemptions

* * * * *

(d) *Procedures.* When a system manager seeks an exemption for a system of records, the following information will be furnished to the Director of Information Systems for Command, Control, Communications and Computers (SAIS–PDD), Washington, DC 20310–0107: applicable system notice, exemptions sought, and justification. After appropriate staffing and approval by the Secretary of the Army, a proposed rule will be published in the **Federal Register**, followed, by a final rule 30 days later. No exemption may be invoked until these steps have been completed.

* * * * *

(e) *Exempt Army records.* The following records are exempt from certain parts of the Privacy Act:

a. *System identification:* A0020–1aSAIG.

(1) *System name:* Inspector General Investigative Files.

* * * * *

b. *System identification:* A0020–1bSAIG.

(1) *System name:* Inspector General Action Request/Complaint Files.

* * * * *

c. *System identification:* A0025–55SAIS.

(1) *System name:* Request for Information Files.

* * * * *

d. *System identification:* A0027–1DAJA.

(1) *System name:* General Legal Files.

* * * * *

e. *System identification:* A0027–10aDAJA.

(1) *System name:* Prosecutorial Files.

* * * * *

f. *System identification:* A0027–10bDAJA.

(1) *System name:* Courts-Martial Files.

* * * * *

g. *System identification:* A0190-5DAMO.
(1) *System name:* Vehicle Registration System (VRS).

* * * * *

h. *System identification:* A0190-9DAMO.
(1) *System name:* Absentee Case Files

* * * * *

i. *System identification:* A0190-14DAMO.
(1) *System name:* Registration and Permit Files.

* * * * *

j. [Reserved].

* * * * *

k. *System identification:* A0190-30DAMO.
(1) *System name:* Military Police Investigator Certification Files.

* * * * *

l. *System identification:* A0190-40DAMO.
(1) *System name:* Serious Incident Reporting Files.

* * * * *

m. *System identification:* A0190-45DAMO.
(1) *System name:* Offense Reporting System (ORS).

* * * * *

n. *System identification:* A0190-47DAMO.
(1) *System name:* Correctional Reporting System (CRS).

* * * * *

o. *System identification:* A0195-2USACIDC.
(1) *System name:* Criminal Investigation and Crime Laboratory Files.

* * * * *

p. *System identification:* A0195-2aUSACIDC.
(1) *System name:* Source Register.

* * * * *

q. *System identification:* A0195-6USACIDC.
(1) *System name:* Criminal Investigation Accreditation and Polygraph Examiner Evaluation Files.

* * * * *

r. *System identification:* A0210-7DAMO.
(1) *System name:* Expelled or Barred Person Files.

* * * * *

s. [Reserved]
t. *System identification:* A0340JDMSS.
(1) *System name:* HQDA Correspondence and Control/Central File System.

* * * * *

u. *System identification:* A0340-21SAIS.
(1) *System name:* Privacy Case Files.

* * * * *

v. [Reserved]

* * * * *

w. *System identification:* A0350-37TRADOC.
(1) *System name:* Skill Qualification Test (SQT).

* * * * *

x. *System identification:* A0351-12DAPE.
(1) *System name:* Applicants/Students, USMA Prep School.

* * * * *

y. *System identification:* A0351-17aTAPC-USMA.
(1) *System name:* U.S. Military Academy Candidate Files.

* * * * *

z. *System identification:* A0351-17bTAPC-USMA.
(1) *System name:* U.S. Military Academy Personnel Cadet Records.

* * * * *

aa. *System identification:* A0380-13DAMO.
(1) *System name:* Local Criminal Intelligence Files.

* * * * *

ab. *System identification:* A0380-67DAMI.
(1) *System name:* Personnel Security Clearance Information Files.

* * * * *

ac. *System identification:* A0381-45aDAMI.
(1) *System name:* USAINSCOM Investigative Files System.

* * * * *

ad. *System identification:* A0381-45bDAMI.
(1) *System name:* Department of the Army Operational Support Activities File.

* * * * *

ae. *System identification:* A0381-45cDAMI.
(1) *System name:* Counterintelligence Operations Files.

* * * * *

af. *System identification:* A0381-100aDAMI.
(1) *System name:* Intelligence Collection Files.

* * * * *

ag. *System identification:* A0381-100bDAMI.
(1) *System name:* Technical Surveillance Index.

* * * * *

ah. *System identification:* A0601-141DASG.
(1) *System name:* Army Medical Procurement Applicant Files.

* * * * *

ai. *System identification:* A0601-210aUSAREC.
(1) *System name:* Enlisted Eligibility Files.

* * * * *

aj. *System identification:* A0601-222USMEPCOM.
(1) *System name:* ASVAB Student Test Scoring and Reporting System.

* * * * *

ak. *System identification:* A0608-18DASG.
(1) *System name:* Family Advocacy Case Management.

* * * * *

6. Appendices A, B and Appendix D, Section I, Abbreviations, are revised to read as follows:

Appendix A to Part 505—Example of System of Records Notice

A0190-9DAMO

System name:

Absentee Case Files.

System location:

Primary system location is at the U.S. Army Deserter Information Point, U.S. Army Enlisted Records Center, Fort Benjamin Harrison, IN 46249-5000. A copy of all or portions of this system is maintained at the installation initiating the report of absence and at respective law enforcement agencies.

Categories of individuals covered by the system:

Any active Army member absent without proper authority and administratively designated as a deserter pursuant to Army Regulation 630-10, Absence Without Leave and Desertion.

Categories of records in the system:

Reports and records which document the individual's absence; notice of unauthorized absence from U.S. Army which constitutes the warrant for arrest; notice of return to military control or continued absence in hands of civil authorities.

Authority for maintenance of the system:

10 U.S.C. 3013(g) and Executive Order 9397.

Purpose(s):

To enter data in the FBI National Crime Information Center "wanted person" file; to ensure apprehension actions are initiated/terminated promptly and accurately; and to serve management purposes through examining causes of absenteeism and developing programs to deter unauthorized absences.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information is furnished to local, state, federal, international, or foreign law enforcement authorities in efforts to apprehend, detain, and return offenders to military custody.

In overseas areas, information may be disclosed to foreign governmental and civil authorities as required by local customs, law, treaties, and agreements with allied forces and foreign governments. Information may be disclosed to the Department of Veteran Affairs for assistance in determining whereabouts of Army deserters through the Veterans and Beneficiaries Identification and Records, Locator Subsystem.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper documents and the record copy of the Arrest Warrant are maintained in the Official Military Personnel Files; verified desertion data are stored on the Deserter Verification Information System at the U.S. Army Deserter Information Point.

Retrievability:

Manually, by name; automated records are retrieved by name, plus any numeric identifier such as date of birth, Social Security Number, or Army serial number.

Safeguards:

Access is limited to authorized individuals having a need-to-know. Records are stored in facilities manned 24 hours, 7 days a week. Additional controls which meet the administrative, physical, and technical safeguard requirements of Army Regulation

380-19, Information Systems Security, are in effect.

Retention and disposal:

Automated records are erased when individual returns to military custody, is discharged, or dies. Paper or microform records remain a permanent part of the individual's Official Military Personnel File.

System manager(s) and address:

Deputy Chief of Staff for Operations and Plans, ATTN: DAMO-ODL, Headquarters, Department of the Army, Washington, DC 20310-0440.

Notification procedure:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquires to the U.S. Army Deserter Information Point, U.S. Army Enlisted Records Center, Fort Benjamin Harrison, IN 42649-5000.

For verification purposes, individual should provide the full name, Social Security Number and/or Army serial number, address, telephone number and signature.

Record access procedures:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the U.S. Army Deserter Information Point, U.S. Army Enlisted Records Center, Fort Benjamin Harrison, IN 46249-5000.

For verification purposes, individual should provide the full name, Social Security Number and/or Army serial number, address, telephone number and signature.

Contesting record procedures:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

Record source categories:

Unit commander, first sergeants, subjects, witnesses, military police, U.S. Army Criminal Investigation Command personnel and special agents, informants, Department of Defense, Federal, State, and local investigative and law enforcement agencies, departments or agencies of foreign governments, and any other individuals or organizations which may furnish pertinent information.

Exemptions claimed for the system:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2) as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

Appendix B to Part 505—Example of a Narrative Statement for

New or Altered System of Records

1. *System identification and name:* A0215CFSC, General Morale, Welfare, Recreation and Entertainment Records.

2. *Responsible official:* Ms. Jan Richardson, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331-0521. Telephone (202) 325-9422.

3. *Purpose(s) of system:* To provide a readily accessible and organized repository of pertinent information to insure better service to users and patrons.

4. *Authority for the maintenance of the system:* 5 U.S.C. 301.

5. *Probable or potential effect(s) on individual privacy:* Type of information requested is provided by voluntary participants. Documents kept for information only are destroyed when no longer needed for current operations; all other documents are destroyed after 2 years.

6. *Relationship, if any, to other branches of the Federal Government and to state and local governments:* None

7. *Steps taken to minimize the risk of unauthorized access:* Records are maintained in lock-type cabinets within storage accessible only to authorized personnel.

8. *Compatibility of each proposed routine use:* Relevant information on an individual may be disclosed for bona fide purposes such as marketing and promoting morale, welfare, recreation (MWR) and entertainment programs, and to sports, educational, athletic, and other organizations conducting MWR-type activities.

9. *Office of Management and Budget information collection Requirement:* None.

10. *Supporting documentation:* No changes to current procedural or exemption rules are required.

Appendix D to Part 505—Glossary of Abbreviations and Terms

Section I

Abbreviations

AAFES—Army and Air Force Exchange Service
AARA—Access and Amendment Refusal Authority
DA—Department of the Army
DOD—Department of Defense
FOIA—Freedom of Information Act
GAO—General Accounting Office
GSA—General Services Administration
MACOM—Major Army Command
NARA—National Archives and Records Administration
OMB—Office of Management and Budget
OPM—Office of Personnel Management
SSN—Social Security Number
TIG—The Inspector General
TJAG—The Judge Advocate General
USACIDC—U.S. Army Criminal Investigation Command

* * * * *

Dated: January 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-2109 Filed 2-4-92; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 156

[OPP-250087; FRL 4007-8]

Notification to the Secretary of Agriculture of a Proposed Regulation on Labeling Claims for Water Purifiers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification to the Secretary of Agriculture.

SUMMARY: Notice is given that the Administrator of EPA has forwarded to the Secretary of Agriculture a proposed regulation establishing standards for the labeling of devices designed to purify water. This action is required by section 25(a)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT By mail: Ruth Douglas, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Antimicrobial Program Branch, rm. 267, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7964.

SUPPLEMENTARY INFORMATION: Section 25(a)(2)(A) of FIFRA provides that the Administrator provide the Secretary of Agriculture with a copy of any proposed regulation at least 60 days prior to signing it for publication in the Federal Register. If the Secretary comments in writing regarding the proposed regulation within 30 days after receiving it, and if requested by the Secretary, the Administrator shall issue for publication in the Federal Register with the proposed regulation, the comments of the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing within 30 days after receiving the proposed regulation, the Administrator may sign the proposed regulation for publication in the Federal Register anytime after the 30-day period.

As required by FIFRA section 25(a)(3), a copy of this proposed regulation has been forwarded to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

As required by FIFRA section 25(d), a copy of this proposed regulation has also been forwarded to the Scientific Advisory Panel.

Authority: 7 U.S.C. 136 et seq.

Dated: January 28, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-2756 Filed 2-4-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87-266; DA 92-57]

Communications Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Common Carrier Bureau of the Federal Communications Commission released an order extending the time in which to file comments and replies in response to its Further Notice of Proposed Rulemaking (In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, sections 63.54-63.58, CC Docket No. 87-266 (56 FR 65484 (12/17/91)). On January 3, 1992, the Motion Picture Association of America, Inc., the Association of Independent Television Stations, Inc., and the Ameritech Operating Companies filed a motion for extension of time requesting that the date for filing comments in this proceeding be extended twenty-eight days and that the date for reply comments likewise be extended twenty-eight days. The Commission granted in part the request for an extension of time for filing comments and replies.

DATES: Comment must be filed on or before February 3, 1992, and replies must be filed on or before March 5, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Donna Lampert, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-6363.

SUPPLEMENTARY INFORMATION:

Telephone Company—Cable Television Cross-Ownership Rules, §§ 63.54-63.58; Order

[CC Docket No. 87-266]

Adopted: January 15, 1992.

Released: January 16, 1992.

Comment Date: February 3, 1992.

Reply Comment Date: March 5, 1992.

By the Chief, Common Carrier Bureau:

1. On January 3, 1992, the Motion Picture Assocation of America, Inc., the Association of Independent Television Stations, Inc., and the Ameritech Operating Companies (hereafter "MPAA") filed a Motion for Extension of Time requesting that the date for filing comments in this proceeding be extended twenty-eight (28) days, from January 23, 1992 to February 20, 1992, and that the date for reply comments likewise be extended twenty-eight (28) days, from February 24, 1992 to March 23, 1992. In this Order, we grant MPAA's motion in part.

2. In the most recent order in this proceeding, the Commission proposed to modify its rules to permit local telephone companies to provide video dialtone.[1] In this regard, the Commission asked parties to comment upon, among other things, the nature of services and markets which may develop as a technologically advanced network develops under the video dialtone model and the benefits and costs of proceeding with video dialtone at this time. The Commission also sought comment on proposed rule changes which may be necessary and/or desirable in order to implement video dialtone consistent with the objectives of non-discrimination, ease of use, and flexibility.[2]

3. In its motion, MPAA argues that an extension of twenty-eight days for filing comments and reply comments is needed so that it can fully consider the "technological and regulatory requirements of such service." [3] MPAA asserts that the resolution of the issues in this proceeding could radically affect "how video programming is distributed to consumers in the United States and * * * the competitive balance in the video distribution business." [4] MPAA further contends that it represents broad interests and is therefore in an "especially unique position" to provide expert analysis on the issues in this proceeding.[5]

4. Under § 1.46 of our rules, it is the policy of the Commission that extensions of time are not routinely granted.[6] We believe, however, that a brief extension of the deadlines for filing comments and reply comments in this proceeding is reasonable in light of the scope of the technological and regulatory issues involved. Accordingly, we will grant the motion and extend the deadline for filing initial comments to February 3, 1992 and the deadline for filing replies to March 5, 1992.

5. Accordingly, *It Is Ordered* That the Motion for Extension of Time filed by the Motion Picture Association of America, Inc., the Association of Independent Television Stations, Inc. and the Ameritech Operating Companies is *Granted* to the extent set forth herein.

6. Accordingly, *It Is Therefore Ordered,* Pursuant to the authority found in sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(c) and sections 0.91, 0.291 and 1.46 of the Commission's rules, 47 CFR 0.91, 0.291 and 1.46, that the times for filing comments and reply comments in this proceeding *Are Extended* to February 3, 1992 and March 5, 1992, respectively.

Federal Communications Commission.

Richard M. Firestone,

Chief, Common Carrier Bureau.

[FR Doc. 92-2679 Filed 2-4-92; 8:45 am]

BILLING CODE 6712-01-M

[1] Further Notice of Proposed Rulemaking, First Report and Order and Second Further Notice of Inquiry, CC Docket No. 87-266, FCC No. 91-334, released Nov. 22, 1991, at paras. 13-19.

[2] *Id.* at paras. 23-40.

[3] Motion for Extension of Time, filed January 3, 1992, at 2.

[4] *Id.*

[5] *Id.* at 3.

[6] 47 CFR 1.46 (1991).

Notices

Federal Register
Vol. 57, No. 24
Wednesday, February 5, 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.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Housing Demonstration Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of Housing Demonstration Program.

SUMMARY: The Farmers Home Administration (FmHA) of the U.S. Department of Agriculture (USDA) will accept, in fiscal year 1992, proposals for a Housing Demonstration program under section 506(b) title V of the Housing Act. Under section 506(b), FmHA may provide loans for innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase the availability of affordable housing for low-income families, through innovative designs and systems.

FOR FURTHER INFORMATION CONTACT: Mathias J. Felber, Branch Chief, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, 14th and Independence Avenue, SW., room 5334, South Building, Washington, DC 20250, telephone 202-720-1474 or Ray McCracken, Senior Loan Officer, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, 14th and Independence Avenues, SW., room 5334, South Building, Washington, DC 20250, Telephone 202-720-1486.

SUPPLEMENTARY INFORMATION: Under current standards, regulations, and policies, some low-income rural families lack sufficient incomes to qualify for loans to obtain adequate housing. Section 506(b) of title V of the Housing Act of 1949 authorizes a housing demonstration program that could result in housing that these families can afford. The Congress of the United States made two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversely affected, and (2) that the aggregate expenditures for the demonstration may not exceed $10 million in any fiscal year.

FmHA State Directors are authorized in fiscal year 1992 to continue to accept proposed demonstration concept proposals from nonprofit organizations, profit organizations and individuals as announced in 51 FR 19240 on May 28, 1986.

The State Directors will evaluate the proposals on a first-come, first-served basis. An acceptable proposal is to be sent to the National Office for concurrence of the Assistant Administrator, Housing before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicant, in writing, giving specific reasons why the proposal was not selected.

The funds for the demonstration program are section 502 funds, and are available to housing applicants that may wish to purchase an approved demonstration dwelling. However, there is no guarantee that a market exists for demonstration dwellings and applicants for such a section 502 RH loan must be eligible for the program in all other respects.

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in Final Rule related to Notice 7 CFR 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," (December 23, 1983) this program/activity is excluded from the scope of Executive Order 12372 which requires the intergovernmental consultation with state and local officials.

All interested parties must make a written request for a proposal package. The request must be made to the State Director in the state in which the proposal will be submitted for evaluation. The Government will not reimburse or be liable for any expenses incurred by respondents in the development and submission of applications.

Following is a list of State Directors and the addresses:

States	Directors and addresses
Alabama	State Director, Farmers Home Administration, room 717, Aronov Building, 474 South Court Street, Montgomery, Alabama 36104.
Alaska	State Director, Farmers Home Administration, suite 103, 634 South Bailey, Palmer, Alaska 99645.
Arizona	State Director, Farmers Home Administration, 201 East Indianola, suite 275, Phoenix, Arizona 85012.
Arkansas	State Director, Farmers Home Administration, 700 W. Capitol, Post Office Box 2778, Little Rock, Arkansas 72203.
California/ Nevada.	State Director, Farmers Home Administration, suite F, 194 West Main Street, Woodland, California 95695-2915.
Colorado	State Director, Farmers Home Administration, room E 100, 655 Parfet Street, Lakewood, Colorado 80215.
Delaware/ Maryland.	State Director, Farmers Home Administration, 1611 South DuPont Highway, Camden, Delaware 19901.
Florida	State Director, Farmers Home Administration, 4440 N.W. 25th Place, P.O. Box 147010, Gainsville, Florida 32614-7010.
Georgia	State Director, Farmers Home Administration, Stephens Federal Building, 355 E. Hancock Avenue, Athens, Georgia 30610.
Hawaii	State Director, Farmers Home Administration, room 311, Federal Building, 154 Waianuenue Avenue, Hilo, Hawaii 96720.
Idaho	State Director, Farmers Home Administration, 3232 Elder Street, Boise, Idaho 83705.
Illinois	State Director, Farmers Home Administration, Illini Plaza, suite 103, 1817 South Neil Street, Champaign, Illinois 61820.
Indiana	State Director, Farmers Home Administration, 5975 Lakeside Boulevard, Indianapolis, Indiana 46278.
Iowa	State Director, Farmers Home Administration, room 873, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309.
Kansas	State Director, Farmers Home Administration, 1201 S.W. Summit, Executive Court, P.O. Box 4653, Topeka, Kansas 66604.
Kentucky	State Director, Farmers Home Administration, 771 Corporate Drive, suite 200, Lexington, Kentucky 40503.
Louisiana	State Director, Farmers Home Administration, 3727 Government Street, Alexandria, Louisiana 71302.
Maine	State Director, Farmers Home Administration, 444 Stillwater Avenue, suite 2, P.O. Box 405, Bangor, Maine 04402-0405.
Mass/Conn./ RI.	State Director, Farmers Home Administration, 451 West Street, Amherst, Massachusetts 01002.

States	Directors and addresses
Michigan	State Director, Farmers Home Administration, room 209, 1405 South Harrison Rd, East Lansing, Michigan 48823.
Minnesota	State Director, Farmers Home Administration, 410 Farm Credit Service Bldg., 375 Jackson St., St. Paul, Minnesota 55101.
Mississippi	State Director, Farmers Home Administration, suite 831, Federal Building, 100 West Capital St., Jackson, Mississippi 39269.
Missouri	State Director, Farmers Home Administration, 601 Business Loop 70 West, Parkdale Center, suite 235, Columbia, Missouri 65203.
Montana	State Director, Farmers Home Administration, 900 Technology Blvd., unit 1, suite B, Bozeman, Montana 59715.
Nebraska	State Director, Farmers Home Administration, room 308, Federal Building, 100 Centennial Mall North, Lincoln, Nebraska 68508.
New Jersey	State Director, Farmers Home Administration, Tamsfield Plaza, suite 22, 1016 Woodland Road, Mount Holly, New Jersey 08060.
New Mexico	State Director, Farmers Home Administration, room 3414, Federal Building, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102.
New York	State Director, Farmers Home Administration, James M. Hanley Federal Building, 100 S. Clinton Street, Syracuse, New York 13260.
North Carolina	State Director, Farmers Home Administration, suite 260, 4405 Bland Road, Raleigh, North Carolina 27609.
North Dakota	State Director, Farmers Home Administration, room 208, Federal Building, Third and Rosser, Post Office Box 1737, Bismarck, North Dakota 58502.
Ohio	State Director, Farmers Home Administration, room 507, Federal Building, 200 North High Street, Columbus, Ohio 43215.
Oklahoma	State Director, Farmers Home Administration, USDA Agricultural Center Bldg., Stillwater, Oklahoma 74074.
Oregon	State Director, Farmers Home Administration, room 1590, Federal Building, 1220 S.W. 3rd Avenue, Portland, Oregon 97204.
Pennsylvania	State Director, Farmers Home Administration, suite 330, Federal Building, One Credit Union Place, Harrisburg, Pennsylvania 17110.
Puerto Rico	State Director, Farmers Home Administration, New San Juan Office Bldg., room 501, 159 Carlos E. Chardon St., Hato Rey, Puerto Rico 00918.
South Carolina	State Director, Farmers Home Administration, Strom Thurmond Federal Building, room 1007, 1835 Assembly St., Columbia, South Carolina 29201.
South Dakota	State Director, Farmers Home Administration, room 308, Federal Building, 200 Fourth St., SW., Huron, South Dakota 57350.
Tennessee	State Director, Farmers Home Administration, suite 300, 3322 West End Avenue, Nashville, Tennessee 37203-1071.
Texas	State Director, Farmers Home Administration, suite 102, Federal Building, 101 South Main, Temple, Texas 76501.
Utah	State Director, Farmers Home Administration, room 5438, Wallace F. Bennett Federal Building, 125 South State St., Salt Lake City, Utah 84138.
Vermont/N.H.	State Director, Farmers Home Administration, City Center, 3rd floor, 89 Main St., Montpelier, Vermont 05602.
Virginia	State Director, Farmers Home Administration, room 8213, Federal Building, 400 North Eighth St., Richmond, Virginia 23240.
Washington	State Director, Farmers Home Administration, room 319, Federal Office Bldg., 301 Yakima St., P.O. Box2427, Wenatchee, Washington 98807.
West Virginia	State Director, Farmers Home Administration, 75 High St., Post Office Box 678, Morgantown, West Virginia 26505.
Wisconsin	State Director, Farmers Home Administration, 4949 Kirsching Court, Stevens Point, Wisconsin 54481.
Wyoming	State Director, Farmers Home Administration, room 1005, 100 East B, Federal Building, Post Office Box 820, Casper, Wyoming 82602.

Authorities: 42 U.S.C. 1480, 7 CFR 2.23, 7 CFR 2.70.

Dated: December 18, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-2698 Filed 2-4-92; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Current Population Survey—June 1992 Fertility and Birth Expectations Supplement.

Form Number(s): CPS-1, CPS-260.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 438 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: 27.7 seconds (for supplement)

Needs and Uses: The Current Population Survey is a monthly survey conducted in approximately 57,000 households throughout the United States. Data on demographic and labor force characteristics are collected from a sample of households which represent the U.S. population. The Bureau of the Census uses the data to compile monthly averages of household size and composition, age, education, ethnicity, marital status and various other characteristics at the U.S. level. The Bureau of Labor Statistics also uses the data in their monthly calculations of employment and unemployment. The basic monthly questionnaire is periodically supplemented with additional questions which address specific needs. This supplement provides data on childbearing characteristics of female household members by various demographic characteristics. The data collected from this supplement are used primarily by government and private analysts to project future population growth, to analyze child spacing patterns, and to assist policymakers in making decisions which are affected by changes in family size and composition.

Affected Public: Individuals or households.

Frequency: This supplement is conducted biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Agency: Bureau of the Census.

Title: Construction Project Report (Multi-family Residential).

Form Number(s): C-700(R).

Agency Approval Number: 0607-0163.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 6,300 hours.

Number of Respondents: 2,100.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Form C-700(R) is one of the three questionnaires used in the Construction Progress Reporting Surveys (CPRS). Statistics from the CPRS become part of the monthly value of new construction put in place series used by government agencies and private companies to monitor the amount of construction work done each month. These statistics are used by all levels of government to evaluate economic policy, to measure progress toward national goals, to make policy decisions, and to formulate legislation. The Census Bureau uses the information collected on the Form C-700(R) to publish estimates of the dollar value of new construction put in place at multi-family residential building projects owned by private companies or individuals. These projects include

residential buildings and apartment projects with two or more housing units.

Affected Public: Businesses or other for-profit organizations, individuals or households.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Agency: Bureau of the Census.

Title: Construction Project Report (State and Local Governments).

Form Number(s): C-700(SL).

Agency Approval Number: 0607-0171.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 17,400 hours.

Number of Respondents: 5,800.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Form C-700(SL) is one of the three questionnaires used in the Construction Progress Reporting Surveys (CPRS). Statistics from the CPRS become part of the monthly value of new construction put in place series used by government agencies and private companies to monitor the amount of construction work done each month. These statistics are used by all levels of government to evaluate economic policy, to measure progress toward national goals, to make policy decisions, and to formulate legislation. The Census Bureau uses the information collected on the Form C-700(SL) to publish estimates of the dollar value of new construction put in place at construction projects owned by state or local government agencies. These projects include public schools, court houses, prisons, hospitals, civic centers, highways, bridges, sewer and water systems, etc.

Affected Public: State or local governments.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposals 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 collections should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 31, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-2761 Filed 2-4-92; 8:45 am]

BILLING CODE 3510-07-F

National Oceanic and Atmospheric Administration

Pacific Halibut and Pacific Coast Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of control date.

SUMMARY: This notice announces a control date of November 13, 1991, after which a vessel or individual entering the fisheries may be assigned a lesser priority for issuance and shares of individual quotes (IQs) in a potential IQ-based limited access system for Pacific coast commercial groundfish fisheries and the commercial Pacific halibut fishery off the State of Washington, Oregon, and California. The intended effect of announcing this control date is to discourage speculative entry into these fisheries while discussions on access control continue.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Director, Northwest Region, NMFS), 206-526-6150; E. Charles Fullerton (Director, Southwest Region, NMFS), 310-514-6196; or Lawrence D. Six (Executive Director, Pacific Fishery, Management Council), 503-326-6352.

SUPPLEMENTARY INFORMATION: The FMP for groundfish was approved on January 4, 1982 (47 FR 43964; October 5, 1992), and implementing regulations appear at 50 CFR parts 611 and 663. During its July 13-14, 1988, meeting, the Council adopted and provided public notice of an eligibility window of July 11, 1984, to August 1, 1988 (53 FR 29338; August 4, 1988), to establish priority for future participation in the Pacific coast commercial groundfish fishery. During its September 18-20, 1991, meeting, the Council used fishery activity during that window period to identify eligible participants in a Pacific coast groundfish license limitation program recommended for adoption by the Secretary of Commerce as Amendment 6 to the FMP. This program would require permits for groundfish trawl, longline, and fishpot vessels to participate in the limited segment of the commercial groundfish fishery.

The Northern Pacific Halibut Act (Halibut Act), Public Law 97-176, 16 U.S.C. 773c(c), authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the allocation of Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, the regulations of the International Pacific Halibut Commission (IPHC). The Pacific Council has authority for the IPHC statistical Area 2A which is all U.S. marine waters lying south of the U.S.-Canada border, including the Straits of Juan de Fuca and Puget Sound.

During the November 12-15, 1991, Council meeting in Milbrae, California, the Council adopted November 13, 1991, as a control date to be used in determining priorities for issuance and shares in a potential IQ-based limited access system or other access controls for Pacific coast groundfish fisheries and the Area 2A Pacific halibut fishery. If IQ programs are adopted, the Council has expressed its intent to exclude from consideration fishing activity occurring after November 13, 1991, in establishing priorities for issuance and shares of individual quotas for these fisheries. In making this announcement, NMFS and the Council intend to prevent speculative fishing, by both new entrants and those already participating in the fishery, during further development and analysis of limited access alternatives.

For the commercial groundfish fishery, this notice is a control date augments but does not necessarily superseded the earlier notice of an eligibility window. The window period was announced in 1988 as follows: "A vessel may be given priority for future participation in the fishery if the vessel made commercial landings of groundfish caught off the coast of Washington, Oregon, or California during a window period between July 11, 1984, and August 1, 1988." The Council has expressed its intent to use fishing activity during the window period that was announced in 1988 and may also consider fishing activity after the window period announced in 1988 until November 13, 1991, in allocating IQs if such a system is adopted.

For the Pacific halibut fishery, there is no previously announced window period. Access to the Pacific halibut fishery currently is not limited although commercial fishermen and charter boat operators must obtain a fishing license from the IPHC. Therefore, as the Council further develops a halibut limited access program, fishing activity in the halibut fishery in Area 2A prior to November 13, 1991, may be considered in determining eligibility and allocating harvest shares under a future access limitation program. The Council may recommend

additional criteria for qualifying fishermen or vessels as participants in the halibut fishery. Some additional criteria that were applied to the groundfish fishery in the Council's recently-adopted limited entry amendment, for example, were minimum amounts landed and minimum numbers of landings.

This announcement does not commit the Council or the Secretary of Commerce to any particular mamangement regime or priority criteria for access to the groundfish or halibut fisheries. Fishermen are not necessarily guaranteed issuance of permits or shares of IQs regardless of their activity prior to November 13, 1991. The Council may choose to give variably weighted consideration to fishermen in the fishery after this date, as may be the case with any permissible exceptions. The Counncil also may choose to take no further action to control entry or access to the fisheries. Fishing activity after November 13, 1991, is not expected to be considered in determining priority and harvest shares in either the groundfish or halibut fisheries if an IQ system is adopted.

This accouncement does not prevent the development or implementation of other eligiblity criteria or restrict the type of management regime selected for limited access.

Authority: 16 U.S.C. 1801 *et seq.*, and 5 UST 5; TIAS 2900; 16 U.S.C. 773–773(k).

Dated: January 28, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–2440 Filed 1–30–92; 3:50 pm]

BILLING CODE 3510-22-M

Florida Keys National Marine Sanctuary Advisory Council; Open Meeting

AGENCY: The Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: February 19 and 20, 1992 from 9:30 a.m. until 4 p.m. The meeting will take place at Buccaneer Resort, 2600 Overseas Highway, in Marathon, Florida.

AGENDA: 1. Development of rules of order for the Council or acceptance of Roberts Rules of Order for conduct of the Committee.

2. Status of efforts to develop a management plan for the Florida Keys National Marine Sanctuary.

3. Water quality protection in the Florida Keys.

Public Participation

The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743–2437 or Ben Haskell at (202) 606–4122.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: January 30, 1992.

John J. Carey,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92–2718 Filed 2–4–92; 8:45 am]

BILLING CODE 3510-08-M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Large Pelagic Committee will meet on February 18, 1992, beginning at 3 p.m. at the Ramada Inn, 173 Jennifer Road, Annapolis, MD., (telephone: 804–351–9209). This meeting will be followed by a meeting of the Demersal Committee at 7 p.m.

The Council will begin its regular meeting on February 19 at 9 a.m. and adjourn at approximately 4 p.m. In addition to reviewing committee reports, the Council is scheduled to hold a Special Election for Chairman at 2 p.m. Then, there will be a presentation from the Chairman of the South Atlantic Council on the Georgia permitting system, and other fishery management matters as deemed necessary. The meeting may be lengthened or shortened depending on the progress of the agenda. The Council may go into closed session (not open to the public), the discuss personnel and/or national security matters.

On February 20 at 8 a.m., there will be a Coastal Migratory Species Committee meeting with advisors and the Atlantic States Marine Fisheries Commission Weakfish Board.

For more information, contract John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: January 30, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–2715 Filed 2–4–92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT), will hold a public meeting on February 18–21, 1992, at the Council's office (address below).

The STT meeting will begin on February 18 at 1 p.m. to draft the 1992 stock status report. The report will be distributed to the public by March 2, 1992, and reviewed at the Council meeting in Seattle, Washington, on March 10.

Oral or written statements from the public pertaining the salmon abundance projections will be accepted at appropriate times during the STT meeting.

For more information contact John Coon, Staff Officer (salmon), Pacific Fishery Management Council, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: January 30, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–2716 Filed 2–4–92; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council (Council) and its Committees will hold public meetings on February 24–27, 1992, at the Hyatt Regency Savannah; Two W. Bay St.; Savannah, GA; telephone: (912) 238–1234. Times for discussion of the agenda items below will be set at a later date.

Council

The Council intends to set the total allowable catch (TAC) for the 1992–93 wreckfish season during this meeting. The Council will hold a closed session (not open to the public) of the Advisory Panel Selection Committee on February

25 between 10:30 a.m. and 12 p.m. The public is invited and encouraged to attend a scoping meeting on February 26 from 6:30 p.m., until 8:30 p.m., to comment on the use of marine fishery reserves as an option for managing snapper and grouper.

Committees

The Spiny Lobster Committee will review the Florida Marine Fishery Commission's changes to its spiny lobster regulations. These changes would include implementing a trap certificate program and 10 percent trap reduction program; requiring divers to measure lobsters while still in the ocean; establishing a uniform trap buoy identification number size; prohibiting the taking of spiny lobster in excess of the bag limit during night diving; prohibiting trawls as allowable gear; and reducing the allowable quantity of lobsters as attractants from 100 to 50 per vessel.

The Snapper-Grouper Committee will recommend the (TAC) for the 1992-93 wreckfish season to the full Council, will review the South Carolina Special Management Zone request, and will be briefed on implementation of Amendment #4 to the Snapper-Grouper Fishery Management Plan (FMP).

The Shrimp Committee will review public comments on the draft Shrimp FMP, and the Council will consider it for approval for submission to the Secretary of Commerce for review.

The Mackerel Committee will review public comments and the Gulf of Mexico Fishery Management Council's recommendations on Amendment #6 to the Mackerel FMP. The Council will also consider approval of the Amendment for submission to the Secretary of Commerce for review.

The detailed agenda with the specific meeting times will be made available to the public in early February. For more information contact Carrie Knight, Public Information Officer: South Atlantic Fishery Management Council; One Southpark Circle, suite 306; Charleston, SC 29407-4699; telephone: (803) 571-4366.

Dated: January 30, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-2714 Filed 2-4-92; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Crustaceans Plan Team (CPT) will hold a public meeting on February 24-25, 1992, at the Honolulu Laboratory Conference Room, 2570 Dole Street, Honolulu, HI.

The CPT meeting will begin at 9 a.m., on each day. The agenda is as follows:

(1) Review team membership (include the replacement of retiring members);
(2) discuss status of Amendment #7;
(3) develop Council-mandated briefing paper on management costs and values of: a. a fishery authorizing males only, b. increasing legal minimum tail size, c. opening Laysan Island to lobster fishing, d. rotating area closure system;
(4) fleet vs. individual quotas;
(5) separate quotas for slipper and spiny lobsters;
(6) changing fishing and processing logs;
(7) marking lobster traps;
(8) redefining overfishing for lobsters in light of their value as monk seal prey;
(9) determining initial fleet quota for 1992;
(10) developing mechanism and schedule for reporting catch for 1992 fleet quota; and
(11) discuss other matters.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: January 30, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-2717 Filed 2-4-92; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Privacy Act of 1974; Establishment of Systems of Records

AGENCY: Commodity Futures Trading Commission.

ACTION: Final notice of the establishment of a system of records for the investigative files of the office of the inspector general.

SUMMARY: This notice is published in accordance with the requirements of subsection (e)(4) of the Privacy Act. 5 U.S.C. 552a(e)(4). The notice describes the establishment of a system of records for the investigative files of the Office of Inspector General (OIG) of the Commodity Futures Trading Commission (Commission), and sets forth routine uses for the system. The system will be entitled "Office of the Inspector General Investigative Files".

Notice of the proposed system of records was published in the **Federal Register** on July 16, 1991 (56 FR 32407), and interested persons were given until August 15, 1991, to submit comments. The Commission received comments from one person, discussed below. As a result of the comments, the Commission has decided to alter proposed routine use one to delete as a routine use disclosure pursuant to subpoena in court proceedings to which the Commission is not a party.

EFFECTIVE DATE: February 5, 1992.

FOR FURTHER INFORMATION CONTACT: Judith A. Ringle, Esq., Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street NW, Washington, DC 20581. Telephone (202) 254-7110.

SUPPLEMENTARY INFORMATION: This notice establishes a new system of records entitled "Office of the Inspector General Investigative Files." Elsewhere in today's **Federal Register**, the Commission is publishing a final rule which exempts the new system of records from certain sections of the Privacy Act of 1974 (5 U.S.C. 552a) pursuant to 5 U.S.C. 552a (j) and (k). The Commission published notice of the proposed system of records, as well as the proposed rule, in the **Federal Register** on July 16, 1991 (56 FR 32407 and 56 FR 32358). The Commission received comments from one commentator regarding the proposed system of records as well as the proposed exemptions under the Privacy Act.

According to the commentator, it is not appropriate to grant an exemption pursuant to 5 U.S.C. 552a(j)(2). The (j)(2) exemption exempts files "maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws." The commentator asserts that enforcement of criminal laws is not the principal function of an Inspector General. The commentator suggested, however, that the (j)(2) exemption could be applied to a record system maintained by an identifiable criminal investigation subunit of the Inspector General.

We do not agree that the OIG does not perform as one of its principal functions activities pertaining to the enforcement of criminal laws. The Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, authorizes the Inspector General to conduct investigations to detect fraud and abuse in the programs and operations of the Commission and to assist in the prosecution of participants in such fraud or abuse, and the Commission's OIG does so.

Given the present staff levels of the Commission's OIG, creation of a

criminal investigative subunit would not seem to be very efficient. As stated in the Commission's notice of proposed rulemaking (56 FR 32358 (July 16, 1991)), the (j)(2) and (k)(2) exemptions will be narrowly applied so that only records pertaining to criminal and civil law enforcement investigative matters will be covered as appropriate under those two exemptions. Accordingly, we decline to adopt this suggestion.

The commentator also objected to proposed routine use 1 for the system to the extent that the routine use would permit disclosure of information in response to a subpoena. As proposed, routine use 1 permitted disclosure of Inspector General files "to the extent required by law in response to the subpoena issued in the course of a proceeding to which the Commission is not a party." The commentator suggests that this provision of routine use 1 is inconsistent with subsection (b)(11) of the Privacy Act and should be eliminated.

Generally, we think the objection is well taken. The Court of Appeals for the District of Columbia Circuit has held that a subpoena is not a court order for purposes of subsection (b)(11) of the Privacy Act, *Doe* v. *DiGenova*, 779 F.2d 74, 85 (D.C.Cir. 1985), and that an agency may not circumvent subsection (b)(11) by adopting a routine use which permitted disclosures pursuant to a subpoena without also obtaining a court order. *Doe* v. *Stephens*, 851 F.2d 1457, 1467 (D.C.Cir. 1988).

Accordingly, the attached final systems notice modifies routine use 1 to eliminate compliance with subpoenas as a routine use. The modification, however, excludes compliance only with third party subpoenas, *i.e.*, those issued to the Commission in a proceeding where the Commission is not a party. Routine use 1 as modified would still permit disclosure in response to a subpoena or a discovery request in judicial and administrative proceedings where the Commission is a party.

We believe this exclusion conforms to the Privacy Act. The Privacy Act defines "routine use" as "the use of such record for a purpose which is compatible with the purpose for which it was collected." 5 U.S.C. 552a(a)(7). Courts have stressed that routine uses should be defined narrowly, so as not to circumvent the mandates of the Privacy Act. *Stephens*, 851 F.2d at 1466. To the extent that participation in judicial proceedings requires disclosure of information relevant to the litigation—whether as part of the Commission's case or as part of its discovery or similar obligations—such disclosure would appear easily to be "compatible" with a purpose for which OIG investigative material is collected.

In addition, the attached systems notice amends routine use 8, which deals with certain interagency disclosures, to permit disclosures to the Department of Justice for legal advice or to pursue non-law enforcement claims arising out of OIG investigations, or in the defense of the federal government whenever it or a component is a defendant in litigation. We feel both uses are appropriate.

In the context of interagency disclosures of Privacy Act material, the compatibility requirement for routine uses has been defined as requiring "some meaningful degree of convergence between the disclosing agency's purpose in gathering the information and in its disclosure." *Britt* v. *Naval Investigative Service*, 886 F.2d 544, 549–550 (3rd Cir. 1989). Disclosure is compatible where the Commission needs to disclose Inspector General investigative files in seeking advice from DOJ or to obtain DOJ's assistance to pursue non-law enforcement claims. In addition, disclosure should be compatible where necessary in the defense of the federal government, whenever the federal government, a federal agency or a federal employee is a defendant in litigation. Any other rule could effectively prohibit the federal government from defending itself in the event of a lawsuit.

Accordingly, the Commission announces the establishment of the following system of records for its Office of the Inspector General:

CFTC-32

SYSTEM NAME:

Office of the Inspector General Investigative Files.

SYSTEM LOCATION:

Office of the Inspector General, Commodity Futures Trading Commission, 2033 K St. NW., Washington, DC 20581.

CATEGORIES OF RECORDS IN THE SYSTEM:

All correspondence relevant to the investigation; all internal staff memoranda, copies of all subpoenas issued during the investigation, affidavits, statement from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits; documents and records or copies obtained during the investigation; and opening reports, progress reports and closing reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 95–452, as amended, 5 U.S.C. App. 3.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) The information in the system may be used or disclosed by the Commission in any administrative proceeding before the Commission, in any injunctive action authorized under the Commodity Exchange Act, in any other action or proceeding in which the Commission or any member of the Commission or its staff participates as a party, in an official capacity, or the Commission participates as amicus curiae.

(2) In any case in which records in the system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred to the appropriate agency, whether Federal, foreign, state or local, charged with enforcing or implementing the statute, regulation, rule or order.

(3) In any case in which records in the system indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, the relevant records may be referred to the appropriate board of trade designated as a contract market by the Commission or to the appropriate futures association registered with the Commission, if the OIG has reason to believe this will assist the contract market or registered futures association in carrying out its self-regulatory responsibilities under the Commodity Exchange Act, 7 U.S.C. 1, et. seq., and regulations, rules or orders issued pursuant thereto, and such records may also be referred to any national securities exchange or national securities association registered with the Securities and Exchange Commission, to assist those organizations in carrying out their self-regulatory responsibilities under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, and regulations, rules or orders issued pursuant thereto.

(4) The information may be given or shown to anyone during the course of an OIG investigation if the staff has reason to believe that disclosure to the person will further the investigation. Information may also be disclosed to Federal, foreign, state or local authorities in order to obtain information or records relevant to an OIG investigation.

(5) The information may be given to independent auditors or other private firms with which the OIG has contracted to carry out an independent audit, or to collate, aggregate or otherwise refine data collected in the system of records. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

(6) The information may be disclosed to a Federal, foreign, state or local government agency where records in the system of records pertain to an applicant for employment, or to a current employer of that agency where the records are relevant and necessary to an agency decision concerning the hiring or retention of an employee or disciplinary or other administrative action concerning an employee.

(7) The information may be disclosed to a Federal, foreign, state, or local government agency in response to its request in connection with the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

(8) The information may be disclosed to the Department of Justice or other counsel to the Commission for legal advice or to pursue claims and to government counsel when the defendant in litigation is: (a) Any component of the Commission or any member or employee of the Commission in his or her official capacity; or (b) the United States or any agency thereof. The information may also be disclosed to counsel for any Commission member or employee in litigation or in anticipation of litigation in his or her individual capacity where the Commission or the Department of Justice agrees to represent such employee or authorizes representation by another.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

Paper records in file folders, computer diskettes and computer memory.

RETRIEVABILITY:

By the name of the subject of the investigation or by assigned identification number.

SAFEGUARDS:

The records are kept in limited access areas during duty hours and in file cabinets in locked offices at all other times. These records are available only to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

The Office of the Inspector General Investigative Files are destroyed ten years after the case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of the Inspector General, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether the system of records contains information about themselves, seeking access to records about themselves in the systems of records, or contesting the content of records about themselves, should address written inquiries to the FOI, Privacy and Sunshine Acts Compliance Staff, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

RECORD ACCESS PROCEDURES:

See Notification Procedure above.

CONTESTING RECORD PROCEDURES:

See Notification Procedure above.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, corporations and other entities; records of individuals and of the Commission; records of other entities; federal, foreign, state or local bodies and law enforcement agencies; documents, correspondence relating to litigation, and transcripts of testimony; and other misscellaneous sources.

SYSTEM EXEMPTIONS FROM CERTAIN PROVISOINS OF THE PRIVACY ACT:

Under 5 U.S.C. 55a(j)(2), the Office of the Inspector General Investigative Files are exempted from 5 U.S.C. 552a except subsections (b), (c) (1), and (2), (3)(4)(A) through (f), (e) (6), (7), (9), (10), and (11), and (i) to the extent the system of records pertains to the enforcement of criminal laws. Under 5 U.S.C. 552(k)(2), the Office of the Inspector General Investigative Files are exempted from 5 U.S.C. 552a except subsection (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) to the extent the system of records consists of investigatory material compiled for law enforcement purposes. These exemptions are contained at 17 C.F.R. 146–13.

Issued in Washington, DC, on January 29, 1992 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92–2566 Filed 2–4–92; 8:45 am]

BILLING CODE 6351–01

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on In-House Microelectronics Research Facilities

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on In-House Microelectronics Research Facilities will meet in closed session on March 5–6, 1992 at Science Applications International Corporation, McLean, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will assess the advantages and disadvantages of a single microelectronics facility for the Department of Defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. app. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: January 31, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–2737 Filed 2–4–92; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on National Aerospace Plane (NASP)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on National Aerospace Plane (NASP) will meet in closed session on March 5–6, at Wright Patterson AFB, Ohio; March 26–27, at Palmdale, California; April 23–24, at West Palm Beach, Florida; and May 27–29, 1992 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the concept, technical

basis, program content, and missions of the National Aerospace Plane (NASP) program.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. app. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: January 31, 1992.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-2729 Filed 2-4-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Fund for Improvement and Reform of Schools and Teaching Board; Meeting

AGENCY: Fund for the Improvement and Reform of Schools and Teaching Board.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of an open meeting of the Fund for the Improvement and Reform of Schools and Teaching Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIMES: February 27, 1992, 9 a.m.-5 p.m., February 28, 1992, 9 a.m.-12:30 p.m.

ADDRESSES: Quality Hotel, Capitol Hill, Lobby Conference Room, 415 New Jersey Avenue, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Diane Hill, Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208-5524, (202) 219-1496.

SUPPLEMENTARY INFORMATION: The Fund for the Improvement and Reform of Schools and Teaching (FIRST) Board was established under section 3231 of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297). The Board was established to advise the Secretary concerning developments in education that merit his attention; identify promising initiatives to be supported under the authorizing legislation; and advise the Secretary and the Director of the Fund on the selection of projects under consideration for support, and on planning documents, guidelines and procedures for grant competitions carried out by the Fund.

The meeting of the FIRST Board is open to the public. On February 27, 1992, the Board will introduce its Board members, approve the minutes from the September meeting, and review the fiscal year 1992 grant competition process. The Board will hold a discussion on their 1993 priorities.

On February 28, 1992, the agenda includes a briefing by the National Board for Professional Teaching Standards with time allotted for Q&A's. The Board will select a new Vice Chairman at this time. The meeting will conclude with a discussion of the upcoming agenda and a date for the next Board meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208-5524, (202) 219-1496 from the hours of 8:30 a.m. to 5 p.m..

Dated: January 31, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 92-2759 Filed 2-4-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER91-680-000, et al.

Electric Rate, Small Power Production, and Interlocking Directorate Filings; The United Illuminating Co. et al.

Take notice that the following filings have been made with the Commission:

1. The United Illuminating Co.

[Docket No. ER91-680-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, coordination transactions involving the exchange of capacity entitlements with Connecticut Municipal Electric Energy Cooperative (CMEEC). This amendment is a response to the Commission Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon CMEEC and on the Connecticut Department of Public Utility Control.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. The United Illuminating Co.

[Docket No. ER92-2-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, coordination transactions involving the sale of capacity entitlements to Connecticut Municipal Electric Energy Cooperative (CMEEC). This amendment is a response to the Commisson Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon CMEEC and on the Connecticut Department of Public Utility Control.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. The United Illuminating Co.

[Docket No. ER91-641-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, coordination transactions involving the resale of capacity entitlements to Central Vermont Public Service Corporation (CVPSC). This amendment is a response to the Commission Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon CVPSC and on the Vermont Public Service Board.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. The United Illuminating Co.

[Docket No. ER92-3-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, coordination transactions involving the exchange with or sale of capacity entitlements to Boston Edison Company (Boston Edison). This amendment is a response to the Commission Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon Boston Edison and on the Massachusetts Department of the Public Utilities.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. The United Illuminating Co.

[Docket No. ER92-4-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, coordination transactions involving the exchange with or sale of capacity entitlements to UNITIL Power Corporation (UNITIL). This amendment is a response to the Commission Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon UNITIL and on the New Hampshire Public Utilities Commission.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. The United Illuminating Co.

[Docket No. ER92-14-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, cooperation transactions involving the exchange with or sale of capacity entitlements to Long Island Lighting Company (LILCO). This amendment is a response to the Commission Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon LILCO and on the New York Public Service Commission.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. The United Illuminating Co.

[Docket No. ER92-7-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, coordination transactions involving the exchange with or sale of capacity entitlements to Montaup Electric Company (Montaup). This amendment is a response to the Commission's Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon Montaup and on the Massachusetts Department of Public Utilities.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. The United Illuminating Co.

[Docket No. ER92-27-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, coordination transactions involving the exchange with or sale of capacity entitlements to Massachusetts Municipal Wholesale Electric Company (MMWEC). This amendment is a response to the Commission Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon MMWEC and on the Massachusetts Department of Public Utilities.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. The United Illuminating Co.

[Docket No. ER92-139-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, coordination transactions involving the sale of capacity entitlements to Green Mountain Power Corporation (GMP). This amendment is a response to the Commission Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon GMP and on the Vermont Public Service Board.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Tucson Electric Power Co.

[Docket No. ER92-189-000]

January 27, 1992.

Take notice that Tucson Electric Power Company ("TEP") on January 17, 1992, tendered for filing a Notice of Amendment. Pursuant to a request for additional information by the Commission Staff, a letter dated January 3, 1992 was forwarded in response, Inadvertently, the Notice of Amendment was omitted.

Copies of the filing were served upon all parties affected by this proceeding.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. The United Illuminating Co.

[Docket No. ER91-639-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered filing an amendment to the rate schedules for short-term, coordination transactions involving the exchange with or sale of capacity entitlements to Chicopee Municipal Lighting Plant (Chicopee). This amendment is a response to the Commission Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon Chicopee and on the Massachusetts Department of Public Utilities.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Indiana Michigan Power Co.

[Docket No. ER92-278-000]

January 27, 1992.

Take notice that Indiana Michigan Power Company (I&M), on January 17, 1992, tendered for filing Modification No. 16, dated September 4, 1991, to the Interconnection Agreement, dated December 30, 1960 (1960 Agreement), between I&M and Indianapolis Power & Light Company (IPL). The 1960 Agreement has previously been designated as I&M's Rate Schedule FERC No. 21 and IPL's Rate Schedule FERC No. 1.

Modification No. 16 adds a new service schedule to the 1960 Agreement for peaking and seasonal exchange transactions. The Parties request an effective date of April 1, 1992.

A copy of the filing was served upon the Indiana Utility Regulatory Commission and the Michigan Public Service Commission.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. The United Illuminating Co.

[Docket No. ER91-638-000]

January 27, 1992

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, coordination transactions involving the exchange with or sale of capacity entitlements to Green Mountain Power Corporation (GMP). This amendment is a response to the Commission Staff's Deficiency Letter of October 28, 1992.

Copies of this amendment were served upon GMP and on the Vermont Public Service Board.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. The United Illuminating Co.

[Docket No. ER91-626-000]

January 27, 1992.

Take notice that on December 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, coordination transactions involving the exchange with or sale of capacity entitlements to Boston Edison Company (Boston Edison). This amendment is a

response to the Commission Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon Boston Edison and on the Massachusetts Department of Public Utilities.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. The United Illuminating Co.

[Docket No. ER91-625-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedules for short-term, coordination transactions involving the exchange with or sale of capacity entitlements to Citizens Utilities Company (Citizens). This amendment is a response to the Commission Staff's Deficiency Letter of October 28, 1991.

Copies of this amendment were served upon Citizens and on the Vermont Public Service Board.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service Corp.

[Docket No. ER91-473-000]

January 27, 1992.

Take notice that Central Vermont Public Service Corporation ("CVPS") on January 17, 1992, tendered for filing an amendment to its June 3, 1991 filing in this docket.

CVPS requests the Commission to waive its notice of filing requirements to permit the rate schedule to become effective as of May 1, 1991.

Comment date: February 7, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Electric and Gas Co.

[Docket No. ER92-279-000]

January 27, 1992.

Take notice that on January 21, 1991, Public Service Electric and Gas Company (PSE&G) tendered for filing an initial Rate Schedule to provide transmission service to EEA Development, Inc. (EEA) for the delivery of the net electrical energy output of EEA's qualifying facility located in the Borough of Ridgefield, New Jersey to the Consolidated Edison Company of New York, Inc.

PSE&G, with the customer's consent, requests a waiver of the Notice Requirements of § 35.3(a) of the Commission's Regulations so that the Rate Schedule can be made effective within sixty (60) days of the date of this filing.

Comment date: February 7, 1992, in accordance with Standard Paragraph E end of this notice.

18. The United Illuminating Co.

[Docket No. ER91-632-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company tendered for filing amendments to rate schedules for UNITIL Power Corporation and Fitchburg Gas & Electric Light Department in response to a deficiency letter for Commission Staff in this docket.

Comment date: February 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. The United Illuminating Co.

[Docket No. ER91-612-000]

January 27, 1992.

Take notice that on January 6, 1992, The United Illuminating Company tendered for filing amendments to rate schedules for Bangor Hydro-Electric Company and the Town of Braintree Electric Light Department in response to a deficiency letter from Commission Staff in this docket.

Comment date: February 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power & Light Co.

[Docket No. ER91-693-000]

January 28, 1992.

Take notice that on January 15, 1991, Florida Power & Light Company, (FP&L) tendered for filing an amendment in the above-referenced docket.

Comment date: February 11, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. MWR Power Inc.

[Docket No. ES92-27-000]

January 28, 1992.

Take notice that on January 23, 1992, MWR Power Inc. (MWR) filed an application with the Federal Energy Regulation Commission under section 204 of the Federal Power Act requesting authority to issue securities and assume liabilities in connection with the proposed merger of Iowa Power Inc. and Iowa Public Service Company with and into MWR.

MWR proposes that:

- All outstanding and issued securities of Iowa Power Inc. and Iowa Public Service Company be converted into securities of MWR to be issued at the completion of the merger.
- All obligations and liabilities in respect to the existing securities of Iowa Power Inc. and Iowa Public Service Company be assumed by MWR.
- MWR be treated as the successor to any existing Commission authority to issue securities in the amounts and for the maturities authorized for Iowa Public Service Company and Iowa Power Inc.

MWR requests exemption from the Commission's competitive bidding regulations.

Comment date: February 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Pacific Gas and Electric Co.

[Docket No. ER92-132-000]

January 28, 1992.

Take notice that on January 10, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to its earlier filing under FERC Docket No. ER92-132-000. Docket No. ER92-132-000 submitted amendment #4 to the Comprehensive Agreement between State of California Department of Water Resources and Pacific Gas and Electric Company to the Commission for filing. At the request of FERC Staff, PG&E has submitted additional information regarding the technical functioning and application of the Remedial Action System, which is the basis of this Docket.

Comment date: February 11, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Acme Power Co.

[Docket No. QF92-28-000]

January 28, 1992.

On January 27, 1992, Acme Power Company, tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment supplements information concerning the facility equipment configuration, and ownership structure. In addition, the amendment requests the type of certification be revised to that of a qualifying small power production facility rather than a qualifying cogeneration facility, as originally requested in the application filed on December 3, 1991.

Comment date: February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Orlando CoGen Limited, L.P.

[Docket No. QF91-233-001]

January 28, 1992.

On January 23, 1992, Orlando CoGen Limited, L.P. tendered for filing an amendment to its filing in this docket.

No determination has been made that the submittal constitutes a complete filing.

The amdnemdnt provides additional information pertaining to the ownership structure of its cogeneration facility.

Comment date: February 18, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Iowa Public Service Co.

[Docket No. ER89-506-000]

January 28, 1992.

Take notice that Iowa Public Service Company (IPS) on its own behalf and on behalf of Interstate Power Company, Kansas City Power & Light Company, Northern States Power Company, Omaha Public Power District and St. Joseph Light & Power Company on January 8, 1992, tendered for filing an amended filing for Supplement No. 6 to the Twin Cities-Iowa-Kansas City 345 kV Interconnection Coordinating Agreement, effective May 1, 1989. Supplement No. 6 revises the rates for power and energy in the Service Schedules under the Original Agreement and adds two new classes of power and energy called "General Purpose Energy" and "Term Energy."

Copies of this filing were served on the following commissions: Iowa Utilities Board; State Corporation Commission (Kansas); Minnesota Public Utilities Commission; Missouri Public Service Commission; The Public Service Commission (Nebraska); South Dakota Public Utilities Commission; The Public Service Commission (North Dakota); Wisconsin Public Service Commission' as well as all owners of the West 345 kV aforementioned transmission line.

This filing has previously been held in abeyance at the request of IPS. IPS is now amending its filing for further review. IPS renew its request for waiver of notice requirements to permit an effective date of May 1, 1990.

Comment date: February 11, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Montenay-Dade, Ltd.

[Docket No. QF81-19-000]

January 29, 1992.

On January 21, 1992, Montenay-Dade, Ltd., tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the owner and operator of the facility.

Comment date: February 20, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation 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 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2707 Filed 2-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-105-000 and GP87-16-000]

Yukon Pacific Corporation; Intent to Prepare a Draft Environmental Impact Statement for the Proposed Yukon Pacific LNG Project and Request for Comments on Environmental Issues

January 31, 1992.

Summary

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) or the (Commission) will prepare a Draft Environmental Impact Statement (DEIS) on the facilities proposed in the above referenced dockets for the Yukon Pacific Liquefied Natural Gas (LNG) Project.

Yukon Pacific Corporation (Yukon Pacific) is seeking approval of a specific site at Anderson Bay, Valdez, Alaska in order to export LNG to Japan, South Korea, and Taiwan, and for the construction of facilities on this site to liquefy pipeline natural gas for storage and subsequent ocean transport to the above Asian Pacific Rim market. These facilities would include a 2.3 billion cubic feet of natural gas per day (Bcfd) liquefaction plant, four 800,000-barrel LNG storage tanks, a marine loading facility, and the operation of a fleet of 15 125,000 cubic meter LNG tankers for transportation beyond U.S. territorial waters. These facilities and the upstream facilities to deliver natural gas from Prudhoe Bay on Alaska's North Shore to Anderson Bay comprise the TransAlaska Gas System (TAGS) Project. Upstream facilities to transport natural gas from Prudhoe Bay to Anderson Bay consist of a 796.5-mile-long, 36-inch-diameter, buried pipeline system with a design capacity of 2.3 Bcfd, and 10 compressor stations. A new or existing Gas Conditioning Facility (GCF) would also be necessary at Prudhoe Bay to "condition" the gas, i.e. remove portions of carbon dioxide and heavier hydrocarbons, prior to transport to the TAGS pipeline. A Final Environmental Impact Statement (FEIS) for the TAGS project was completed and circulated to the public by the Bureau of Land Management (BLM) and the U.S. Army Corps of Engineers (COE) in June 1988. Although the GCF is not part of any specific application, it is a connected action and was identified in the TAGS FEIS.

By this notice, the FERC staff is requesting comments on the scope of the analysis that should be conducted for the DEIS, which will be limited to the export site, the construction and operation of LNG related facilities on the site, and the transit of LNG by ship through Alaskan waters. All comments will be reviewed prior to the preparation of the DEIS and significant issues will be addressed. Comments should focus on potential environmental effects and measures to mitigate adverse impact. Written comments must be submitted by March 16, 1992 in accordance with the "Scoping and Comment Procedures" provided at the end of this notice.

Project Background

On December 5, 1986, Yukon Pacific filed applications with the BLM and the COE to construct a large diameter, buried, chilled gas pipeline between Prudhoe Bay, Alaska and Anderson Bay, Valdez, Alaska for export purposes. On December 18, 1986, Yukon Pacific filed a petition with the Commission for a Declaratory Order in Docket No. GP87-16-000 on whether the Commission has jurisdiction over the project under sections 3 and/or 7 of the Natural Gas Act (NGA). On May 27, 1987, the Commission issued its Declaratory Order determining in part that the Commission has authority under section 3 of the NGA to approve or disapprove the place of export for the Yukon Pacific Project. The Commission declined in the Declaratory Order to exercise any discretionary authority it may have under section 3 to regulate the siting, construction, and operation of the TAGS pipeline from Prudhoe Bay to Anderson Bay.

Since the BLM and the COE were already preparing an EIS on the entire TAGS Project, the BLM requested the FERC on June 5, 1987 to participate in

the BLM/COE EIS as a cooperating agency. Although applications were not yet filed with the FERC or the U.S. Department of Energy (DOE), the FERC agreed to participate as a cooperating agency on July 1, 1987. The DOE also participated as a cooperating agency. A "tiered" process was agreed upon using an initial overview EIS of the entire project from its North Slope gas conditioning facility to tanker transport of the LNG. The EIS examined alternative terminal locations and accompanying pipeline route variations. It was understood that additional detailed site-specific environmental work may be required on specific elements of the project when permits and approvals are requested and acquired. In September 1987, the TAGS DEIS was issued for public comment.

On December 3, 1987, Yukon Pacific filed an application with the Commission in Docket No. CP88-105-000 for an order authorizing a place of export at Anderson Bay, Alaska for the exportation from the United States of LNG. On December 3, 1987, Yukon Pacific also filed an application with the Economic Regulatory Administration (ERA) of the DOE in ERA Docket No. 87-68-LNG for authority to export up to 14 million metric tons of LNG annually (equivalent to 660 Bcf of gas) to Japan, South Korea, and Taiwan.

On January 12, 1988, President Ronald Reagan issued a Presidential Finding determining that the effects of exports of Alaska natural gas on American consumers would comply with section 12 of the Alaska Natural Gas Transportation Act in the context of current and projected future energy markets, and that this finding should not hinder the completion of the Alaska Natural Gas Transportation System (ANGTS) which was previously authorized to transport North Slope Alaska natural gas to the lower-48 states.

In June 1988, the BLM and the COE issued the TAGS FEIS. Subsequently, on October 17, 1988, the BLM issued a Federal Right-of-Way Grant for the TAGS pipeline project and the State of Alaska issued its State Grant on December 16, 1988. The Department of Energy, Office of Fossil Energy (DOE/FE), successor to the ERA, granted authorization of the export under section 3 of the NGA in Opinion and Order Number 350, issued November 16, 1989. The DOE Order relied on the TAGS FEIS in assessing the environmental consequences of granting the proposed export. Condition F of the order requires that all aspects of the export be implemented in accordance with all applicable environmental procedures, requirements, and mitigative measures imposed by Federal and state agencies. Further, the order directs "* * * the FERC to consider the safety and environmental aspects of the export site and facilities, including the liquefaction plant, the marine terminal, the LNG tankers and their routes in Prince William Sound and U.S. territorial waters, prior to approving any export site or facilities." (pg 37).

The DOE Order also concluded:

(a) "With respect to the place of exportation for the LNG * * *, all locations other than Port Valdez, Alaska, are rejected." [1]

(b) "Except for the authority under DOE Delegation Order 0204-112 over the export site, including the liquefaction plant, marine terminal, and related transportation of LNG, the Federal Energy Regulatory Commission (FERC) shall exercise no authority over the export project * * *"

In accordance with the tiered process, the FERC Declaratory Order, BLM's Federal Right-of-Way Grant, and the DOE Order 350, FERC will prepare a more detailed DEIS for the "Place of Export" and associated facilities.[2] The issues to be addressed will be limited to those mandated by the DOE Order and confined to the FERC's jurisdiction described in the Declaratory Order. Issues associated with conditioning plant(s) on the North Slope, the TAGS pipeline, and alternative locations for the export site will not be addressed in this EIS.

Proposed Action

The general location of the proposed facilities for the Yukon Pacific LNG Project is shown in Figure 1. The site is 5.5 miles southwest of the city of Valdez and 3.5 miles west of the Trans-Alaska Oil Pipeline System marine terminal. The entire plant site occupies approximately 300 acres of a 2,500 acre parcel directly adjacent to the proposed marine terminal. The major facilities in the plant include four LNG process trains consisting of gas pretreatment and liquefaction, four 800,000-barrel cryogenic storage tanks, and two LNG loading lines. The plant would be designed for the future addition of one process train and storage tank. Figure 2 shows a site plan.

Conditioned natural gas would enter the LNG plant for initial treatment to remove moisture and impurities by passing it through a series of dryers and scrubbers. Once treated, the gas would proceed through the liquefaction process. The LNG plant would consist of four air-cooled liquefaction trains operating in parallel. Each train would produce LNG for transfer to aboveground cryogenic storage tanks with sufficient capacity to store 5 days for LNG production. Each storage tank would be constructed with an integral concrete outer wall. This wall would serve as a Class 1 impoundment system to contain accidentally spilled LNG.

The LNG loading system would transfer LNG product from onshore storage tanks to LNG tankers, berthed at the marine terminal. Transfer piping would be sized to load two tankers simultaneously in a 12-hour period (approximately 70,000 barrels per hour per tanker). Loading lines, supported by trestles, would connect the LNG storage tanks to the loading platform. The loading lines would use materials designed to withstand cryogenic (−259° F) LNG temperature, and would be insulated to minimize boil-off. The loading operation at each berth would use four articulated loading arms and one vapor-return arm. The latter would take LNG vapors back into the plant fuel gas system or to the feed gas stream for reliquefaction.

The marine facility would consist of two LNG tanker berths, a cargo dock, a ferry landing for site access, and sheltered mooring for small craft. The LNG tanker berths, designed to handle tankers in the 125,000 to 165,000 cubic meter size range, would consist of loading platforms and berthing and mooring dolphins. The platform would be connected to the shore by a causeway, built on piles, carrying roadway and piping. The tanker berths would be approximately parallel to the shore in 50 feet of water.

The tankers that would be used to transport the LNG would be of approximately 125,000 cubic meter capacity and would use any of the three basic containment systems currently in use throughout the world—spherical, prismatic free-standing, and membrane tank designs. The LNG carriers for the TAGS project would be built and operated in strict accordance with all current regulatory and classification society requirements.

[1] This action was not to be interpreted as approval of the Valdez site. The DOE required that "the FERC conduct its own examination of the health, safety, and environmental impacts associated with Yukon Pacific's use of the Valdez site."

[2] It should be noted that the DOE/FE authorization to export is under appeal by Alaskan Northwest Natural Gas Transportation Company in the U.S. Court of Appeals for the District of Columbia Circuit, and that on May 10, 1991, Circuit Judges Silberman and Williams ordered that the appeals be held in abeyance pending disposition by the FERC of Docket Nos. CP88-105-000 and GP87-16-000.

The anticipated LNG volume to be exported would require approximately 275 tanker loads per year. Vessel traffic into Anderson Bay would start from the Gulf of Alaska, enter Prince William Sound through Hinchinbrook Entrance, proceed north into Valdez arm, then pass through Valdez Narrows to the marine terminal site. Prince William Sound supports a major marine industry dominated by oil tanker traffic. The Prince William Sound Vessel Traffic Service Area (VTS Area) has been created by the U.S. Coast Guard (USCG) as described beginning in 33 CFR 161.301. All vessels traversing Prince William Sound to or from Valdez must follow USCG rules of the VTS.

Construction

The LNG plant and marine terminal at Anderson Bay would be constructed by Yukon Pacific using conventional construction procedures and techniques. Detailed design and construction activities would be completed over a 5-year period.

The proposed project facilities would be designed, constructed, and maintained in accordance with DOT Federal Safety Standards for Liquefied Natural Gas Facilities, (49 CFR part 193). The facilities constructed at the site would also meet the National Fire Protection Association 59A LNG standards. The marine cargo transfer system and any other appurtenances located between the vessel and the last valve located immediately before a storage tank, must comply with 33 CFR part 127 and Executive Order 10173 (USCG).

Site excavation would include removal of overburden soils down to bedrock with placement of these soils in planned fill and disposal areas following cut and fill of the rock to establish the design elevations. Rock excavation would be done using conventional drilling and blasting techniques. Rock would be moved and placed by dozers, loaders, haul trucks, and compactors. Of the approximately 8.5 million cubic yards of rock and overburden to be excavated from the site, about half would require offsite disposal.

A construction off-loading dock would be built using precast concrete caissons filled with granular materials. As soon as possible in the second construction season, construction would begin for the ring foundations for the first two LNG tanks. LNG tank erection would follow until all four tanks are erected.

The remaining shoreside facility mobilizing to the site would commence during the third quarter of the third year. The LNG process trains would be manufactured in modules offsite and shipped and installed in sequence.

Construction of the two LNG mooring and loading berths at the marine terminal would commence late in the third year. Each berth would be parallel to the shore in about 50 feet of water, and consist of three breasting dolphins, a transfer platform for the four marine loading arms and vapor return arm, and four mooring dolphins located outboard to the vessel. A cargo dock to unload vessels with a 20 foot draft would be constructed about 4,500 feet west of the two LNG berths for general cargo shipments to the site. The cargo dock would include a ferry landing to allow employee and visitor access to the site from Valdez.

Environmental Issues

Based on a preliminary analysis of the application for a Place of Export and the environmental information provided by Yukon Pacific, the FERC staff has identified a number of issues that will be specifically addressed in the DEIS.

Soils and Geology
- —Erosion control and revegetation;
- —seismology and soil liquefaction;
- —public and worker safety during seismic events;

Water Resources
- —Site-specific impacts on surface and groundwater;
- —effects of LNG spillage or leakage during transfer and handling, on surface and groundwater and marine water qualify;
- —Potential introduction of non-indigenous species and diseases from tanker ballast water.
- —effects of underwater excavation, dredging, and filling on marine water quality and biota; and
- —wetland impacts at plant site.

Wildlife
- —Impacts of plant construction and operation on resident wildlife including threatened and endangered species;
- —effects of increased tanker traffic on threatened whale species along the route; and
- —effects of construction of terminal on marine life in Anderson Bay.

Land Use/Aesthetics
- —Impact of access limitations for local recreational and commercial fishermen and exclusions from Chugah National forest lands; and
- —compatibility of proposed facility with Valdez City Planning Committee's waterfront plan.

Vegetation
- —Short- and long-term effects on terrestrial vegetation.

Air and Noise
- —Air quality and noise impacts of LNG plant and associated facilities during operations; and
- —air and noise impacts during construction.

Socioeconomics
- —Impact of 1,500 peak workforce on the town of Valdez;
- —impact of construction activity and restrictions on tourism and recreation and local economy; and
- —long term effects of 30–50 permanent jobs in Valdez.

Marine Transportation
- —Effects of increased marine traffic on existing marine traffic both commercial and recreational; and
- —probability of increased accident risk and potential for release of LNG or other hazardous materials.

Public Safety
- —Compliance with 49 CFR 193 for exclusion zones (thermal and vapor gas dispersion), siting criteria, seismic criteria, etc. and
- —consequences of a major spill.

Comments are solicited on any additional topics of environmental concern to residents and others in the project area. However, as previously stated, issues associated with conditioning plant(s) on the North Slope, the TAGS pipeline, and alternative locations for the export site are outside the scope of this EIS. The above three issues were addressed in the TAGS FEIS or DOE Order 350. The Staff Does not Intend to Allow This EIS to Resurrect Old Issues nor Entertain Comments on Old Issues. The Comment Period for Old Issues is Closed.

After comments in response to this notice are received and analyzed, and the various issues investigated, the staff will prepare a DEIS for the Yukon Pacific LNG Project. The DEIS will be based on the FERC staff's independent analysis of the proposal. Together, the DEIS and comments received will comprise part of the record to be considered by the Commission in this proceeding.

Cooperating Agencies

As an outgrowth of the applications filed with the FERC and the DOE and the November 1989 DOE Order No. 350, it became obvious that the FERC would require the assistance of other Federal and Alaska state agencies to address the four issues mandated by the DOE Order and other necessary issues. The DOT's Office of Pipeline Safety and the USCG agreed to assist the FERC, and all three agencies agreed to coordinate each other's reviews in order to ensure compliance with their own respective LNG regulations (49 CFR part 193 and 33

CFR part 127), and to avoid duplication of effort. The State of Alaska's Pipeline Coordinator's Office will also assist as a cooperating agency and has agreed to act as the state contact for all state and local correspondence. The appropriate contacts at these offices are:

Lloyd Ulrich, Chief, Technical Division, U.S. Dept. of Transportation, Office of Pipeline Safety, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4556.

Commanding Office, USCG, Marine Safety Office, P.O. Box 486, Valdez, Alaska 99686, Att: Commander Ed Thompson, (907) 835-4791.

Jerry Brossia, State Pipeline Coordinator, State Pipeline Coordinator's Office, Alaska Dept. of Natural Resources, 411 W. 4th Avenue, suite #2, Anchorage, Alaska 99501, (907) 278-8594.

Robert Arvedlund, Chief Environmental Compliance & Project Analysis Br., Federal Energy Regulatory Commission, 825 North Capitol St., Washington, DC 20426, (202) 208-0091.

The FERC staff would like to maximize the use of the state's Pipeline Coordinator's Office to coordinate and centralize State and local issues/comments. Therefore, state and local agencies should first avail themselves of the use of this state office. Federal agencies should continue to coordinate through the FERC. The FERC staff has also maintained coordination with the Office of the Federal Inspector for ANGTS. It is assumed that the above mentioned agencies will continue as "cooperating agencies" and need not reapply for such status.

The following additional Federal and Alaska state agencies are requested to indicate whether they wish to be cooperating agencies in the production of the DEIS.

Advisory Council on Historic Preservation

U.S. Department of Agriculture
- Forest Service
- Soil Conservation Service

U.S. Department of Commerce
- National Marine Fisheries Service
- National Oceanic and Atmospheric Administration

U.S. Department of Energy

U.S. Department of Defense
- Army Corps of Engineers

U.S. Department of the Interior
- Fish and Wildlife Service
- Bureau of Indian Affairs
- Bureau of Mines
- Geological Survey
- Mineral Management Service
- National Park Service
- Bureau of Land Management
- Bureau of Reclamation

U.S. Department of Transportation
- Federal Highway Administration

U.S. Environmental Protection Agency

U.S. Department of State

State of Alaska
- Division of Governmental Coordination
- Department of Fish and Game
- Department of Natural Resources
- Department of Transportation and Public Facilities
- Department of Environmental Conservation

Federal, state, or local agencies desiring cooperating agency status should send a request describing how they would like to be involved to Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. This request should reference Docket No. CP88-105-000 and should be received by March 16, 1992. An additional copy of the request should be sent to the FERC project manager identified at the end of this notice. Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agencies. Cooperating agencies are also welcome to suggest format and content modifications to facilitate ultimate adoption of the DEIS; however, the lead agency will decide what modifications will be adopted in light of production constraints.

Scoping and Comment Procedures

After the written scoping comments are received, local public scoping meetings will be conducted by the FERC in Alaska and are presently planned to be held sometime during May 19-29 at Anchorage, Valdez, and Fairbanks, Alaska. Other or alternative locations will be considered based on comments to this notice. The precise date, location, and agenda of the meetings will be identified in a subsequent **Federal Register** notice which will be sent to all parties receiving this notice.

The scoping meetings are primarily intended to obtain input from state and local governments and the public. Federal agencies have formal channels for input into the Federal process (including separate meetings where appropriate) on an interagency basis. Federal agencies are expected to coordinate their comments through the lead Federal agency and not use the scoping meetings for this purpose.

Interested groups and individuals are encouraged to attend the meetings and present oral comments on the environmental impacts which they believe should be addressed in the EIS. Anyone who would like to make an oral presentation should contact the project manager identified below to have their name placed on the speakers list. A second speakers list will be available at the public meeting. A transcript will be made of the meeting and comments will be used to help determine the scope of the EIS.

Copies of this notice have been distributed to Federal, state, and local agencies; public interest groups; libraries; newspapers; parties in the proceeding; and other interested individuals. Written comments are also welcome to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues, and to identify and eliminate from detailed study the issues that are not significant. All comments on specific environmental issues should contain supporting documentation and rationale. Written comments must be filed on or before March 16, 1992, reference Docket No. CP88-105-000, should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. A copy of these comments should also be sent to the project manager identified below.

The DEIS will be mailed to Federal, state, and local agencies. Public interest groups; interested individuals; newspapers; libraries; and the parties in the FERC proceedings who wish to receive a copy of the DEIS and other subsequent published environmental information must return the attached appendix to remain on the mailing list. A 45-day comment period will be allotted for the review of the DEIS.

Any person may file a motion to intervene on the basis of the staff's DEIS (18 CFR 380.10(a) and 385.214). After these comments are reviewed, any new issues are investigated, and modifications are made to the DEIS, a FEIS will then be published by the staff and distributed. The FEIS will contain the staff's responses to comments received on the DEIS.

Organizations and individuals receiving this Federal notice have been selected to ensure public awareness of this project and public involvement in the review process under the National Environmental Policy Act. Any subsequent information published regarding the Yukon Pacific LNG Project will be sent automatically to the appropriate Federal and state agencies. However, to reduce printing and mailing costs and related logistical problems, the DEIS AND FEIS will only be distributed to those organizations, local agencies, and individuals who return the attached appendix to this notice by March 16, 1992.

Additional information about this proposed project is available from Mr. Chris Zerby, Project Manager, Federal Energy Regulatory Commission, room 7312, 825 North Capitol Street, NE.

Washington, DC 20426, or call (202) 208-0111.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2709 Filed 2-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-65-001, et al.]

Natural Gas Certificate Filings; Florida Gas Transmission Company, et al.

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Co.

[Docket No. CP91-65-001]

January 27, 1992.

Take notice that on January 10, 1992, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-65-001, a request with the Federal Energy Regulatory Commission (Commission) pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations hereunder, for an amendment to a previously authorized Certificate in Docket No. CP91-65-000. FGT states that it is filing this amendment in order to construct the previously authorized facilities with a higher grade in 18-inch pipe to avoid potential future environmental impact. The previously approved Connecting Facilities will extend from a point near FGT's Compressor Station No. 30 on FGT's St. Petersburg, Florida Lateral to a point approximately 2.3 miles north of State road 62 where FGT's Sarasota, Florida Lateral intersects State road 39, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

FGT's proposed amendment would permit it to place in service 36 miles on 18-inch pipeline, with a yield strength of 70,000 pounds per square inch, instead of the 60,000 pounds per square inch authorized by the July 24, 1991 order in Docket No. CP91-65-000. FGT estimates the proposed change in grade of pipe to cost approximately $200,000, which represents approximately a one percent increase in the cost of the authorized facilities. FGT states that it proposes to finance the increased facility cost with internally generated funds.

Comment date: March 12, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. U-T Offshore System

[Docket No. CP92-298-000]

January 27, 1992.

Take notice that on January 13, 1992, U-T Offshore System (U-TOS), P.O. Box 1396, Houston, Texas 77251, filed in the above-referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) for a certificate of public convenience and necessity authorizing construction and operation of certain facilities by U-TOS to provide an interconnection for TEMCO Liquids Company (TLC) at U-TOS's Johnson's Bayou Plant in Cameron Parish, Louisiana (Johnson's Bayou Plant), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

U-TOS seeks authority to construct and operate an interconnect consisting of a 20-inch tap, fittings and approximately 700 feet of 24-inch diameter pipe. U-TOS states that as a result of the addition of such 700 feet of 24-inch pipe, approximately 100 feet of the existing U-TOS low pressure line is no longer required and will be removed. The proposed facilities are said to be completely located within the existing fenced portion of the Johnson's Bayou Plant yard. U-TOS estimates the cost of the proposed facilities to be $393,764 which is to be reimbursed by TLC.

U-TOS asserts that the proposed arrangement will provide TLC with a high pressure gas source interconnection. It is stated that such arrangement would enable TLC to receive the dekatherm equivalent of 400 MMcf per day through U-TOS at the Johnson's Bayou Plant.

Comment date: February 18, 1992, in accordance with Standard Paragraph F at the end of the notice.

3. The Berkshire Gas Co.

[Docket No. CI92-22-000]

January 29, 1992.

Take notice that on January 14, 1992, The Berkshire Gas Company (Berkshire) of 115 Cheshire Street, Pittsfield, Massachusetts 01201, a local distribution company, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, imported natural gas and liquefied natural gas, and gas purchased from interstate and intrastate pipelines and from local distribution companies, without rate restrictions, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: February 18, 1992, in accordance with Standard Paragraph J at the end of this notice.

4. Enron Gas Marketing, Inc.

[Docket No. CI87-547-012]

January 29, 1992.

Take notice that on January 15, 1992, Enron Gas Marketing, Inc. (Enron) of P.O. Box 1188, Houston, Texas 77251-1188, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder to amend the blanket limited-term certificate with pregranted abandonment previously issued by the Commission in Docket No. CI87-547-010 for a term expiring March 31, 1992, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Enron requests extension for an unlimited term, or, in the alternative, for an additional one year term. Enron also requests that its blanket certificate be amended to remove the pricing restrictions on sales for resale of interruptible system supply (ISS) gas it purchases from affiliated pipelines and to remove the condition that the certificate is subject to the outcome of Docket No. RM87-5.

Comment date: February 18, 1992, in accordance with Standard Paragraph J at the end of this notice.

5. Green Canyon Pipe Line Co.

[Docket No. CP92-308-000]

January 29, 1992.

Take notice that on January 16, 1992, Green Canyon Pipe Line Company (Green Canyon), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-308-000 a petition under rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order (1) finding that its facilities are in fact gathering facilities that are not subject to Commission jurisdiction consistent with section 1(b) of the Natural Gas Act and (2) rescinding the certificate of public convenience and necessity issued in Docket No. CP89-515-000, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Green Canyon, a wholly-owned subsidiary of Transco Energy Company, states that it operates pipeline facilities in the Outer Continental Shelf (OCS) of offshore Louisiana. Green Canyon explains that it was issued an optional certificate of public convenience and

necessity on June 1, 1989, in Docket No. CP89-515-000 (47 FERC ¶ 61,310). Green Canyon further explains that it sought certificate authority only because at the time of its application in 1989, Commission precedent and policy indicated that certificate authority was necessary for such facilities.

Green Canyon notes that the Commission and courts have since reexamined and modified the traditional test for determining whether a facility is gathering. The result is, Green Canyon believes, that the criteria for gathering facilities are much broader than in the past. It is asserted that in light of the decision of the Fifth Circuit in *EP Operating Company* v. *FERC*, 876 F.2d 46 (*EP*) and the Commission's order issued in Amerada Hess Corporation, et al., (52 FERC ¶ 61,268 (Amerada Hess), Green Canyon now clearly performs a gathering function. Green Canyon avers that Amerada Hess establishes standards for a modified "primary function" test, standards which Green Canyon meets.

Green Canyon states that the considerations under the modified primary function test include: (1) The diameter and/or length of the pipeline, (2) the location of processing plants or compression, (3) the central point in the field criterion, (4) the location of wells along all or part of the pipeline, and (5) the geographic configuration of the facilities.

Green Canyon states that its pipeline consists of four pipeline segments which range from 4.02 miles to 26.57 miles in length. Green Canyon further states that OCS lines of comparable length have been characterized as gathering by the courts and the Commission.[1] Green Canyon insists that the length of its pipeline is solely a function of the location of production platforms and the distance to connect with Transcontinental Gas Pipe Line Corporation's (Transco) facilities. Green Canyon does not believe diameter is a barrier to a gathering determination either. It is asserted that the 20-inch diameter is solely a function of the substantial volumes which flow through the line and the fact that there is no compression along the pipeline. Green Canyon cites precedents such as *El Paso Natural Gas Company*, 57 FERC ¶ 61,186, Amerada Hess, Exxon Corporation, et al., 45 FERC ¶ 61,436 (Exxon), *EP*, and Shell I. In any case, Green Canyon insists that it falls within the Commission's "sliding scale" policy under which the Commission has expressed intention of allowing the use of gathering pipelines of increasing lengths and diameters in correlation to the distance from shore and the water depth of the offshore production area. Since Green Canyon's system is located over 80 miles from shore and attached wellhead depths exceed 750 feet, a pipeline such as Green Canyon, albeit relatively long in length, is consistent with a primary function of gathering.

Also supportive of a finding of gathering, in Green Canyon's view, is the fact that there are no processing plants or compressors located along the Green Canyon pipeline. Further, Green Canyon emphasizes that the maximum allowable pressure (MOP) of its system (1440 psig) is comparable to the MOP on other gathering systems. Green Canyon cites *EP*, Amerada Hess, and Shell II.

While an examination of the configuration of the Green Canyon system (an inverted "Y") might suggest a central point in the field and, thus, a transmission function for the 25-mile unitary pipeline segment, Green Canyon points out that in applying the modified primary function test, the Commission and the courts have not relied on this factor and have found certain OCS facilities to be gathering even though the systems extended beyond the purported central point in the field.

By traditional standards, the fact that Green Canyon has no wells along its pipeline might have been taken as evidence of a transmission function. However, Green Canyon stresses that there were no wells along the pipeline in *EP*, Amerada Hess, Shell I, and Shell II and the primary function of these facilities was nonetheless found to be gathering. Green Canyon submits that the ultimate test is whether the function of a system is gathering or transmission and that the facts and circumstances clearly support a finding of gathering for its system.

It is asserted that Green Canyon's configuration also supports a finding of gathering. It is noted that Green Canyon is a fully integrated system consisting of four lines which connect several production platforms and form a network feeding into Transco's gathering system at South Marsh Island Block 106. Green Canyon states that it generally possesses the network-like configuration or configuration resembling the spokes of a wheel that is associated with gathering. In any event, Green Canyon notes that its configuration is more comparable to traditional gathering systems than the single, straight lines found to be gathering in *EP*, Amerada Hess, Shell I, and Shell II.

Green Canyon concludes that it meets the modified primary function test and therefore requests that the Commission find that the Green Canyon pipleine system is a gathering system and therefore exempt from the Commission's Regulations pursuant to section 1(b) of the Natural Gas Act. Green Canyon further requests that its certificate in Docket No. CP89-515-000 be rescinded. Green Canyon argues that rescinding its certificate is justified because it would be inappropriate to require Green Canyon to retain a section 7 certificate which it obtained only in cautious adherence to a now outdated Commission policy.

Comment date: February 19, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Truckline Gas Co.

[Docket No. CP92-310-000]

January 29, 1992.

Take notice that on January 21, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed a prior notice request with the Commission in Docket No. CP92-310-000 pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery meter in Marshall County, Mississippi, in order to deliver natural gas transported for Mid-America Pipeline Company (MAPCO), under its blanket certificates issued in Docket Nos. CP83-84-000 and CP86-586-000, pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Trunkline proposes to construct and operate a delivery point and appurtenant metering facilities in Collierville, Marshall County, Mississippi, in order to effect transportation of up to 830 Mcf of natural gas per day and 302,950 Mcf annually on a firm basis for MAPCO pursuant to transportation agreement which would become effective March 1, 1992. Trunkline would receive gas at various existing receipt points on its system in Illinois, Louisiana, offshore Louisiana, Tennessee, Texas, offshore Texas, and deliver to the proposed delivery point in Collierville. MAPCO would reimburse Trunkline for the estimated construction cost of $185,000.

Comment date: March 16, 1992, in accordance with Standard Paragraph G at the end of this notice.

[1] See *EP* (51-mile line), Amerada Hess (34- and 40-mile lines), Shell Gas Pipeline Company, 41 FERC ¶ 61,032 (Shell I) (27-mile line), and Shell Gas Pipeline Company, 55 FERC ¶ 61,265 (Shell II) (36-mile line).

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will beheld without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or to be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-2708 Filed 2-4-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4097-2]

Supplemental Notice of Proposed Guidance on Establishment of Control Periods Under Section 211(m) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency.

ACTION: Supplemental notice of proposed guidance.

SUMMARY: Section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990 ("the Act") requires that various states submit revisions to their State Implementation Plans (SIPs) and implement an oxygenated gasoline program. This requirement applies to all states with carbon monoxide (CO) nonattainment areas with design values of 9.5 parts per million or more, generally based on data for 1988 and 1989. The oxygenated gasoline program must require gasoline in the specified control areas to contain no less than 2.7% oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide, except that a state is encouraged to adopt an averaging program employing marketable oxygen credits.

Section 211(m)(2) requires that the Administrator specify the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide. This portion of the year ("control period") is to be not less than four months in length, unless the state can demonstrate that based on meteorological conditions, a reduced period will not result in exceedances outside of such reduced period.

Today's notice proposes EPA guidance on the control periods as a supplement to the Notice of Proposed Guidelines which was published on July 9, 1991.[1] This notice also discusses the geographic scope of the control areas.

In general, this supplemental proposal mirrors the guidelines proposed on July 9, 1991. An important change, however, is that only one of the two options discussed in that Notice is proposed herein. The primary determinants of the control periods proposed are the statutory minimum of four months and data on exceedances of the carbon monoxide standard at the design value monitor in the design value year. Additional modifications are discussed herein. Today's Supplemental Notice of Proposed Guidelines reflects a consensus Agreement in Principle signed by the parties to the Clean Fuels Advisory Committee.

DATES: Comments reveived by March 6, 1992, will be considered by EPA in promulgating final guidelines.

ADDRESSES: Materials relevant to this action have been placed in Docket A-91-04 by EPA. Additionally, EPA has participated in the Regulatory Negotiation process to develop this proposed guidance. A docket has also been set up for the Regulatory Negotiation process. Regulatory Negotiation materials have been placed in Docket A-91-17. The dockets are located in the Air Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M-1500 Waterside Mall and may be inspected from 8:30 a.m. to 12:00 noon and from 1:30 p.m. to 3:30 p.m. Monday through Friday. A reasonable fee may be charged for copying docket material.

The draft Regulatory Support Documents have been placed in Docket A-91-04, and are referenced by numbers II-F-3 through II-F-6, II-A-2 and II-A-3. These documents are available at the above address.

Comments should be submitted (in duplicate if possible) to the Air Docket Section, Docket A-91-04 at the above address. A copy should also be sent to Mr. Alfonse Mannato at the EPA address listed below: Environmental Protection Agency, Office of Air and

[1] 56 FR 31151 (July 9, 1991).

Radiation, 401 M Street, SW. (EN-397F), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato (202) 260-9040.

SUPPLEMENTARY INFORMATION:

I. Introduction

This supplemental notice describes EPA's proposed guidance on establishment of control periods for oxygenated gasoline programs under section 211(m) of the Act. Section II provides the background for this proposed action, with respect to chronology and the broad issues involved. Section III presents EPA's proposed action and rationale.

II. Background

Section 211(m) of the Act requires states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more, based on data for the two-year period of 1988 and 1989.[2] to submit revisions to their State Implementation Plans (SIPs). Such states must individually implement an oxygenated gasoline program in the specified control areas requiring gasoline to meet a minimum oxygen content of 2.7 percent by weight, subject to a testing tolerance established by the Administrator. This oxygen content requirement applies during the portion of the year, referred to as the "control period," in which the areas are prone to high ambient concentrations of CO. The length of the control period, as required by section 211(m) of the Act, is to be determined by the Administrator and shall not be less than four months in length. EPA may reduce the control period if a State can demonstrate that because of meteorological conditions, a reduced period will assure that there well be no carbon monoxide exceedances outside of such reduced period. The oxygen content requirement is to cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. A Supplemental Notice of Proposal Guidance for credit programs appears in an additional **Federal Register** notice published today.

This supplemental notice provides EPA's proposed guidance to states regarding the establishment of control periods for oxygenated gasoline programs, under section 211(m) of the Act. This guidance is a general statement of policy. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made applying the law, applicable regulations and guidelines on the basis of specific facts and actual action.

Today's supplemental notice proposes control periods for each of the CO nonattainment areas required to have an oxygenated gasoline program. After consideration of public comments on the notice, EPA intends to issue final guidance to the states on this matter. The proper control period will also be an issue during the notice and comment rulemaking undertaken by EPA to review individual state submissions of oxygenated gasoline programs as SIP revisions as required by section 211(m).

To expedite Agency decisions in particular cases, a state submitting a SIP revision which includes an oxygenated gasoline program with a different proposed control period than the applicable control period as specified in these guidelines should provide as detailed an explanation as possible for the differences.

Regulatory Negotiation

EPA used a Regulatory Negotiation Advisory Committee (Advisory Committee) to aid in the development of these proposed guidelines. The regulatory negotiation process was initiated on February 8, 1991, when EPA announced its intent to form an Advisory Committee to negotiate certain guidelines and proposed regulations implementing the clean fuels provisions of sections 211 (k) and (m) of the Act.[3] A public meeting was held of February 21-22, 1991 in Washington, DC, and after considering the comments submitted in response to the notice and the results of that public meeting, an Advisory Committee was established on March 13, 1991.[4] Those notices contain a more detailed discussion of the issues referred to the Advisory Committee, as well as information on the requirements of the Regulatory Negotiation process.

Several meetings were held by the Advisory Committee. On March 14-15, 1991, May 1, 1991, May 13-14, 1991, June 13-14, 1991, and June 26-27, 1991, the Advisory Committee met to discuss the issues associated with the winter oxygenated gasoline program. Between these meetings there were several meetings of the four workgroups of the Advisory Committee.

Notices of Proposed Rulemaking (NPRM) and Proposed Guidelines were published on July 9, 1991,[5] presenting options discussed by the Advisory Committee and its workgroups. A public hearing on the clean fuels NPRMs and Guidelines was held on July 15, 1991. The Advisory Committee continued its activities throughout the months of July and August, and on August 16, 1991, an "Agreement in Principle" was signed by members of the Advisory Committee. A copy of that agreement has been placed in the docket for this guidance.

Today's Supplemental Notice of Proposed Guidelines reflects the "Agreement in Principle" that was signed by the Advisory Committee. The Agreement represents a consensus by the members of the Advisory Committee on the underlying principles of certain proposed rules and guidance concerning the Act's provisions for reformulated gasoline, anti-dumping, and oxygenated gasoline, sections 211 (k) and (m), and contains an outline of these supplemental proposed rules and guidance. For guidance on control periods for the oxygenated gasoline programs the outline references one of two approaches proposed in the July 9, 1991 Notice. In addition, it briefly discusses the control periods for certain specific areas in Oregon and New York states. Questions concerning the Agreement in Principle should be addressed to Alfonse Mannato at (202)260-9040.

EPA invities comments on the guidelines proposed in this supplemental notice, as well as any other relevant options and issues.

III. Proposed Action

Control Periods

In establishing an oxygenated gasoline program, the Act specifies that oxygenated gasoline will be required during the portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. The control period shall not be less than four months. These control periods are to be determined by the Administrator. EPA may reduce the control period if a state can demonstrate, based on meteorological conditions, that a reduced period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA will address the control period issues, as necessary, for areas with carbon monoxide design values of 9.5 parts per million (ppm) or greater for

[2] The Agency has determined that the 1988 and 1989 data from several areas is inadequate to properly characterize the ambient concentrations of CO. Therefore, for these areas—Boston, Cleveland, Seattle and Washington DC—older, more representative data has been used.

[3] 56 FR 5167 (February 8, 1991).

[4] 56 FR 10522 (March 13, 1991).

[5] 56 FR 31148; 56 FR 31151; 56 FR 31154 (July 9, 1991).

any two-year period after 1989. These areas will be required to submit SIP revisions within 18 months of such two-year exceedance period.

In analyzing the control period issue, the Agency has focused on the ambient monitoring data from 1988 and 1989. The Agency has chose this time period for two reasons. First, it is the time period specified in section 211(m) of the Act for determining inclusion in the program. Second, it is the most recent period for which a full set of data exists for the nation as a whole. For areas where the Agency believes that 1988–89 ambient monitoring data is inadequate, the Agency has focused on the ambient monitoring data for the most recent period for which an adequate set of data exists. EPA does not, however, intend to foreclose consideration of more recent data as it becomes available regarding appropriate control periods, either in issuing final guidance to the states or in reviewing individual state submissions of SIP revisions.

EPA considered various approaches to calculating the period "prone to high ambient concentrations of carbon monoxide," a phrase which the Act does not define. The first approach taken by EPA analyzed the ambient monitoring data by looking at the average carbon monoxide concentrations which occurred in 8-hour overlapping periods (Approach I).

For each of the covered CO nonattainment areas, the five highest days in each month were calculated and plotted for 1988 and 1989. Bar graphs reflecting this information for the 39 [6] potential oxygenated gasoline areas have been placed in the docket.[7] Preliminary control periods under Approach I were identified by noting those months where any of the five highest days exceeded the National Ambient Air Quality Standard (NAAQS) for CO.

Examination of the data resulting from the Approach I analysis revealed considerable heterogeneity in the length and temporal placement of a number of areas that share fuel distribution facilities. As a result, it was suggested that there is a need to constrain this heterogeneity to facilitate transportation logistics. That is, where possible, areas that share pipeline distribution systems should be given the same control period. In evaluating this suggestion, EPA considered a second way of analyzing this monitoring data.

This second approach used the exceedances of the carbon monoxide standard at the design value monitor in the design value year (the year in which the design value was established), to identify the months the individual areas were prone to high ambient concentrations of carbon monoxide. The outer boundaries of the season in which these exceedances at the design value monitor occurred was considered along with the larger body of monitoring data mentioned before. Determination of the control periods in this manner results in a significant degree of consistency among the control periods of areas which share oxygenate sources and transportation facilities.

In many cases, using both approaches, the 4-month statutory minimum length for the control period was the controlling factor, along with the requirement that, in general, these programs begin no later than November 1, 1992.

The result of the second analysis, called Approach II, is being proposed by the Agency today, with three modifications in the State of Oregon. These proposed control periods are set forth in Table 1.

By using only data from the design value monitor in the design value year and by looking only at non-overlapping 8-hour averages, Approach II ties the control period determination more closely to the methodology used to define attainment. Violation of the 8-hour standard occurs when the second highest non-overlapping 8-hour average in a year is in excess of the National Ambient Air Quality Standard (NAAQS) for CO. This is in contract to the overlapping 8-hour averages (many more in a 24-hour period) used in Approach I. In addition, Approach II also provides more logical consistency in the gasoline distribution network.

Using this second approach, the eastern seaboard, with the exception of the New York City area, converges on a common core 4 month period from November through February. This same core period prevails in Petroleum Administration for Defense Districts (PADDs) 3 and 4 and in a substantial portion of PADD 5. Six areas were assigned control periods in excess of four months using this approach.

One area which merits a separate analysis is the New York City CMSA. Data from 1988–89 suggests that a control period extending into the summer might be warranted in New York. Based on this data, EPA is tentatively proposing a 12-month control period. On August 26, 1991, the Agency received a letter from the New York State Department of Environmental Conservation requesting a five-month winter season oxygenated fuels program. Consideration of 1990 data might support a shorter control period. The Deputy Commissioner proposed that the New York City CMSA program require 2.7% oxygen by weight in gasoline from November 1 to March 31, and 2.0% oxygen by weight from April 1 to October 31. This proposal also addressed the State's concern that a summertime 2.7% oxygen by weight program could potentially negatively affect the area's NOx and ozone attainment goals, and discussed possible trends shown in the recent air data. In effect, this amounts to a request for a control period of November 1 to March 31, with the State separately enacting by legislation a 2.0% program for the non-wintertime program. EPA has had extensive discussions with New York, New Jersey and Connecticut state officials, to attempt to coordinate their input regarding this issue for their common CMSA. These discussions are ongoing, and comments are specifically requested on this issue.

Based on discussions during the regulatory negotiation process, and in accordance with the "Agreement in Principle," EPA has decided to modify the control periods for Grant's Pass, Medford and Klamath, in the state of Oregon, and to propose guidance for the control periods of four months from October 1 until January 31.[8] This modification is fully consistent with air quality data for these Southern Oregon locations. The ambient air data considered indicates high ambient concentrations for these counties in the months of December and January. The Agency considered additional months given the four-month statutory minimum. For one county, February had somewhat lower concentrations than October, and for the other two counties the February and October concentrations were approximately the same.

Based on current data alone, these counties are not prone to high ambient concentrations of CO in either October or February. Nevertheless, the Act requires a minimum control period of four months. The Agency believes that, in determining which months to include

[6] In the July 9, 1991 Federal Register notice, this number was 41, not 39. As of the current date, neither Steubenville, OH nor Winnebago, WI has been designated as a CO nonattainment area. Therefore the number of CO nonattainment areas covered by these guidelines is currently 39. Both of these areas have been deleted from Table 1.

[7] These bar graphs appear in a document titled, "Bar graphs of carbon monoxide in Non-Attainment Areas—Revised," June 7, 1991.

[8] The control period proposed in the July 9, 1991 Notice was November 1 through February 29, hence the only change is to add the month of October and delete the month of February.

in the control period to reach the four-month minimum, other factors may be considered together with the environmental data. Here the environmental data shows similar CO concentrations in certain areas for October and February, and therefore supply logistics may be a legitimate basis for selection.

Modification of the control periods for areas in southern Oregon is advisable from the standpoint of gasoline supply logistics. A reasonable supply point for the southern Oregon cities is Chico, California, which requires oxygenated gasoline from October through January, as do all Northern California CO nonattainment areas. Chico is supplied by San Francisco area refineries via pipeline. Other potential supply points, Eugene and Coos Bay, OR, do not require oxygenates. However, one commenter has stated a preference for a control period from November through February, based upon a different supply scenario which anticipates that southern Oregon will receive shipments of gasoline from northern Oregon and Washington as opposed to California. Portland, OR and Seattle, WA, both have a control periods of November through February. The Agency requests comments on the appropriate approach for southern Oregon.

Both approaches proposed in the July 9, 1991 Notice could provide reasonable guidance for States on the minimum control periods required under section 211(m). EPA has decided to propose Approach II primarily because it is more consistent with the methodology used to determine attainment. This is in line with the statute's emphasis on attainment status and design value, both of which focus on design monitor values. This approach will also aid in the implementation of these state programs by helping to integrate control periods for areas which share oxygenate sources and transportation facilities. EPA is fully confident that Approach II reasonably reflects the period "prone to high ambient concentrations of carbon monoxide" for the applicable areas.

Several commenters have raised a concern regarding Litchfield County, Connecticut. Section 211(m) of the Act provides that the oxygenated gasoline program should apply in the entire MSA or CMSA during that area's control period. Separate parts of Litchfield County are included in both the Hartford and New York City CMSAs. This problem is compounded by the fact that these two control areas are proposed to have different control periods. The State of Connecticut has noted the need for flexibility in dealing with this situation. EPA nonetheless currently proposes that the Connecticut SIP revisions provide that each part of Litchfield County be subject to the control period applicable to the MSA or CMSA or which it is a part. Comments are requested on how this situation should be handled.

EPA requests comments on the relative merits of this proposal, as well as any other approaches which may be considered relevant.

Effective Date

In the Notice of Proposed Guidance on Establishment of Control Periods, EPA proposed that gasoline programs with control periods beginning in September, October, and November would have effective dates of September 1, 1992, October 1, 1992, and November 1, 1992, respectively. In addition, EPA proposed that for areas with a control period of twelve months, the effective date will be September 1, 1992.[9] Based on comments, however, EPA is now proposing that the effective date for all areas with control periods beginning on or before November 1, 1992 will be no later than November 1, 1992.

EPA is concerned that an effective date prior to November 1, 1992 would afford industry and the states insufficient time to implement the oxygenated gasoline programs. EPA recognizes that a November 1 start date could deprive areas of air quality benefits from the oxygenated gasoline program during that portion of control periods prior to November 1, 1992. In addition, EPA recognizes that certain areas may have an effective control period in the winter of 1992–93 of less than four months. Nevertheless, EPA believes that the time necessary to successfully implement this program justifies the November 1 start date. In any case, states with control periods commencing prior to November 1 are not precluded from starting their programs prior to the November 1 deadline.

EPA also believes that the November 1, 1992 start date is consistent with the Act, which provides that the oxygenated gasoline requirement "shall take effect no later than November 1, 1992 (or at such other date during 1992 as the Administrator establishes under the preceding provisions of this paragraph)." If the date determined by the Administrator for the control period governs, in all cases, as the deadline for commencement of the program, then the reference to November 1 appears unnecessary. Under well-settled principles of statutory construction, an interpretation which renders any part of the statute meaningless is to be avoided.

EPA believes that a more reasonable view is that Congress intended that the programs presumptively are to begin no later than November 1, 1992, and that the parenthetical provision was intended as a limited exception to account for the unusual circumstance in which EPA determines a control period which begins after November 1 in the calendar year. Mandating that the oxygenated gasoline requirements take effect on November 1, 1992 in areas where EPA has determined that there is no carbon monoxide problem until after November 1 would make little sense. Grammatically, EPA believes that the "or" should be read disjunctively to join two deadline dates. If the EPA-determined control period begins before November 1, then the November 1, 1992 reference would have meaning as the operative deadline. Alternatively, if the control period is determined to begin after November 1, then the program must take effect no later than the beginning of that control period.

Alternatively, EPA is considering whether it is reasonable to interpret the Act's disjunctive "or" as intended to give EPA the discretion to require that the program begin no later than November 1, 1992, or at the beginning of the EPA-determined control period in 1992. Under this view, the statute could be read to provide EPA with limited flexibility to require the program to begin as it sees fit. Thus, EPA could require that the states' programs begin at the beginning of the control period available for that early implementation. Otherwise, EPA could approve a November 1 start date if it believes such time is necessary. The only way EPA could approve a start date after November 1, however, would be if the EPA-determined control period began after November 1 in the calendar year. The Agency invites comment on this interpretation.

Additionally, it has recently been suggested to the Agency that the programs be allowed to start even later than November 1, 1992. The Agency would like to take comment on the legality and practicality of a start date later than November 1, 1992.

Geographic Scope

According to section 211(m) of the Act, SIP revisions must be submitted by each State in which there is located all or part of an area which is designated under title I as a nonattainment area for carbon monoxide and which has a carbon monoxide design value of 9.5

[9] Notice of Proposed Guidance, 56 FR 31148, 31153 (July 9, 1991).

parts per million (ppm) or above based on the date for the two-year period of 1988 and 1989 and calculated according to the most recent interpretation methodology issued by the Administrator prior to enactment of the 1991 amendments to the Act. These contol areas are as follows:

1. Boston-Lawrence-Salem, MA–NH CMSA
2. Cleveland-Akron-Lorain, OH CMSA
3. Denver-Boulder, CO CMSA
4. Hartford-New Britain-Middletown, CT CMSA
5. Los Angeles-Anaheim-Riverside, CA CMSA
6. New York-Northern New Jersey-Long Island, NY–NJ–CT CMSA
7. Philadelphia-Wilmington-Trenton, PA–NJ–DE–MD CMSA
8. Portland-Vancouver, OR–WA CMSA
9. San Francisco-Oakland-San Jose, CA CMSA
10. Seattle-Tacoma, WA CMSA
11. Albuquerque, NM MSA
12. Anchorage, AK MSA
13. Baltimore, MD MSA
14. Chico, CA MSA
15. Colorado Springs, CO MSA
16. Duluth, MN–WI MSA
17. El Paso, TX MSA
18. Fort Collins-Loveland, CO MSA
19. Fresno, CA MSA
20. Greensboro-Winston-Salem-High Point, NC MSA
21. Las Vegas, NV MSA
22. Medford, OR MSA
23. Memphis, TN–AR–MS MSA
24. Minneapolis-St. Paul, MN–WI MSA
25. Modesto, CA MSA
26. Phoenix, AZ MSA
27. Provo-Orem, UT MSA
28. Raleigh-Durham, NC MSA
29. Reno, NV MSA
30. Sacramento, CA MSA
31. San Diego, CA MSA
32. Spokane, WA MSA
33. Stockton, CA MSA
34. Syracuse, NY MSA
35. Washington, DC–MD–VA MSA
36. Missoula, MT
37. Fairbanks, AK
38. Grant's Pass, OR
39. Klamath County, OR

Section 211(m)(2) of the Act requires that the oxygenated gasoline program apply to all gasoline sold or dispensed in the larger of the CMSA or MSA in which the nonattainment area is located. For nonattainment areas not in a CMSA or MSA, the control area is the nonattainment area. The requirements of the program shall apply to every county, or partial county which is located in the CMSA, MSA, or nonattainment areas.

This requirement has caused some concern. State officials in Minnesota have expressed concern over the designation of the entire Duluth MSA as requiring an oxygenated gasoline program. Most of northeastern Minnesota is included in the Duluth MSA. According to state officals, much of this area is national wilderness area, and therefore very rural sparsely populated. The state believes that compliance with the oxygenated gasoline provisions as proposed may prove an onerous burden for the few gasoline marketers and retailers in the area.

Congress has specifically mandated in the Act that these programs be implemented in "the larger of the Consolidated Metropolitan Statistical Area (CMSA) in which the [CO nonattainment] area is located, or if the area is not located in a CMSA, the Metropolitan Statistical Area in which the area is located." Comments are requested on the issue of the appropriate control area for Duluth.

For certain multi-state MSAs and CMSAs, the portions of one or more of the states in the MSA or CMSA are not actually designated as being in CO nonattainment. For example, the Boston CMSA extends to areas in New Hampshire which are designated as attainment for CO. New Hampshire contains no CO nonattainment areas. Likewise, the portion of Maryland contained in the Philadelphia CMSA is designated as CO attainment, although Maryland separately contains the Baltimore MSA with a CO nonattainment area therein. This problem arises in a number of additional states.

The Agency notes that section 211(m)(1) obligates "[e]ach State in which there is located all or part of an area which is designated under title I as a nonattainment area for carbon monoxide * * * [to] submit to the administrator a State implementation plan * * * for such area * * *". Section 211(m)(2) provides further that SIP revisions require that the oxygenated gasoline program apply to fuel refiners or marketers in the larger of the CMSA or MSA in which the CO nonattainment area is located. The Agency does not believe that states containing only an attainment portion of the MSA or CMSA are obligated to submit SIP revisions. In the case of such states, the attainment portions of the MSA or CMSA located within their boundaries are not themselves designated under title I as a nonattainment area for CO. These states therefore are not required to submit SIPs for such areas. Indeed, a state, such as New Hampshire, without any nonattainment areas would have no SIP to which "revisions" could be made.

Moreover, the Agency questions whether Congress intended States containing nonattainment portions of the MSA or CMSA to establish oxygenated gasoline programs requiring that gasoline sold or dispensed for use outside its borders be oxygenated. An interpretation that section 211(m) requires such states to establish oxygenated gasoline programs applicable in this manner to the portions of the MSA or CMSA outside their borders raises serious constitutional issues regarding the principle of a State's sovereignty vis a vis other States and about the consitutionality of Congress's delegation of power to regulate interstate commerce.

For areas that have carbon monoxide design values of 9.5 parts per million (ppm) for any two year period after 1989, the Act requires that a revision to the SIP shall be submitted within 18 months after such two year period. EPA will address the geographic scope issues for these areas as such action becomes necessary.

IV. Environmental Impact

The sale of oxygenated gasoline reduces carbon monoxide emissions from motor vehicles and thereby helps carbon monoxide nonattainment areas to achieve compliance with national ambient air quality standard for carbon monoxide. Oxygenated gasoline is becoming a widely recognized control strategy for reducing carbon monoxide emissions from motor vehicles in a timely manner. The establishment of control periods as required by the Act and proposed in this supplemental notice will be valuable implentation guidance for the states and should help to ensure that the full benefits of the oxygenated gasoline program are realized.

V. Public Participation

EPA desires full public participation in arriving at final decisions in this guidance development. A public hearing was held on July 15 on the Proposed Guidance which was published in the Federal Register on July 9, 1991.[10]

All comments received by March 6, 1992, will be considered in EPA's final guidance. Comments should be directed to Docket A–91–04. All comments will be available for inspection during the noted hours at the EPA office listed in the addresses section of this notice.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments

[10] 56 FR 311.51 (July 9 1991)

to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket.

Information covered by a claim of confidentially will be released by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

VI. Administrative Requirements

Administrative Designation and Regulatory Impact Analysis

Under Executive Order 12291, the Agency must judge whether this guidance subject to the requirement to prepare an impact analysis. The guidance proposed today is not a regulation, but, together with the other oxygenated fuels guidance proposals, is nonetheless significant. Therefore, the Agency has prepared several draft Support Documents that discuss the economic impacts of implementing the guidance packages. These documents have been placed in Docket A-91-04, and are referenced by numbers II-F-3 through II-F-6, II-A-2 and II-A-3.

This proposed guidance was submitted to the Office of Management and Budget (OMB) for review. Any written comments received from OMB and any EPA response to those comments have been placed in the public rulemaking docket.

Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public contact, a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e. small businesses, small organizations, and small governmental jurisdictions). Today's action is not a rulemaking; therefore no regulatory flexibility analysis has been prepared.

VII. Paperwork Reduction Act

This proposed guidance on establishment of control periods does not conduct or sponsor the collection of information, and is therefore not subject to the requirements of the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

VIII. Statutory Authority

Authority for the action proposed in this notice is granted to EPA by Section 211 of the Clean Air Act as amended (42 U.S.C. 7545).

Dated: January 22, 1992.

William K. Reilly,

Administrator.

TABLE I.—PROPOSED GUIDANCE ON CONTROL PERIOD BY NONATTAINMENT AREA

Approach II
November 1—February 29
Baltimore
Boston
Greensboro
Hartford
Philadelphia
Raleigh
Syracuse
Washington, DC
Cleveland
Memphis
Albuquerque
El Paso
Colorado Springs
Denver/Boulder
Fort Collins
Missoula
Provo/Orem
Anchorage
Fairbanks
Portland, OR
Seattle
San Diego
All year
New York/No. NJ [1]
October 1—January 31
Duluth
Fresno
Minneapolis
Chico
Modesto
Reno
Sacramento
San Francisco
Stockton
Grant's Pass, OR
Klamath Co., OR
Medford
October 1—February 29
Las Vegas
Phoenix
September 1—February 29
Los Angeles
Spokane

[1] The implementation of the New York/New Jersey control period is to be coordinated with the states of New York, New Jersey, and Connecticut.

[FR Doc. 92-2155 Filed 2-4-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4097-4]

Proposed Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended

AGENCY: Environmental Protection Agency.

ACTION: Supplemental notice of proposed guidelines.

SUMMARY: Section 211(m) of the Clean Air Act as Amended by the Clean Air Act Amendments of 1990 ("the Act") requires that various states submit revisions to their State Implementation Plans (SIPs), and implement oxygenated gasoline programs. This requirement applies to all states with carbon monoxide (CO) nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. The oxygenated gasoline program must require gasoline in the specified control areas to contain at least 2.7% oxygen by weight, during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide.

Section 211(m)(5) of the Act requires that EPA promulgate guidelines for state credit programs, allowing the use of marketable oxygen credits for gasolines with a higher oxygen content than required to offset the sale or use of gasolines with a lower oxygen content than required.

Today's supplemental notice contains Proposed Guidelines for such oxygenated gasoline credit programs.

This supplemental proposal mirrors the guidelines proposed on July 9, 1991,[1] with certain important changes reflecting choices between various options under consideration. The changes include: a minimum oxygen content of 2.0% by weight during the control period; an averaging period equal to the control period, with a three-month averaging period in cases where the control period is six months or longer; and the requirement of an attest engagement in place of an audit. The choices made in today's Supplemental Notice of Proposed Guidelines reflect a consensus Agreement in Principle signed by the parties on the Clean Fuels Advisory Committee.

DATES: Comments received by March 6, 1992, will be considered by EPA in promulgating final guidelines.

ADDRESSES: Materials relevant to these proposed Guidelines have been placed in Docket A-91-04 by EPA. EPA has engaged in the Regulatory Negotiation process to assist in developing these guidelines. A separate docket has been set up for the Regulatory Negotiation, Docket A-91-17. Dockets are located in the Air Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, in room M-1500 of Waterside Mall, and may be inspected from 8:30 a.m. to 12:00 noon and from 1:30 p.m. to 3:30 p.m., Monday through Friday. A reasonable

[1] 56 FR 31154 (July 9, 1991).

fee may be charged for copying docket material.

The draft Regulatory Support Documents have been placed in Docket A-91-04, and are referenced by numbers II-F-3 through I-F-6, II-A-2 and II-A-3. These documents are available at the above address.

Comments should be submitted (in duplicate if possible) to the Air Docket Section, Docket A-91-04 at the above address. A copy should also be sent to Mr. Alfonse Mannato at the EPA address listed below:

U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street SW (EN-397F), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Alfonse Mannato, (202)260-9040.

SUPPLEMENTARY INFORMATION:

I. Introduction

This supplemental notice describes Proposed Guidelines for oxygenated gasoline credit programs, as required under section 211 (m)(5) of the Act. The remainder of this preamble is divided into two parts. Section II provides the background for this proposed action, with respect to chronology and the broad issues involved. Section III presents EPA's proposed action and rationale.

II. Background

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure to reduce these emissions is the use of oxygenates in motor vehicles' gasoline. By adding oxygenates to gasoline, exhaust emissions of carbon monoxide are reduced.

Section 211(m) of the Act requires that states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more, based on data for the two year period of 1988 and 1989, submit revisions to their State Implementation Plans (SIPs). Although the Act does not specify a due date for these SIP revisions, the Agency is interested in setting such a date in order to encourage consistency across the nation in implementing the oxygenated gasoline programs. There are three possible dates which could be chosen by the Agency. SIP revisions could be due on November 1, 1992, the day which marks the beginning of the mandated oxygenated gasoline programs, or on November 15, 1992 in order to allow the states some flexibility in processing the SIPs, assuming that the programs begin on November 1, 1992 regardless. The third option is to require the SIP revisions on some date in advance of November 1, 1992, for example, on June 1, 1992. While this option would give the most assurance that states have given their full attention to the implementation of the oxygenated gasoline programs, it could be an unreasonable burden on the states. The Agency invites comment on this issue.

The SIP revisions for those areas must establish oxygenated gasoline programs requiring at least 2.7% oxygen by weight, except that states may adopt credit programs such that gasoline with a higher oxygen content than required can offset the sale or use of gasoline with a lower oxygen content than required. The oxygen content requirement is subject to a testing tolerance to be established by the Administrator. The minimum oxygen content requirement applies during the portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide.

Under the Act, the length of these control periods is to be established by the Administrator and shall not be less than four months in length unless a State can demonstrate, based on meteorological conditions, that a reduced period for any individual control area will assure that there will be no carbon monoxide exceedances outside of such period. These requirements are to cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Supplemental proposed guidance on the establishment of control periods appears in an additional **Federal Register** notice published separately today.[2,3]

The Act requires that the Administrator promulgate guidelines allowing for the use of marketable oxygen credits from gasolines with a higher oxygen content than required to offset the sale or use of gasolines with a lower oxygen content than required. Oxygen credits may not be transferred between control areas, but instead may be used only in the area in which they were created.

This supplemental notice proposes guidelines for state oxygenated gasoline credit programs. The proposed guidelines include an enforcement scheme with responsibilities and liabilities of various parties involved in the oxygenated gasoline industry.

This supplemental notice provides EPA's proposed guidance to states regarding credit programs to be employed in oxygenated gasoline programs, under section 211(m) of the Act. This guidance is a general statement of policy. It does not establish a binding norm and is not finally determinative of the issues addressed. Agency decisions in any particular case will be made applying the law, applicable regulations and guidelines on the basis of specific facts and actual action.

To expedite Agency decisions in particular cases, a state submitting a SIP revision which includes an oxygenated gasoline credit program should identify all areas where the state program differs from these guidelines, and provide as detailed an explanation as possible for these differences. For example, this explanation could include, but need not be limited to, an explanation of any circumstances unique to the state or localities involved, and a demonstration of whether the state's proposed program would be at least as effective as the program proposed in this guidance.

EPA is aware that the gasoline production and distribution industry extends to all areas of the country, crossing state borders in an intricate, nationwide web of commerce. At the same time, the oxygenated gasoline programs required by the Act are centered around a limited number of carbon monoxide nonattainment areas and their surrounding CMSA or MSA. State-based oxygenated gasoline credit programs should be structured in a way that assures their successful implementation, to the greatest extent possible, within the limits of state authority over a nationwide production and marketing structure. Coordination among states is specifically addressed in sections 102 and 187(e)(1) of the Act. EPA believes that these provisions reflect Congress's concern that state programs applicable to multistate nonattainment areas be coordinated, with the Agency's help.

EPA will attempt to minimize problems associated with multistate MSAs and CMSAs. The Agency is committed to providing technical support to the states in implementing these oxygenated gasoline guidelines. This supplemental guidance should help insure program consistency in multi-state program areas. The Agency plans to provide technical support such as standardized training materials, audit forms, industry report forms, and database software to state officials.

[2,3] Supplemental notices are being published today for two of the three oxygenated fuels-related notices which were published on July 9, 1991. The third, the notice of proposed rulemaking which was published on the oxygenated gasoline labeling regulations, is not being re-proposed today, as the wording in that original notice remains unaffected by the Regulatory Negotiation and its "Agreement in Principle."

Also, the Agency will encourage cooperative activities by the states in an attempt to coordinate the implementation of these multi-state programs.

Regulatory Negotiation

EPA has used the Regulatory Negotiation process in the development of these proposed guidelines. On February 8, 1991, EPA published a **Federal Register** Notice announcing its intent to form an advisory committee to negotiate guidelines and proposed regulations implementing the clean fuels provisions of section 211(k) and (m) of the Act.[4] A public meeting was held on February 21–22, 1991 in Washington, DC, and after considering comments submitted in response to the Notice and the results of that public meeting, a Negotiated Rulemaking Advisory Committee was established on March 13, 1991.[5] Please refer to those notices for a detailed discussion of the issues considered appropriate for negotiation by the Advisory Committee, as well as information on the requirements of the Regulatory Negotiation process.

Several meetings were held by the Advisory Committee. On March 14–15, 1991, May 1, 1991, May 13–14, 1991, June 13–14, 1991, and June 26–27, 1991, the Advisory Committee met to discuss the issues associated with the winter oxygenated gasoline program. Between these meetings there were several meetings of the four workgroups of the Advisory Committee.

Notices of Proposed Rulemaking (NPRM) and Proposed Guidelines were published on July 9, 1991 [6] presenting options discussed by the Advisory Committee and its workgroups. A Public Hearing on the clean fuels NPRMs and Guidelines was held on July 15, 1991. The Advisory Committee continued its activities throughout the months of July and August, and on August 16, 1991, members of the Advisory Committee signed an "Agreement in Principle." A copy of that agreement has been placed in the docket for these guidelines. Today's Supplemental Notice of Proposed Guidelines reflects the "Agreement in Principle" that the Advisory Committee signed.

The Agreement represents a consensus reached by the members of the Advisory Committee on the underlying principles of certain proposed rules and guidance concerning the Act's provisions for reformulated gasoline, anti-dumping, and oxygenated gasoline, sections 211(k) and (m), and contains an outline of these supplemental proposed rules and guidance. For oxygenated gasoline credit programs, the Agreement outline briefly addresses issues such as the minimum oxygen content, the averaging period, the determination of compliance at the terminal, the applicable control area, and the availability of various oxygenates.

EPA invites comments on the guidelines proposed in this supplemental notice, as well as any other relevant options and issues.

Summary of the Guidelines

The EPA is proposing guidelines for programs to be employed in state oxygenated gasoline programs, in which gasoline containing more oxygen than the minimum 2.7% by weight that is required would generate marketable credits.

The credit program guidelines here proposed by EPA are designed to ensure that all gasoline sold or dispensed in the control area, on the average, meets or exceeds the minimum oxygen content required under section 211(m). In developing these guidelines many issues have to be confronted, for example, over what time period should oxygen content be averaged? Should there be a minimum oxygen content, and if so, what should it be? What requirements should be placed on parties other than those required to meet the average? Analysis of these and many related issues, in the context of the Regulatory Negotiation discussed above, has led EPA to propose the following guidelines for such credit programs.

An averaging program that would require all parties in the gasoline distribution network, from refiners to retailers, to be responsible for averaging the oxygen content of the gasoline they make or distribute is both unworkable and unnecessary. Instead, discussions during the Regulatory Negotiation focused on averaging at the gasoline terminal level. Gasoline is typically sold or dispensed from these terminals into trucks, for shipment to retail stations, or transferred in bulk to other terminals. Requiring averaging at the terminal level, plus averaging for any oxygenate blending conducted in trucks at the terminal or at remote locations, should encompass all retail gasoline in a control area, and should thus result in all such gasoline meeting the required oxygen content on the average. EPA's guidelines adopt this approach. Taking advantage of the terminals' central position in the gasoline distribution system should maximize the credit program's success while minimizing its burdens, both on the regulated community and the governmental bodies involved.

The party responsible for complying with the minimum 2.7% oxygen by weight standard on the average, over the designated averaging period, must be specifically identified. This party will be designated the Control Area Responsible Party (CAR). The responsibilities of the CAR are discussed more fully below.

At the terminals, the CAR would be the person who owns the gasoline sold or dispensed from a control area terminal into a truck.[7] Parties who own or operate terminals but who do not own or sell gasoline are not CARs. Selling or dispensing gasoline from a terminal into trucks is commonly referred to as "breaking bulk." In addition, persons who blend oxygenates into gasoline intended for use in any control area subsequent to its transfer into a truck are also CARs, called Blender CARs. (Blender CARs and CARs are hereinafter collectively referred to as CARs.) Terminal owners, whether or not they are CARs, must provide CARs using the terminal with the volume and oxygen content of the gasoline delivered to or received from each CAR.

The volume and oxygen content of all gasoline entering into a terminal must be provided to the CAR. Based on this and other information, the CAR must keep a running weighted average of the gasoline it transfers into each control area.[8] Gasoline that is transferred in bulk becomes the responsibility of the CAR to whom it is transferred. If transferred by a CAR to another CAR, it is therefore removed from the averaging calculations of the CAR who transferred the gasoline. At the end of the averaging period, the average oxygen content of all gasoline the CAR distributed to trucks destined for each separate control area is calculated separately. In each control area, if the average oxygen content is greater than or equal to the required minimum, then compliance has been demonstrated. Credits are created if the average is greater than the required minimum. If the average oxygen content is less than the required 2.7% by weight minimum, then credits are needed to meet the compliance average.

[4] 56 FR 5167 (February 8, 1991).

[5] 56 FR 10522 (March 13, 1991).

[6] 56 FR 31148; 56 FR 31151; 56 FR 51154 (July 9, 1991).

[7] Control area terminals would be those terminals at which gasoline intended for use in any control area is sold or dispensed into trucks. The terminal itself need not be physically located in the control area.

[8] Section 211 (m)(5) of the Act requires that an averaging program be conducted separately for each control area.

The averaging program proposed in this notice is similar to the type of program used by EPA in the lead phasedown gasoline program. To comply with the oxygenated gasoline program, CARs must, at a minimum, achieve the sales-weighted average oxygen content over a specified time period, or averaging period. This can be done either by always selling each gallon of fuel with an oxygen content at or above the requisite oxygen content, or by adjusting the quantities and types of fuel sold over the averaging period either directly or by obtaining credits from another regulated party within the control period to attain at least the requisite oxygen content on an averaged basis.

There is no intended prohibition or limitation on the ability of third party brokers to facilitate the purchase and sale of credits. However, while persons other than CARs may act as brokers, only CARs may own credits. Since brokers may not be as established in the industry as CARs, they may have a reduced sense of responsibility for the program requirements. Also, credits may be transferred to the extent such a transfer would not result in any transferor having a negative credit balance at the conclusion of any averaging period. Any credits transferred in violation of this are improperly created credits, which may not be used, regardless of the transferee's good faith. Where any credit transferor has in its balance both credits which were properly created and those which are improperly created, the properly created credits should be applied first to the transfers before the transferor may apply any credits to achieve its own compliance.

Although not strictly necessary to achieve the desired air quality results or to comply with the requirement of section 211(m), an averaging program has a number of benefits. The principal advantage of this program design is that it entails less regulatory intrusion into the marketplace than traditional command and control approaches. It thus retains a high degree of marketing flexibility and competition among blending agents. The advantageous aspects of this approach can be further enhanced by allowing suppliers to trade oxygen credits among themselves, with suppliers of relatively low-oxygen fuels able to purchase such credits from suppliers of relatively high-oxygen fuel within a control area.

Furthermore, when compared to an oxygenated gasoline program requiring oxygen content compliance on a per gallon basis, a program incorporating an oxygen averaging provision should prove to be less costly to implement in 1992. This is due to the fact that averaging programs will allow the supply of oxygenates, which some parties have suggested to be limited for the first control season beginning in 1992, to be used in a flexible, and hence more efficient, manner. Therefore, EPA recommends that states adopt averaging programs in line with these guidelines.

EPA and various parties have raised concerns about the possibility that in the context of an averaging program, gasoline which does not conform to the requirements for oxygenated gasoline may be sold or dispensed within a control area without being detected since there would be no per-gallon standard against which to test the gasoline. Two options were considered to address this potential problem. The first option would have required the use of a marker. Under that option, gasoline which was not destined for use in a control area would contain a marker, and it would be a prohibited act for parties downstream of the terminal in the distribution system to sell or dispense such marked gasoline in a control area. The second option was to establish a minimum oxygen content requirement for all gasoline sold or dispensed within the control area.

Today, EPA is proposing to require a minimum of 2.0% oxygen by weight in all gasoline offered for sale, sold, stored or dispensed by a CAR for use in the control areas during the control period. This requirement would also apply to all parties downstream of the CAR. The same minimum requirement would apply for all gasoline sold or dispensed to the ultimate consumer in the control area during the control period. The only exception to this requirement would be for gasoline sold or dispensed from one CAR directly to another CAR. Adoption of this requirement would obviate the need for a gasoline marker, since all gasoline within the control area could be tested for the presence of 2.0% oxygen by weight.

In today's proposal, CARs are required to register with the state, and to provide reports on each averaging period. Each CAR must perform attestation engagements as a check on compliance. The proposed guidelines describe the responsibilities of the various parties regarding records, reports and transfer documents, as well as requirements to sample and test the oxygen content of the gasoline. Liability for prohibited activities is also included in the proposed guidelines, affecting refiners to retailers, along with defenses to liability.

The proposed credit program guidelines provide that credits must be created on the basis of the oxygen content of the oxygenated gasoline sold or dispensed in a particular control area, that credits may be used to demonstrate compliance only within the same control area in which they were earned, and that credits may only be used during the averaging period in which they were created.

And finally, EPA would like to propose that the states should monitor the availability of and demand for a variety of oxygenates, and should take appropriate steps necessary to reasonably assure the availability of these various oxygenates in the marketplace.

III. Proposed Action

Sale of Only Oxygenated Gasoline in a Control Area

Concern has been raised that a cost incentive will exist to cheat by selling less-expensive sub-2.0% oxygen by weight gasoline in a control area. Two options were considered for prohibiting the sale of non-oxygenated gasoline in designated control areas during their control periods. The first option involved the use of a marker in non-oxygenated gasoline. This option would have required that all non-oxygenated gasoline produced nation-wide be marked with a tracer at the terminal at the time that it was designated for transportation into a non-control area. This option is not proposed. The primary reason for rejecting this option is the difficulty that individual states would have enforcing this requirement.

The second option, which is the option being proposed, is to require a minimum 2.0% oxygen by weight in all gasoline sold or dispensed by a CAR for use in the control areas during the control period. This requirement would also apply to all parties downstream of the CAR. The same minimum requirement would apply for all gasoline sold or dispensed to the ultimate consumer in the control area during the control period. The only exception to this requirement would be for gasoline sold or dispensed from one CAR directly to another CAR. This requirement would apply in addition to the other requirements for averaging programs. There are several reasons for using a minimum content requirement as an adjunct to an averaging program. First, in each control area there would be less potential variation in the effect of the program on the ambient air quality level on any given day, because of the 2.0% oxygen by weight minimum. Second,

enforcement of the program would be somewhat simplified in that state enforcement personnel could readily take samples for comparison to the required minimum.[9] Finally, there would be less potential for consumer confusion concerning the amount of oxygen being marketed.

Since the minimum oxygen content option has been chosen for proposal, an issue arises as to the need to implement the minimum requirement for some period of time before the beginning of the control period. A regulatory leadtime for the minimum requirement, applied to any party which sells gasoline to a retailer or wholesale purchaser-consumer within a control area, would help to insure that the retailer would be able to meet the minimum oxygen requirements on the first day of the control period. EPA received various estimates of the average time between deliveries at gasoline stations nationwide. These estimates varied between 2 and 7 days, with the national average estimated to be 3.9 days.

EPA recommends that the states implement a 5-working day leadtime requirement. The data suggests that a leadtime of five days will ensure that most, if not all, retail stations will be able to dispense gasoline on the first day of every control period that contains the 2.0% oxygen by weight minimum content requirement. A longer period is not necessarily supported by the data and may cause a significant reduction in the supply of oxygenates available for the oxygenated gasoline programs during the control periods throughout the country, especially in the first year of the program. EPA is requesting comments on this proposed leadtime.

Length of Averaging Period

EPA is proposing the following averaging periods: For any area with a control period of five months or less, the averaging period shall be equal to the control period, and for areas with control periods of six months or longer, the averaging period shall be three months in length. In addition to these averaging periods, EPA is proposing a 15-working-day reconciliation period following each averaging period, during which time CARs may purchase or sell credits for use in connection with the immediately-preceding averaging period.

In proposing the averaging periods in conjunction with a 15-working-day reconciliation period, EPA has considered a number of factors. First, the proposed averaging periods and 15-working-day reconciliation period would give the petroleum industry more flexibility in planning for compliance with the required oxygen standard. Second, during the Regulatory Negotiation discussions, the issue of designating the length of the averaging period was often discussed in conjunction with the possibility of requiring a minimum oxygen content. That is, the establishment of a minimum content of 2.0% oxygen by weight lessens the need for short averaging periods. The averaging periods that are proposed are a result of the negotiations, and are taken directly from the "Agreement in Principle," which is discussed above. Finally, EPA believes that the averaging periods and 15-working-day reconciliation period which are being proposed, when coupled with the minimum oxygen content requirement of 2.0% oxygen by weight, will give the petroleum industry needed flexibility and will also minimize the risk that averaging will cause poor air quality episodes potentially due to averaging.

Banking Credits

Some parties have suggested that the banking of credits from one averaging period to another should be allowed as a means of permitting further flexibility to the industry. If, at the close of one averaging period, a CAR were to have excess credits in its oxygenated gasoline credit account, a banking system would allow that party to apply those credits to the next averaging period.

Because credits earned in one averaging period would be applied to the oxygenated gasoline standards of a different averaging period, and maybe even of a different control season, concern has been expressed that such a banking system may cause variations in oxygen content resulting in ambient air quality exceedances. As a result, in today's notice, EPA is not proposing a banking program.

As stated above, the majority of the averaging periods as proposed match the control periods for each nonattainment area. This would mean that in order to institute a banking system which all areas could use, credits would have to be allowed to carry over from one control period to the next, meaning that in practice, credits would carry from one year to the next in the majority of the nonattainment areas. This scenario could potentially present air quality attainment problems, with excess credits from one season being allowed to be used in a later season. In particular, if the later season is characterized by numerous measured CO exceedances, marginal air quality costs, due to the carryover of credits associated with banking, could constitute a particularly significant contribution to the area's ambient air quality problems.

Therefore, in light of the averaging periods that have been proposed, the minimum requirement of 2.0% oxygen by weight, and the 15-day reconciliation period at the end of each averaging period, the Agency is not proposing a banking program at this time.

Blendstock/Export/Storage Issues

The sale or distribution of non-oxygenated gasoline by any person for use in any control area is prohibited by these proposed guidelines unless (a) such gasoline is segregated from oxygenated gasoline, (b) the documents which accompany such gasoline are clearly marked as "non-oxygenated gasoline, not for sale to ultimate consumer in a control area," and (c) the non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers, during the control period, in the control area. Gasoline intended for sale to the ultimate consumer in a control area must contain the required 2.0% minimum oxygen content to avoid enforcement action at any point from the CAR to the retailer or the wholesale purchaser-consumer.

In classifying product, however, some concern has been expressed about blendstock, gasoline which is destined for export, and gasoline in storage. These are petroleum products that are not standard oxygenated gasoline and would not contain the required 2.0% oxygen content, but might have a legitimate presence within a control area.

As a matter of enforcement policy, EPA expects that a state would not hold a party liable for the possession or transfer of non-oxygenated product which may arguably meet the regulatory definition of gasoline if the following requirements are met:

1. The product is clearly labeled as "blendstock/ export/storage" and the evidence supports this classification;

2. The accompanying documents clearly state that the product does not comply with the oxygenated gasoline requirements;

3. Some aspect of the product's quality supports the party's claim that the product was intended to be further blended before being sold, supplied, etc. as finished product;

4. The seller, supplier, or transporter of the product has obtained a written

[9] Sampling for the minimum will not obviate the need for states to audit CARs to insure the averaged standard of 2.7% is being met. Requirements for state audits will be covered in a separate implementation document to be issued later this year.

certification or notice on shipping documents from the buyer/recipient of the product that the buyer/recipient understands that the product is not intended for sale or distribution as finished gasoline in a control area unless or until (a) it is blended to meet the oxygenated gasoline regulatory requirements; (b) the buyer/recipient receives equivalent certification from a subsequent buyer or obtains a written certification that the gasoline will not be sold or dispensed for use within a control area; and

5. The party has no knowledge or reason to believe that the product will not be further blended to comply with the regulatory standards before being sold, supplied or transported as finished product, or that it would be sold or dispensed without further blending within a control area.

Registration

At least 30 days before the beginning of any control period, any person who would be defined as a Control Area Responsible Party (CAR) would be required to register with the state. Any party which would decide to participate in a control area as a CAR after the start of the control period could do so after submitting a registration application to the state, and receiving the state's approval. When registered by a state, every CAR should receive a CAR identification number, which authorizes a CAR to conduct oxygen credit trades. This registration would be on a form provided by the state, and would contain basic information provided by the owner/operator on the day-to-day operation of the terminal or blending facility from which the CAR operates. The state would have the flexibility to request additional information that it deemed appropriate. A valid registration would be a precondition for operating as a CAR. From the time any such information became inaccurate, the CAR would have 30 days in which to provide an update. The Agency has proposed a 30-day time period in order to allow the states sufficient time for the review of applications, while still allowing the CARs the flexibility to join state averaging programs at any time during a control season.

Specific Responsibilities/Liabilities of Regulated Parties

The oxygenated gasoline credit program guidelines which EPA is proposing imposes responsibilities on parties in the gasoline industry which fall generally into four categories:

Persons who produce or import gasoline (refiners and importers) are responsible for assuring that gasoline is tested and that the documentation that accompanies the gasoline accurately reflects the oxygen content. Liability for violations of these requirements is for the refiner or importer only.

Persons who transport, store or sell gasoline (refiners, importers, blenders, distributors, resellers, retailers, wholesale purchaser-consumers and carriers) have various responsibilities associated with assuring that only oxygenated gasoline is sold or dispensed for use in control areas. Persons who transport, store, or sell gasoline downstream from the CAR are responsible for assuring that gasoline intended for sale to retailers or wholesale-purchaser consumers within a control area meets the 2.0% required minimum oxygen specification. Persons who transport, store, or sell gasoline at the terminal or upstream from the terminal are responsible for assuring that the oxygenate content of all gasoline intended for use in a control area, as stated on the accompanying paperwork, is accurate. These persons are also responsible for assuring that all non-oxygenated gasoline sold into a control area for use as a blendstock is sold only to CARs duly registered with the state. Liability for violations of these requirements is for the facility where the violation is found, and for all persons upstream from that facility, except in the case of violations associated with the minimum requirement, which stop at the terminal.

Terminal owners and operators are responsible for assuring that the oxygen content of the gasoline they receive, handle or dispense is accurate. CARs are responsible for assuring that gasoline intended for use within a control area, during the control period, meets the 2.0% required minimum oxygen specification; for assuring that oxygenated gasoline, once accounted for, is in fact sold or dispensed in the proper control area; for properly accounting for credits generated, transferred or received; and for assuring that the oxygenated gasoline standard is met on the average for each averaging period in each relevant control area.

Retailers and wholesale purchaser-consumers are responsible for assuring that gasoline intended for sale during the control period contain at least 2.0% oxygen, by weight.

The term "responsible for assuring" as used above is not meant to imply any requirement that a party guarantee compliance at a point downstream from it in the gasoline distribution network. In fact, elements of various defenses that would be available to regulated parties are discussed below.

With respect to those regulatory responsibilities where potential liability exists for parties upstream from the facility found in violation, EPA's proposal includes liability for the operator of the facility in violation and presumptive liability for upstream parties. Under this approach, defenses would be available for each party with presumptive liability. This is the scheme which is followed under the federal gasoline lead contamination, volatility, and diesel fuel sulfur content regulations.[10]

EPA believes that the principal advantage of the presumptive liability approach is that it would allow identification of the person who caused the violation. EPA is concerned that non-oxygenated gasoline could be mixed with oxygenated gasoline by any person in the gasoline distribution network, and that it would be difficult or impossible for the state to identify the person responsible for causing this violation. In order to address this difficulty, those persons who actually handled the gasoline, who are in the best position to identify the cause of any violation, must have an incentive to be forthcoming in providing accurate compliance information. EPA believes that a presumptive liability scheme is the most appropriate method of addressing this concern. This is a scheme which is familiar both to EPA and to industry, and makes the most efficient use of state resources.

For the forgoing reasons, EPA is proposing a liability scheme for the oxygenated gasoline credit program guidance based upon presumptive liability. EPA believes such an approach would be the most effective and equitable method of placing liability upon the party or parties responsible for causing a violation.

In certain instances the Proposed Guidelines impose responsibilities and liabilities on parties that may be physically located outside of states covered by section 211(m), or on activities that may be conducted outside of these states. EPA specifically invites comment on the legal ability of states to regulate these parties or activities, as well as the feasibility of such state regulation. EPA also requests suggested modifications or alternatives to the Proposed Guidelines if the states subject to section 211(m) cannot lawfully or feasibly implement the guidelines to regulate these parties or activities.[11]

[10] See 40 CFR 80.23,80.27 and 80.29.

[11] Please see the Supplemental Notice of Proposed Guidelines on Establishment of Control Periods, also published today, for a more detailed discussion of this issue.

The Control Area Responsible Party

The Control Area Responsible Parties (CARs) are those parties subject to the average oxygen content standard. To account for oxygenated gasoline credits, the CAR must know the specific oxygen content of each gallon of oxygenated gasoline delivered to a control area to be offered for sale or dispensed by a retailer or a wholesale purchaser-consumer.

EPA is proposing that there be two potential responsible parties. The first would be the person who owns gasoline which is sold or dispensed from a control area terminal, or the CAR. A control area terminal is a facility which is capable of receiving gasoline in bulk, i.e. by pipeline or barge, and/or at which gasoline is altered either in quantity or quality. Gasoline which is intended for use in any control area is sold or dispensed into trucks at these control area terminals. The second would be the person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending facility, or the Blender CAR. A control area oxygenate blending facility is any facility or truck at which oxygenate is added to gasoline which is intended for use in any control area, and at which the quality or quantity of gasoline is not altered in any other manner, except through the addition of deposit-control additives. All CARs and Blender CARs will be required to register with the state before being allowed to buy or sell oxygenated gasoline or oxygen credits.

At gasoline terminals which sell or dispense gasoline for use in a control area, the owner of the gasoline which is sold or dispensed is the CAR. The CAR must know the oxygen content of the gasoline it is dispensing or selling in order to account for the credits or debits generated by that gasoline and to ensure that every gallon complies with the minimum oxygenate requirement of 2.0% oxygen content by weight. The CAR shall know this information through receipt of transfer documents from upstream parties, through its own testing, or by receipt of information on the mathematically calculated oxygen content from the terminal operator in charge of the terminal from which a CAR's gasoline was sold. It is the CAR's responsibility, at the close of every averaging period, to demonstrate compliance with the average 2.7% oxygen content by weight for the total volume of all gasoline sold or dispensed into any one control area over the course of the entire averaging period.

When any blending occurs at the terminal or at another location downstream from the terminal, the responsible party is the Blender CAR. Owners of gasoline who are not registered CARs are permitted to sell gasoline only outside of control areas, or to sell to registered CARs and Blender CARs. Once a Blender CAR has obtained the gasoline, it may blend it in order to comply with the average oxygen content standard and the minimum per gallon oxygenate requirement of 2.0% oxygen by weight. It is the Blender CAR's responsibility, at the close of every averaging period, to demonstrate compliance with the average 2.7% oxygen content by weight for the total volume of all gasoline sold or dispensed over the course of the entire averaging period.

The responsibilities of a CAR consist generally of accounting for all oxygen content associated with the oxygenated gasoline which is dispensed into trucks for delivery into any control area, to ensure that every gallon sold or dispensed for use in the control area meets the 2.0% minimum oxygen requirement, and for submitting reports to the state at the conclusion of each averaging period showing average oxygen gasoline standards were achieved.

EPA also is proposing that CARs commission an attestation engagement to verify the information supplied in the report to the state. This requirement is discussed more fully below. EPA is proposing that the averaging responsibility be located at the gasoline terminal and at the blender facilities, because as previously described, they represent the last centralized point in the gasoline distribution network before gasoline is transported by truck to a wide variety of retail locations in the control area. Based on its place in the distribution network, EPA expects that compliance with the averaging requirement at terminals and blending facilities would lead to compliance, on average, by all gasoline dispensed to ultimate consumers in the control area. The centralized nature of these facilities also allows the averaging requirement to apply to a manageable number of identifiable parties, facilitating implementation and enforcement. Because the 2.7% oxygen by weight requirement is an average to be applied over an entire control area, if a CAR or Blender CAR supplies a single control area from more than one terminal, the CAR may combine volumes sold from the respective terminals to satisfy the average oxygen requirement.

At the Regulatory Negotiation, there was extensive consideration of which party at the terminal it would be feasible to hold responsible for the averaging program. The terminal owner or operator was one option, and another was the owner of the gasoline. EPA is proposing the latter as the CAR—the owner of the gasoline at a control area terminal when the gasoline is sold or dispensed over the rack. This reflects EPA's opinion that the owner of the gasoline is in the best position to exercise control over the oxygen content of the gasoline. At the same time, EPA is proposing that terminal owners and operators may act on behalf of a CAR by accepting gasoline into the terminal, but may not allow its introduction into commerce unless the proper documentation accompanies it containing information such as oxygen content and volume, or until testing using approved methods has been done to establish the oxygen content. This proposal is designed to assure that the information needed to conduct averaging is available to the CAR. The terminal owner or operator would also be responsible for conducting a quality assurance program to verify the accuracy of such information.

Compliance in the oxygenated gasoline program for CARs is based upon the oxygenated gasoline dispensed into trucks or barges for transport into control areas, plus or minus any credit transfers, and excluding the oxygenated gasoline transferred outside the control area in bulk or to another registered CAR in any control area. Separate compliance determinations must be calculated for every control area served by a CAR, regardless of the number of terminal facilities owned by that CAR which serve the same area.

The following is an example of a compliance calculation for a CAR.

On day one of the compliance period the CAR received 100,000 gallons of oxygenated gasoline, containing 3.0 percent by weight oxygen. The credit status of this batch of gasoline is calculated as follows:

Actual Oxygen Content = weight percent × gallons

3.0 × 100,000 = 300,000 oxygen content units

The CAR received a total of three other shipments of oxygenated gasoline during the compliance period, which had the following oxygen contents:

Batch	Gallons	% Oxygen	Oxygen content
2	100,000	2.0%	200,000
3	100,000	2.3%	230,000
4	100,000	2.9%	290,000

In this example, the CAR had no bulk transfers of gasoline to another control area, or to any non-control areas. Also,

it is assumed that all the gasoline associated with these four batches was sold or dispensed in this same control area during the relevant control period. Therefore, the four batches of gasoline received constituted the total gasoline which was relevant to the oxygenated fuel compliance determination. To determine compliance, the CAR compares the required total content of oxygen to the actual total content of oxygen, which resulted from the gasoline sold or dispensed into the control area.

The required total content of oxygen is calculated by multiplying the averaging standard times the total volume in gallons. The averaging standard is 2.7 weight percent oxygen, meaning that in this example, the resulting required total content of oxygen is:

2.7 × 400,000 gallons = 1,080,000 oxygen content units

The actual total content of oxygen is compared to this required total. In this example, the actual total content of oxygen is 1,020,000 units, which is 60,000 units less than the required total. As a result, the CAR must obtain 60,000 oxygen content credits generated by another CAR in the same control area and averaging period in order to achieve compliance.

For each control area served by a CAR, calculations such as those found above must be computed.

The next sample calculation demonstrates how a CAR or terminal operator will compute the running weighted average oxygen content of a single bulk tank out of which oxygenated fuel is sold or dispensed into any control area. These calculations would be used by a CAR or terminal operator who receives oxygenated gasolines of varying oxygen content during the compliance period, and stores them all in the same tank. This example is unlike the one above which would require that each shipment of oxygenated fuel be handled separately.

On day one of the control period, the CAR has 400,000 gallons of oxygenated gasoline in a tank, which contains 2.0% oxygen by weight. No gasoline is sold or dispensed out of this tank on day one, and on day two, the CAR receives another 100,000 gallon shipment of oxygenated gasoline, this time containing 2.4% oxygen by weight. The running weighted average oxygen content of this tank, now containing 500,000 gallons of oxygenated gasoline, would be calculated as follows:

2.0 × 400,000 = 800,000 oxygen content units
2.4 × 100,000 = 240,000 oxygen content units

The average running weighted average oxygen content is found by dividing the total oxygen content units in the tank by the number of gallons of oxygenated gasoline in the tank:

1040,000 divided by 500,000 = 2.08

Therefore, the running weighted average oxygen content of this tank is 2.08% oxygen by weight.

To continue the example, on day three the CAR dispenses 5 separate batches of 10,000 gallons of oxygenated gasoline each from this tank into 5 separate trucks, for a total of 50,000 gallons dispensed into the control area. The gasoline in these trucks has an oxygen content of 2.08% by weight, based on the calculation above. These withdrawals leave 450,000 gallons of oxygenated fuel in the tank.

After dispensing this gasoline, the tank receives a shipment of 200,000 gallons of oxygenated gasoline containing 2.7% oxygen by weight, bringing the total gallonage in the tank up to 650,000 gallons. The running weighted average oxygen content of the tank after this addition would be calculated as follows:

2.08 × 450,000 = 936,000 oxygen content units
2.70 × 200,000 = 540,000 oxygen content units
1,476,000 divided by 650,000 = 2.27

Therefore, the running weighted average oxygen content of the tank after both the dispensing of the 50,000 gallons and the addition of the 200,000 gallons of 2.7% gasoline is 2.27% oxygen by weight. Any gasoline subsequently dispensed into trucks would have an oxygen content of 2.27% by weight.

The next example is a compliance calculation which would be used by a blender CAR. On day one of the compliance period the blender CAR received 900 gallons of gasoline containing 0.0% oxygenate by volume. The blender CAR then added 100 gallons of ethanol, bringing the total volume of gasoline to 1,000 gallons, the oxygenate volume percentage up to 10.0%, and the oxygen content by weight up to 3.5%. The credit status of this batch of gasoline is calculated as follows:

Actual Oxygen Content = weight percent X gallons
3.5 × 1,000 = 3,500 oxygen content units

The blender CAR had a total of three other shipments of oxygenated gasoline during the compliance period, which had the following volumes and oxygen contents after the blender added oxygenate to the products:

Batch	Gallons	% Oxygen when dispensed	Oxygen content
2	1,000	3.5%	3,500
3	1,000	2.2%	2,200
4	1,000	2.7%	2,700

In this example, the blender CAR had no transfers of gasoline to another control area, or to any non-control areas. Also, it is assumed that all the gasoline associated with these four batches was sold or dispensed in the same control area during the relevant control period. Therefore, the four batches of gasoline received constituted the total gasoline which was relevant to the oxygenated fuel compliance determination. To determine compliance, the blender CAR compares the required total content of oxygen to the actual total content of oxygen which resulted from the addition of ethanol to the gasoline which was sold or dispensed into the control area.

The required total content of oxygen is calculated by multiplying the averaging standard times the total volume in gallons. The averaging standard is 2.7 weight percent oxygen, meaning that in this example, the resulting required total content of oxygen is:

2.7 × 4,000 gallons = 10,800 oxygen content units

The actual total content of oxygen is compared to this required total. In this example, the actual total content of oxygen is 11,900 units, which is 1,100 units more than the required total. As a result, the blender CAR may transfer 1,100 oxygen content credits to another CAR or blender CAR in the same control area and averaging period.

Attest Engagements

EPA is proposing that, as a part of its periodic report to the state showing compliance with the oxygenated gasoline credit program, each CAR will be required to commission an attest engagement of the information which forms the basis of the periodic report.

In the July 9, 1991 Notice of Proposed Guidelines for oxygen credit programs, EPA proposed that each CAR commission an audit. The audit was proposed to be conducted in accordance with Generally Accepted Auditing Standards (GAAS) established by the American Institute of Certified Public Accountants (AICPA). GAAS are those standards used in the auditing of financial statements.

Today's notice proposes that each CAR commission an attest engagement, in accordance with the Standards for

Attestation established by the AICPA. These attestation standards are an extension of GAAS to cover a wider range of services than the review of historical financial statements. Based on comments received in reaction to the July 9, 1991 Notice, the term "audit" has been changed to "attest engagement" in order to more accurately reflect the standards that are to be applied. In effect, an attest engagement is the same as an audit of non-financial statements.

These attest engagements are not intended as substitutes for enforcement audits conducted by the state, but are intended to serve as a means of improving compliance with the oxygenated gasoline program by identifying problem areas to the regulated parties. Such attest engagements also assure the regulated parties that the records on which they base periodic reports will be reviewed and cross checked for accuracy by a third party (as well as possibly by the state); will lead to the correction of simple arithmetic errors; will aid in correcting misconceptions about regulatory requirements; and generally will deter the making of false reports.

EPA is proposing that attest engagements be conducted by an independent practitioner who is a Certified Public Accountant (CPA) at the end of the annual control period, or every 6 months, whichever is shorter, with the report to be submitted by the CAR to the state within 60 days following the end of the period of the engagement. Submission of the practitioner's report is required, and failure to do so will constitute a reporting violation by the CAR. EPA intends to develop standardized forms for the attest engagement and agreed-upon procedures for conducting the engagement and preparing the report. These agreed-upon procedures will be developed by EPA in consultation with state officials, accounting professionals, and the regulated industry. EPA believes that the costs to a regulated party of the attest engagement will be reduced through the use of standardized forms and procedures.

A number of commenters have suggested that the requirement that independent Certified Public Accountants evaluate each CAR and blender CAR's compliance with the oxygenated gasoline program creates an onerous financial burden, but failed to submit cost information so that the issue could be properly evaluated. The Agency would like to request further comment on this issue. In particular, EPA would like interested parties to submit cost estimates for attest engagements to the Agency for use in its evaluation of the issue.

EPA has experience in auditing the records of refiners, importers, and terminal operators. EPA recognizes that each CAR has a unique system of accounting and operating controls, and believes that practitioners in an attest engagement generally should be free to design programs to test the reports and required records to the extent required in each individual case. In order to maintain consistency within the process, however, EPA suggests the following credentials for the practitioners to be chosen by the regulated parties, and provides the following minimum guidelines to be followed in each attest engagement.

(1) *Credentials of practitioners.* The proposed guidelines require that the attestation engagements will be conducted by independent Certified Public Accountants who are not employees of the CAR and that attestation engagements are to be conducted in accordance with the Standards for Attestation Engagements. Under the American Institute of Certified Public Accountant's Standards for Attestation Engagements, the first General Standard requires that, "The engagement shall be performed by a practitioner or practitioners having adequate technical training and proficiency in the attest function." In general, the attestation standards deal with the need for technical compliance, independence in mental attitude, due professional care, adequate planning and supervision, sufficient evidence, and appropriate reporting.

EPA's proposed guidelines, in stating that the attestation engagements will be performed in conformity with the Attestation Standards, anticipate that the practitioner will perform all of the required engagement procedures; including planning, review of internal control structures over the required reports, and other required procedures. EPA also expects that the practitioner will document the procedures and findings within working papers, as required by the Standards for Attestation Engagements.

(2) *Attestation guidelines in general.* The proposed guidelines contain a listing of the general types of standard industry records which are required to be included in the practitioner's review and analysis procedures. While the practitioner, using his professional judgement, should devise procedures to correspond with the facts of each individual attestation engagement, review internal accounting, operating and administrative controls, and determine the extent of testing required, EPA believes that certain procedures should be conducted during each attestation engagement.

Attestation engagements of all regulated parties should include a comprehensive review of the systems and procedures employed to assure compliance with the guidelines. Such review should include a review of the applicable administrative, operating, and accounting controls established by the company. The documentation to be reviewed and procedures would include reviewing the CAR's quality assurance program as required by the guidelines. This review should be performed, prior to initiating any other detailed auditing procedures, by staff with significant experience in evaluating operating and technical procedures.

(3) *Attestation engagement guidelines for control area responsible parties.* It is EPA's belief that many CARs will also be terminal operators. However, not all CARs will be terminal operators, and therefore all CARs may not have access to some of the records referenced below. For example, a non-terminal operator CAR will likely not possess records showing the oxygen content of gasoline entering the terminal. The requirements applicable to non-terminal operator CARs and blender CARs will therefore be less exhaustive than those listed below. These parties must demonstrate the basis of their compliance calculation.

An attestation engagement of a CAR shall include the review and analysis of the following:

1. Records which show the quantity and oxygen content of oxygenated gasoline entering the terminal and leaving the terminal in bulk;
2. Records which show the destination, quantity and oxygen content of truckloads of oxygenated gasoline going to specific control areas;
3. Records which show the oxygen content of gasoline in storage tanks from which trucks are loaded, and the calculations which formed the basis for claimed oxygen content;
4. Testing results for storage tanks when additional gasoline is added;
5. Records showing the oxygenate type and amount which was blended.
6. Records which show the beginning and ending inventories and oxygen contents of all gasoline and oxygenate storage tanks involved in the oxygenated gasoline program.

Relevant Records

Terminal operators normally prepare daily operations summaries for the volumes of each tank's inventory

balances (beginning and ending), transfers in and transfers out. Daily reports are supported by pipeline meter tickets, truck tickets, and tank gauging reports. These daily reports are then summarized by month or quarter.

The chemical characteristics of the product stored or moved into or out of each tank are based on periodic laboratory analysis or certificates of analysis from the supplier. In order to comply with the proposed guidelines, laboratory reports (or summaries thereof) currently in use must be revised to document more fully the oxygen content of the oxygenated gasoline, and to provide a method of averaging these characteristics. Compliance with the minimum 2.0% oxygen by weight requirement must be strictly monitored. The exact form of the detailed or summary reports has not yet been determined, but the prudent terminal operator will likely perform computer analysis and summarization of the data. These reports will also be the basis for calculating compliance with the oxygen standard, and determining the amount of credits generated or required.

Special circumstances for terminals will likely require special data to be collected in order for the CAR to demonstrate compliance, credit generation, or debit generation. Each CAR is responsible for assuring that such data is available.

The practitioner should prove and reconcile total reported receipts, bulk transfers, and deliveries to trucks with internal monthly and daily reports. Accumulation of the daily amounts to monthly totals should be tested. All volumes should be temperature adjusted to 60 degrees fahrenheit. The primary test should be a test for overstatement of volumes. The practitioner should test the classification of products by reference to other available operational or accounting reports of product storage. The practitioner should determine the procedures used for "cut-off" at the end of each month and perform any other tests considered necessary to test the proper volumes reported.

The practitioner should obtain special laboratory analyses, detailed reports and averaging summaries, and test the arithmetic accuracy thereof. The practitioner should select a representative sample from laboratory analysis reports of oxygenated gasoline receipts and deliveries for detailed examination. The practitioner should examine the laboratory reports for accuracy and reasonableness. Comparisons of company laboratory reports should be made with reports of independent petroleum laboratories. Independent calculations of credit accounting should be made, and the amount of credits earned or required should be tested. The practitioner should select a representative sample from bulk and truck delivery records. Detailed verification of the sample items should be performed by reviewing pipeline tickets, truck tickets, rack tickets, etc. The practitioner should test that the required transfer and distributors' certification procedures have been adhered to. Tank segregation and data regarding the specific control area served by the terminal should be compared to delivery documentation.

The practitioner should also test that the requirements concerning the transfer of credits have been adhered to. This will entail the review of all records which show the credit transfers to or from the CAR. These records may include, but not be limited to, contracts, letter agreements, invoices, or other documentation evidencing the transfer of credits. The practitioner should examine contracts or other evidence of the transfer of credits to or from the facility and confirm that they were transferred in accordance with the existing program requirements.

(4) *Type and form of report and opinion.* The proposed guidelines require that the practitioner's report must be on forms provided by the state, and shall consist of information on records reviewed during the engagement; relevant regulated personnel; the location of the regulated party's physical plant; examples of calculations performed; and any discrepancies found.

Refiners and Importers

Refiners and importers are responsible for determining the oxygen content of all gasoline produced or imported. This determination must be made separately for each batch of gasoline. The importance of correctly determining the oxygenate content of each batch of gasoline is that this parameter must be known when the gasoline arrives at the control area of its use. The shipping documents which accompany each batch of gasoline down the distribution chain must specify the oxygen and oxygenate content associated with the gasoline. In this manner, the person who brings the gasoline into the control area of its use knows the oxygen and oxygenate contents for which an accounting must be made.

The program EPA is proposing would include state inspections and audits of gasoline refiners and importers. The purpose of these inspections and audits would be to collect and analyze samples of gasoline stored at the refinery or import facility, to determine if the gasoline has been properly tested and classified. In addition, the states would audit testing records for oxygenated gasoline previously produced or imported for proper classification and oxygen content.

In order that these audits may be conducted, EPA is proposing that refiners and importers be required to retain copies of documents which demonstrate that appropriate sampling and testing was conducted to support claimed oxygen contents. EPA also is proposing that refiners and importers retain copies of documents which describe the purchase or production of oxygenated gasoline as additional support for oxygen content.

These records are to be retained at the refinery or import facility if practicable, or at the business office of the refiner or importer. An issue has been raised as to how long from the date the gasoline was produced or imported records should be kept. EPA recommends that states establish a record retention requirement which coincides with their relevant statutes of limitations for enforcement of their oxygenated gasoline programs.

Where a violation is found at a refinery or an import facility, the refiner or importer would be solely liable. The refiner or importer would have no specified defense where the violation is discovered at that facility, other than to contest the existence of the violation.

EPA is proposing that in cases where gasoline produced or imported by a refiner or importer is found downstream from that party for which the oxygen content of the gasoline is improperly stated, the refiner or importer would be presumptively liable for these violations. The rationale for this presumption is discussed above. Under EPA's proposal, the refiner or importer would be able to avoid liability if it could demonstrate that it did not cause the violation, and test results conducted by the refiner, importer or blender on the gasoline show that the proper classification and oxygen content of the gasoline was recorded when it left the control of the refiner or importer.

In cases where gasoline which is identified by the corporate, trade or brand name of a gasoline refiner is improperly classified or for which the oxygen content is improperly stated, EPA is proposing that the named refiner be presumptively liable. EPA is proposing that this liability would attach regardless of who actually produced or imported the gasoline (e.g., the named refiner would be presumptively liable even though the gasoline was obtained

by the named refiner from another refiner through an exchange agreement). In order to avoid liability in this situation, EPA is proposing that the named refiner must show the following:

(1) Records of test results for the gasoline when it was produced or imported showing the oxygen content; and

(2) The violation was caused by action(s) of someone other than the refiner or its employees or agents; and

(3) The violation was caused by an act in violation of law, or an act of sabotage or vandalism; or

(4) The violation was caused by an act which was in violation of a contractual obligation designed to prevent such violations which was imposed by the refiner on the party operating under the refiner's brand name, and despite periodic sampling and testing by the refiner to assure compliance with the contractual obligations; or

(5) The violation was caused by the act of a carrier or other distributor engaged by the refiner for transportation of gasoline but with whom the refiner did not have a contractual relationship, despite efforts by the refiner (such as a periodic sampling and testing) designed to assure that violations do not occur.

This proposed refiner's defense for violations found at branded facilities is closely modeled upon the enforcement schemes followed in the federal gasoline lead contamination, volatility, and diesel fuel sulfur content regulations.

Distributors

EPA is proposing that gasoline distributors should be responsible for ensuring that gasoline sold or dispensed, transported or stored by a distributor downstream of the terminal is properly characterized as either oxygenated gasoline, or non-oxygenated gasoline. Distributors also would be prohibited from selling, storing or transporting gasoline intended for use in a control area during the control period which does not meet the 2.0% minimum oxygen content requirement. Distributors are not prohibited from storing non-oxygenated gasoline within the control area as long as it is intended for sale and is sold in a non-control area, or is intended for sale outside of the control period, and is properly segregated and marked. If the fuel is intended for sale for use in the control area and is sold or dispensed after the end of the control period in the control area then the storage tank should remain sealed until that time.

EPA is proposing that a distributor downstream of the terminal should be liable for violations of the above requirements found at the distributor's facility. In addition, EPA is proposing that distributors should be liable for such violations found at facilities downstream from the distributor, which could include facilities operated by other distributors, downstream carriers, retailers and/or wholesale purchaser-consumers.

In the case of oxygenated gasoline which is sold, transported, or stored between the refinery or import facility and a control area terminal, EPA is proposing that distributors have the additional responsibility of ensuring that this gasoline conforms to the oxygen content which is stated in the paperwork which accompanies the gasoline. In EPA's scheme, distributors would be liable for violations of this requirement found at the distributor's facility, and for violations found between the distributor and the control area terminal or oxygenate blending facility.

Under EPA's proposal, the distributor upstream of a control area terminal or oxygenate blending facility could avoid liability for the above requirements if it could show: (1) That it or its employees or agents did not cause the violation (e.g., by showing causation elsewhere); (2) possession of documents required to accompany the gasoline, such as invoices or bills of lading, which contain the information required by paragraph (h) of the Proposed Guidelines; and (3) evidence of a quality assurance sampling and testing program carried out by the distributor to monitor, when appropriate, the oxygen content.

EPA is proposing that when gasoline found at a distributor's facility is improperly classified or the oxygen content is not properly stated in the accompanying paperwork, persons upstream from the distributor would be presumptively liable for these violations. The upstream persons could include refiners, importers, blenders, carriers or distributors, except that liability associated with the minimum oxygen content requirement would not apply upstream of the control area terminal.

Carriers

Carriers are distinguished from other distributors in that carriers do not take title to the product they store or transport. As a result of this distinction, carriers traditionally have had liability presumptions and defenses which are different from other distributors under federal fuels enforcement schemes (e.g., volatility, unleaded contamination, and diesel sulfur).

There are at least two options for ensuring that oxygenated gasoline transported or stored by upstream carriers and downstream carriers conforms to the oxygenated gasoline requirements. One option is to make carriers liable only for violations detected at the carrier's facility, unless the carrier is able to show that it did not cause the violation. Under this option, carriers would not be presumptively liable for violations found downstream from the carrier's facility, unless it can be shown that the carrier in fact caused the violation. This is the traditional approach used for carriers.

The second option is to make carriers presumptively liable for violations detected downstream from the carrier. Carriers would be able to avoid liability if they could show that they did not cause the violation, and, in addition, show evidence of an affirmative quality assurance program, such as periodic sampling and testing, to ensure that the gasoline they transport or store conforms to the accompanying shipping documents. Under this option, carriers would not be required to sample and test every load or shipment of gasoline, but rather to conduct a periodic quality assurance program. In this manner, carriers would have an opportunity to detect gasoline tendered which does not conform to the shipping documents, to take appropriate steps to correct the documents (or inform the gasoline's recipient of the correct specifications), and to take actions to prevent future errors in documentation. Such future actions could consist of requiring a particular shipper to produce independent test results to support the specifications documented for future gasoline tendered, or in extreme cases, the refusal to accept gasoline from a particular person.

The rationale for the first option is that carriers normally do not alter the quality of the gasoline they transport or store—in fact, the EPA's definition of carrier in 40 CFR Part 80 requires that they not alter the quality of the gasoline. Under this argument, carriers only transport or store what they are given, and have no control over the product. This approach was found to be most appropriate in the gasoline volatility program, in part because EPA is able to sample and test gasoline at any point downstream from the carrier to determine if the gasoline conforms to the standard. When violations of the applicable volatility standard are found, EPA normally is able to gather facts sufficient to establish who caused the violation, with the result that future violations are deterred.

EPA believes that quality assurance programs by carriers are appropriate. EPA proposes that downstream carriers would be responsible for confirming the

minimum 2.0% oxygen content in the gasoline through review of the accompanying documentation. In addition, EPA is proposing that at points upstream from a control area terminal, upstream carriers be required to conduct quality assurance programs regarding the claimed oxygenate content of the gasoline.

EPA is requesting comment on this proposal. In particular, EPA seeks comments on whether carriers should be required to conduct quality assurance programs, and if so, the manner in which this requirement should be structured; whether such programs only should be a portion of the required showing for a carrier to establish a defense where a violation is found at the carrier's facility or downstream from the carrier's facility; or whether quality assurance by carriers should be excluded from the oxygenated gasoline program altogether.

Retailers and Wholesale Purchaser-Consumers

EPA is proposing that during the relevant control period retailers and wholesale purchaser-consumers in CO nonattainment areas be prohibited from selling or dispensing gasoline that has less than the required 2.0% minimum oxygen for use in a control area. EPA is proposing that such retailers or wholesale purchaser-consumers should be liable for violations of the above requirements found at their facilities.

Under various federal fuels enforcement schemes, retailers and wholesale purchaser-consumers have been able to avoid liability by showing they did not cause the violation. EPA is proposing that a retailer or wholesale purchaser-consumer in a control area could avoid liability for non-oxygenated gasoline found at its facility by showing it did not cause the violation, and that it has possession of documentation required to accompany the gasoline.

In the July 9, 1991 guidelines, there was an extensive description of a quality assurance program for retailers and wholesale purchaser/consumers to screen for the presence of a gasoline marker. In today's notice, the section which describes quality assurance programs has shortened considerably, reflecting the decision to require a minimum of 2.0% oxygen by weight instead of a marker.

Product Transfer Documentation

EPA is proposing that on each occasion physical custody or title of gasoline transfers from one party to another, other than when gasoline is sold or dispensed for use by the ultimate consumer at a retail outlet or wholesale purchaser-consumer facility, that the documents which accompany the transfer include information necessary for the implementation of the oxygenated gasoline program. This shall be achieved either through the use of a separate transfer document or through the addition of the required information to paperwork which already accompanies the shipment of gasoline. This information should include the following:

a. The date of the transfer;

b. The name and address of the transferor;

c. The name and address of the transferee;

d. The volume of gasoline which is being transferred;

e. The proper identification of the gasoline as non-oxygenated or oxygenated;

f. The location of the gasoline at the time of the transfer;

g. The type of oxygenate; and

h. For gasoline which is in the gasoline distribution network between the refinery or import facility and the control area terminal, the oxygen content of the gasoline, and the oxygenate volume of the gasoline.

Recordkeeping and Reporting

All persons subject to the average oxygen content standard, i.e. all CARs, would be required to maintain reports containing compliance information. Parties who have selected the option of meeting the standard on a "per gallon" basis would be required to maintain a basic set of information, including volume of shipments bought and sold, volume of oxygenate bought and sold, oxygen content of all gasoline handled, etc. The records kept by parties who offer to sell, sell, store or dispense gasoline which contains not less than 2.7% will be much simpler than those required by these guidelines. Information to be recorded would include data on product received by the party (for example, the date the product was received, the source of the shipment, the type of product received, the total volume of the shipment), and data on the product sold or supplied by the party (for example, the date the product was sold or supplied, the type of product sold or supplied, the total volume of the shipment, the name of the person to whom the product was sold or supplied, the oxygenate content, and the oxygen content of the product).

On the other hand, parties who have selected the option of meeting the standard on an average basis (with or without trading) would need to maintain more detailed information because of the greater complexities of demonstrating compliance when averaging and credit trading are involved. Information to be recorded would include data on product received by the party (for example, the date the product was received, the source of the shipment, the type of product received, the total volume of the shipment, and the results of any tests performed), data on the product sold or supplied by the party (for example, the date the product sold or supplied, the type of product sold or supplied, the total volume of the shipment, the name of the person to whom the product was sold or supplied, the oxygenate content, and the oxygen content of the product). In addition, the party would also be required to calculate the average oxygen content of its product based on such information and according to the procedure outlined above.

As well as the information detailed above, CARs engaging in trading oxygen credits during a compliance period would be required to supply additional information in their reports. Such information would include the name, CAR identification number and address of the other party in each trade and the quantity of oxygen credits (volume and oxygen content of gasoline) traded. The party selling or otherwise transferring oxygen credits would have to demonstrate how such credits were calculated. The party buying or otherwise receiving oxygen credits would be required to calculate its compliance with the regulatory standard through the use of these credits. Both parties to an oxygen credit trade would have to submit to the state supporting documentation adequate to demonstrate the agreement of the other party to the trade and to transfer the credits no later than 15 days after the relevant averaging period for which the trade is reported. A contract signed by both parties no later than 15 days after the close of the relevant averaging period would be sufficient for this purpose. A purported trade would not be recognized as valid unless both parties report and adequately document it.

Persons who own control area terminals but who do not own the gasoline which is dispensed from those terminals are not subject to the averaging standard. These terminal operators are required to maintain records. These would have to include information on the ownership, volume, and oxygen concentration of gasoline sold, dispensed or transported during each averaging period, and the location to which transported, that is, whether it was within a control area or not. Such reports would provide a partial cross-

check on reports submitted by persons subject to the regulatory standard.

All parties subject to these recordkeeping requirements would be required to retain the records for the period of time established by the state. They would have to be available for appropriate state review, although they are not required to submit information to the state. For all records, the state would have the authority to determine whether any record should be recognized as meeting regulatory requirements.

The only parties who would be required to send in compliance reports to the state are the CARs. Not later than 30 days after the close of the averaging period, each such party would be required to submit a report to the state, detailing its purchases, shipments, sales, and credit accounting for the averaging period in question.

Sampling and Testing Methodologies

The sampling methodologies recommended for oxygenated fuels programs are the same as those set forth at 40 CFR part 80, appendix D, relating to sampling procedures for fuel volatility.

In today's notice, the Agency is proposing two separate testing methods. The American Society for Testing and Materials (ASTM) standard test method, Designation D 4815–89, which is included with this notice as appendix B, is the most widely-used method for the determination of alcohols and MTBE in gasoline by gas chromatography. This test method covers a procedure for determination of methanol, ethanol, isopropanol, n-propanol, isobutanol, sec-butanol, tert-butanol, n-butanol, and methyl tertiary butyl ether (MTBE) in gasoline by gas chromatography. It does not currently have the capability to detect the presence of some of the heavier oxygenates in gasoline, one example being TAME, although ASTM is planning to extend the scope to include up to 15% MTBE by volume and 17% TAME by volume. Adaptation of the method for ETBE analysis is straightforward, it merely requires a change of internal standards.

In addition, many states which currently implement oxygenated gasoline programs have found the ASTM precision standards to be inadequate, allowing large variations in accepted oxygen level measurements.

For these reasons, the Agency is also proposing an alternative testing methodology which is currently being refined by the Agency's laboratory in Ann Arbor, Michigan. This method is a single column, direct injection gas chromatographic procedure for quantifying the oxygenate content of gasoline. Unlike the current ASTM method, this method can be used to detect all types of oxygenates in gasoline. This method is included in today's notice as appendix C.

The Agency prefers the EPA test over the ASTM. The Agency anticipates it to be more accurate, easier to conduct, and less expensive than the ASTM method. However, at this point in time, the work on the EPA test is not yet complete, and industry is understandably apprehensive about adopting a relatively new test.

Therefore, the Agency is proposing the use of the ASTM test method until the end of the 1993–94 oxygenated gasoline control period. During the first years of the program, this will allow the regulated parties to use equipment they may already possess, and a test method with which they are already familiar. However, for testing during the control periods which begin in the fall of 1994, in order to coincide with the beginning of the reformulated gasoline program which is January 1, 1995, the states should allow either the use of the EPA method or the ASTM method, if it is determined that the ASTM method has expanded its capabilities and improved its precision standards. By this time, the EPA test should be well-established, the technology perfected and the precision fully documented. EPA will publish precision information on its method based on multi-lab analyses (similar to ASTM round robins) at least one year prior to its allowance.

In addition to the approval of these two testing methods, EPA is proposing to establish a procedure whereby additional testing methods may be approved by the Agency. EPA recognizes that there are many potential tests for use in the detection of oxygenates to gasoline, and would like to encourage the development of even newer and more efficient methods. Therefore, as the Agency continues to develop its own method during the next two years, it shall also work on creating a certification procedure for the evaluation and approval of other oxygenate tests.

Comments are requested on the appropriateness of this approach, including the usefulness of ASTM's own guidance pertaining to data analysis and interpretation. If this methodology is chosen, the Agency will subsequently publish guidance on testing tolerance based on multi-lab round robin testing.

The ASTM method contains precision information for the volume percent of various oxygenates that varies as a function of the volume of oxygenate being measured. The Agency proposes to use a single testing tolerance for ethers and alcohols that represent the predominant volume of these oxygenates that is expected to be used to comply with the oxygen content requirements. The use of a single testing tolerance for each oxygenate will simplify enforcement.

This tolerance, as mandated by the Act, section 211(m)(2)(B), will be established by the Administrator at a later date.

Oxygen Content Conversions

An issue has been raised concerning the ability to accurately determine the oxygen content of gasoline when oxygenates are added by volume (usually downstream from the refinery). This is a concern because, as the specific gravity (or density) of the base gasoline varies, the weight fraction of oxygenate (and oxygen) varies for any specific produced oxygenate blend. Hence, two blends of oxygenate could result in differing oxygen weight fractions if the specific gravity of the base gasolines for the two blends differs.

Typically, oxygenates are blended with gasoline volumetrically. For example, a "ten percent ethanol blend" typically refers to a volume percent. The standards of an oxygenate program as delineated in the Clean Air Act Amendments are in terms of weight percent oxygen. Technically, in order to calculate the weight percent oxygen in the oxygenate blend, several factors must be taken into consideration. These are: temperature and specific gravity of the oxygenate and the gasoline, and, for ethanol, the amount of denaturant, which is some fraction of the volume ethanol added to the gasoline. Elsewhere in this notice, it is stated that standard temperature will be 60 degrees Fahrenheit. In order to calculate the weight percent oxygen in the blend, the weight percent oxygenate must be calculated. Accordingly, to calculate the weight percent oxygenate from volume percent oxygenate, specific gravities of the oxygenate and the blend must be taken into consideration. (Specific gravities (or densities) as well as weight percent oxygen in the oxygenate may be found in table 1 for common fuel oxygenates.)

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Table 1. Specific Gravity and Weight Percent Oxygen of Common Oxygenates

Oxygenate	Weight % oxygen	Specific Gravity at 60 deg F
Methanol	0.4993	0.796
Ethanol	0.3473	0.794
Propanols	0.2662	0.789
Butanols	0.2158	0.810
Pentanols	0.1815	0.817
Methyl Tertiary Butyl Ether (MTBE)	0.1815	0.744
Hexanols	0.1566	0.823
Tertiary Amyl Methyl Ether (TAME)	0.1566	0.770
Ethyl Tertiary Butyl Ether (ETBE)	0.1569	0.755

The following equation describes the conversion from volume percent oxygenate to weight percent oxygenate:

$$W_{oxygenate} = V_{oxygenate} \times \frac{d_{oxygenate}}{d_{bl}} \quad (1)$$

Where

W	= weight fraction (for percent, multiply by 100)
oxygenate	= oxygenate in the blend
bl	= blend
V	= volume fraction
d	= specific gravity.

The specific gravity of the oxygenate is known (see Table 1) and, if the specific gravity of the blend has been measured and is, therefore, known, the calculation is straightforward. If, however, the specific gravity of the blend is unknown, it can be estimated as the volume weighted contribution of the specific gravities of the gasoline to which the oxygenate is added and the oxygenate itself:

$$d_{bl} = (V_{gas} \times d_{gas}) + (V_{oxygenate} \times d_{oxygenate}) \quad (2)$$

Where

gas = gasoline to which oxygenate is added.

The weight fraction of oxygen in the blend is simply the product of the weight fraction of oxygen in the oxygenate (from Table 1) and the weight fraction of oxygenate in the blend. Therefore, the weight fraction of oxygen in the blend is:

$$W_{oxygen} = W_{oxygenate} \times W_{oxygen/oxygenate} \quad (3)$$

Where

oxygen/oxygenate = oxygen in the oxygenate.

Substituting equations (1) and (2) in equation (3), results in:

$$W_{oxygen} = \frac{V_{oxygenate} \times d_{oxygenate} \times W_{oxygen/oxygenate}}{(V_{gas} \times d_{gas}) + (V_{oxygenate} \times d_{oxygenate})} \quad (4)$$

For blends with more than one oxygenate, the equation becomes:

$$W_{oxygen} = \frac{\Sigma(V_{oxygenate} \times d_{oxygenate} \times W_{oxygen/oxygenate})}{(V_{gas} \times d_{gas}) + \Sigma(V_{oxygenate} \times d_{oxygenate})} \quad (5)$$

The following examples demonstrate use of the equation:

Question 1: Suppose nine gallons of neat ethanol are blended with 91 gallons of gasoline to make 100 gallons of ethanol blend gasoline. The specific gravity of the gasoline is 0.74. What is be the weight percent oxygen in this blend?

Answer 1: In this case, the volume fraction of ethanol is 0.09 and the volume fraction of gasoline is 0.91. The specific gravity of neat ethanol (from Table 1) is 0.794 and the specific gravity of the gasoline is stated to be 0.74. Hence, the weight fraction of

oxygen can be calculated using equation (4) as follows:

$$W_{oxy}=\frac{0.09\times0.794\times0.3473}{(0.91\times0.74)+(0.09\times0.794)} \quad (6)$$

$$W_{oxy}=0.0333 \quad (7)$$

Therefore the weight fraction of oxygen in such a blend is 0.0333 or 3.33 percent.

Question 2: Suppose 1000 gallons of MTBE are blended with 6000 gallons of gasoline to make 7000 gallons of MTBE blend gasoline. The specific gravity of the gasoline is 0.75. What is the weight percent oxygen in this blend?

Answer 2: In this case, the volume fraction of MTBE is 1000/7000 or 0.1429 and the volume fraction of gasoline is 6000/7000 or 0.8571. The specific gravity of neat MTBE (from Table 1) is 0.744 and the specific gravity of the gasoline is stated to be 0.75. Hence, the weight fraction of oxygen can be calculated using equation (4) as follows:

$$W_{oxy}=\frac{0.1429\times0.744\times0.1815}{(0.8571\times0.75)+(0.1429\times0.744)} \quad (8)$$

$$W_{oxy}=0.0258 \tag{9}$$

Therefore the weight fraction of oxygen in such a blend is 0.0258 or 2.58 percent.

In the following example, multiple oxygenates are used.

Question 3: Suppose 800 gallons of MTBE and 200 gallons of TAME are blended with 6000 gallons of gasoline to make 7000 gallons of blend gasoline. The specific gravity of the gasoline is 0.73. What is the weight percent oxygen in this blend?

Answer 3: In this case, the volume fraction of MTBE is 800/7000 or 0.1143, the volume fraction of TAME is 200/7000 or 0.0286 and the volume fraction of gasoline is 6000/7000 or 0.8571. The specific gravity of neat MTBE (from Table 1) is 0.744, of neat TAME is 0.770 and the specific gravity of the gasoline is stated to be 0.73. Hence, the weight fraction of oxygen can be calculated using equation (5) as follows:

$$W_{oxy}=\frac{(0.1143\times0.744\times0.1815)+(0.0286\times0.770\times0.1566)}{(0.8571\times0.75)+(0.1143\times0.744)+(0.0286\times0.770)} \tag{10}$$

$$W_{oxy}=0.0252 \tag{11}$$

Therefore the weight fraction of oxygen in such a blend is 0.0252 or 2.52 percent.

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While refinery blending of oxygenates presents little problem in calculating the oxygen weight percent since the specific gravity of the gasoline blendstock is typically measured on a routine basis, with terminal blending the specific gravity parameter may not be readily available to an oxygenate blender. Hence, the Agency believes it may be appropriate to provide a second option by which the oxygen content of oxygenated gasoline blended at the terminal may be determined. The following two variables must be considered: (1) What should be used for the specific gravity of the gasoline blended with oxygenate at the terminal (which is variable), and (2) For ethanol blends, what considerations should be made for the presence of a denaturant in the ethanol? Gasoline samples from the 1990 Motor Vehicle Manufacturers Association (MVMA) fuels database indicate an average specific gravity of 0.742029 with a standard deviation of 0.013285. Using two times the standard deviation to create a lower and upper bound (assuming the vast majority of samples lie within this range), a range of oxygen weight percents can be calculated for an upper end, lower end, and average gasoline specific gravity using equation (4). Table 2 shows the results of such an analysis and includes an analysis if one assumes the volume fraction of ethanol and the weight fraction of ethanol to be equal.

TABLE 2.—OXYGEN WEIGHT PERCENTS BASED UPON GASOLINE SPECIFIC GRAVITY

[Ethanol: 10 volume %/No denaturant]

Description	Gasoline specific gravity	Weight % oxygen
W % eth = V % eth	0.794	3.47
High End Specific gravity	0.7686	3.58
Average Specific gravity	0.7420	3.69
Low End Specific gravity	0.7155	3.81

If the assumption is made that 5 percent by volume of the ethanol is denaturant (i.e., 0.5 percent by volume of the final blend is denaturant) and therefore the ethanol volume contribution to the final blend is 9.5 percent, the following results apply:

TABLE 3.—Oxygen Weight Percents Based Upon Gasoline Specific Gravity

[Ethanol: 9.5 volume %/Denaturant: 0.5 volume]

Description	Gasoline specific gravity	Weight % Oxygen
W%eth = V%eth	0.794	3.35
High End Specific gravity	0.7686	3.40
Average Specific gravity	0.7420	3.51
Low End Specific gravity	0.7155	3.62

Although the Agency believes that little blending of oxygenates other than ethanol is performed at the terminal, a similar analysis could apply for MTBE and/or other oxygenates. However, for oxygenates other than ethanol, the denaturant consideration is not applicable. Table 4 shows such an approach for a 15% MTBE blend.

TABLE 4.—OXYGEN WEIGHT PERCENTS BASED UPON GASOLINE SPECIFIC GRAVITY

[MTBE: 15 volume percent]

Description	Gasoline specific gravity	Weight Oxygen
W% MTBE = V% MTBE	0.744	2.72
High End Specific gravity	0.7686	2.65
Average Specific gravity	0.7420	2.73
Low End Specific gravity	0.7155	2.81

Since the Agency believes that oxygenates blended at the terminal are blended volumetrically and that most gasolines should be near the average specific gravity listed above and most ethanol blends do contain 0.5 percent by volume denaturant, Table 3 is most appropriate for 10 percent ethanol blends. Therefore, utilizing the "average gasoline" row from Table 3, the appropriate level of oxygen associated with a 10 percent (by volume) ethanol blend is best estimated to be 3.51 weight percent. Thus, the Agency proposes that one alternative for determining the oxygen content for terminal-blended ethanol-gasoline blends is to simply assume a 3.51 weight percent oxygen based on the above analysis. Likewise, for a terminally blended 15 percent (by volume) MTBE blend, the appropriate oxygen content would be 2.73 weight percent. For other volumes of these or other oxygenates, a terminal blender may simply substitute the appropriate values above for average gasoline specific gravity and the values in Table 1 in equation 4 to calculate the appropriate oxygenate level. As mentioned previously, for refinery blended oxygenates, the actual measured specific gravities should be utilized. Additionally, the terminal blender would have the option of actually measuring the appropriate specific gravities.

The Agency requests comments on the need for the alternative mentioned here of using average specific gravities in terminal blending situations and whether such averages should take into account seasonal and geographic differences.

Purity Issue

There is some question as to the determination of oxygen content for gasoline blends containing ethanol. Some commenters have observed that according to certain tax laws, blenders can blend between 9.8% and 10.0% oxygen by volume (due to variations in ethanol purity) while receiving a full 10.0% credit for tax purposes. Other commenters have responded that purity is unimportant in the determination of true oxygen levels.

Because many parties in the gasoline distribution network will be relying on the written records they receive from other parties in the network in order to determine the amount of oxygenate contained in the fuel they offer for sale, sell, store, or dispense, this issue is an important one. Fuels must not be represented as containing more oxygenate than they actually do. Therefore, the Agency specifically requests comments regarding the correct handling of ethanol purity.

Blending Allowance

In order to allow for the dilution of oxygenates during transport and storage, the Agency is recommending the use of a blending allowance for the measurement of all oxygenates which fall under the "substantially similar" definition. The allowance will permit the blending of gasoline at levels 0.2% percent oxygen by weight higher than allowable under the "substantially similar" interpretive rule. This allowance is desirable from a practical standpoint since the legal minimum for program areas and the legal maximum under "sub-sim" are the same (2.7% oxygen by weight). It will allow for the dilution of some oxygenates during transport and storage, providing some flexibility to gasoline producers who are likely to blend gasoline at points upstream from terminals and transport it to the terminal.

It is important to note that this allowance applies only to oxygenates blended under the "substantially similar" definition, and are blended at the refinery to meet a minimum 2.7% oxygen by weight requirement. The allowance would not apply to oxygenates waived to oxygen levels above 2.7 weight percent oxygen. (Hence, an ethanol blend could not be blended to levels higher than that allowed under the "gasohol waiver.")

In order to compensate for the problems associated with dilution and density, the Agency is proposing to exercise discretion in enforcing the maximum "sub-sim" limit by permitting a blending allowance of +0.2 percent oxygen by weight for "sub-sim" gasolines. For example, MTBE or TAME blends containing up to 2.9% oxygen by weight will be considered acceptable when detected at any point in the gasoline distribution network. This will allow many blenders to blend slightly higher volumes of oxygenate into their gasoline, thereby anticipating and avoiding the potential loss of oxygen in the gasoline intended for sale in an oxygenated gasoline program. A similar blending allowance was announced by EPA in its Federal Implementation Plan for the Maricopa and Pima carbon monoxide nonattainment areas.[12]

This blending tolerance will be considered separately from the testing tolerance which is to be established at a later date by the Administrator in conjunction with testing methods.

Approved Oxygenates

An oxygenate is any substance which, when added to gasoline, increases the amount of oxygen in that gasoline blend. It is unlawful to introduce oxygenated gasoline into commerce unless it is either "substantially similar" to certification fuel in accordance with § 211(f)(1) of the Act, or permitted under a waiver granted by the Administrator under the authority of § 211(f)(4) of the Act. The following oxygenates are currently approved. Others may be approved by the Agency in the future, at which time they may be automatically recognized as approved under these guidelines.

Through a series of waivers and interpretive rules, the Agency has determined the allowable limits for oxygenates in unleaded gasoline. The "Substantially Similar" Interpretive Rule [13] allows blends of aliphatic alcohols other than methanol and aliphatic ethers, provided the oxygen content does not exceed 2.7% by weight. It also provides for blends of methanol up to 0.3 percent by volume exclusive of other oxygenates, and up to 2.75% by volume methanol with an equal volume of butanol or alcohols of a higher molecular weight.

The following individual waivers pertaining to the use of oxygenates in unleaded gasoline have been issued by the Agency under the authority of § 211(f)(4), and are available for use by all parties.

1. Blends of up to 10% by volume anhydrous ethanol (200 proof) (commonly referred to as the "gasohol" waiver).[14]

2. Blends of methanol and gasoline-grade tertiary butyl alcohol (GTBA) such that the total oxygen content does not exceed 3.5% by weight and the ratio of methanol to GTBA is less than or equal to one. It is also specified that this blended fuel must meet ASTM volatility specifications (commonly referred to as the "ARCO" waiver).[15]

3. Blends of up to 5.0% by volume methanol with a minimum of 2.5% by volume cosolvent alcohols having a carbon number of 4 or less (i.e. ethanol, propanol, butanol, and/or GTBA). The total oxygen must not exceed 3.7% by weight, and the blend must meet ASTM volatility specifications as well as phase separation and alcohol purity and inhibitor specifications (commonly referred to as the "DuPont" waiver).[16]

4. Blends up to 5.0% by volume methanol with a minimum of 2.5% by volume cosolvent alcohols having a carbon number of 8 or less. The total oxygen must not exceed 3.7% by weight, and the blend must meet ASTM volatility specifications as well as phase separation and alcohol purity and inhibitor specifications (commonly referred to as the "Octamix" waiver).[17]

5. Blends up to 15.0% by volume methyl tertiary butyl ether (MTBE), which must meet the ASTM D4814 specifications. Blenders must take precautions that the blends are not used as base gasolines for other oxygenated blends (commonly referred to as the "Sun" waiver).[18]

It is the intent of these guidelines that oxygen content be calculated based upon the actual content of oxygen of a blend. That is, the actual content of oxygen in a gasoline blend is determined based upon the volume of the oxygenate, excluding denaturants or other non-oxygen-containing compounds.

Inability to Produce Conforming Gasoline Due to Extraordinary Circumstances

Some parties suggested during the Regulatory Negotiation process that EPA address the situation where extraordinary circumstances do not permit a regulated party to comply with the requirements of a state oxygenated gasoline program under Section 211(m). In appropriate extreme and unusual circumstances (e.g., natural disaster or "Act of God") which are clearly outside the control of the refiner and which could not have been avoided by the exercise of prudence, diligence and due care, states should consider allowing a refiner, for a brief period, to distribute fuel which does not meet the requirement for oxygenated gasoline if: (1) It is in the public interest to do so (e.g., distribution of the nonconforming fuel is necessary to meet projected shortfalls which cannot otherwise be compensated for); (2) The refiner exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity; (3) The refiner can show how the requirements for oxygenated gasoline will be expeditiously achieved; (4) The refiner agrees to make up the air quality detriment associated with the nonconforming gasoline, where practicable; and (5) The refiner agrees to pay the state an amount equal to the economic benefit of the nonconformity minus the amount expended, pursuant to number 4 above, in making up the air quality detriment.

IV. Environmental Impact

The sale of oxygenated gasoline reduces carbon monoxide emissions from motor vehicles and thereby helps carbon monoxide nonattainment areas to achieve compliance with the applicable carbon monoxide ambient air quality standard. Oxygenated gasoline is becoming widely recognized as a control strategy for reducing carbon monoxide emissions from motor vehicles in a timely and cost-effective manner.

V. Impact on Small Entities

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare

[12] 56 FR 5458 (February 11, 1991).

[13] 56 FR 5352 (February 11, 1991).

[14] 44 FR 20777 (April 6, 1979).

[15] 44 FR 10530 (February 21, 1979).

[16] See 50 FR 2615 (January 17, 1985), 51 FR 15064 (April 22, 1986), 51 FR 39800 (October 31, 1986), 52 FR 18736 (May 19, 1987).

[17] 53 FR 3636 (February 8, 1988).

[18] 53 FR 33846 (September 1, 1988).

and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e. small businesses, small organizations, and small governmental jurisdictions). Today's action is not a rulemaking; therefore no regulatory flexibility analysis has been prepared.

VI. Public Participation

EPA desires full public participation in arriving at final decisions in this guidance development. A public hearing was held on July 15 on the Proposed Guidance which was published on July 9, 1991.[19]

All comments received by [insert date 30 days from published date] will be considered in EPA's final guidelines. Comments should be directed to Docket A-91-04. All comments will be available for inspection during normal business hours at the EPA office listed in the addresses section of this notice.

Commenters desiring to submit proprietary information for consideration should clearly distinguish such information from other comments to the greatest possible extent, and clearly label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to base its decision on a submission labelled as confidential business information, then a non-confidential version of the document which summarizes the key data or information should be placed in the docket.

Information covered by a claim of confidentiality will be released by EPA only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commenter who submitted the information.

VII. Administrative Designation and Analysis

Under Executive Order 12291, the Agency must judge whether this guidance is subject to the requirement to prepare an impact analysis. Because of the significant economic and environmental impact of this guidance, the Agency has prepared several draft support documents. These documents have been placed in Docket A-91-04 and are referenced by numbers II-F-3 through IIF-6, II-A-2 and II-A-3. These proposed guidelines were submitted to the Office of Management and Budget (OMB) for review. Any written comments received from OMB and any EPA responses to those comments have been placed in the public docket.

VIII. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 , and implementing regulations, 5 CFR part 1320, EPA must obtain clearance from OMB for any activity that will involve collecting substantially the same information from 10 or more non-Federal respondents. Since the action in this supplemental notice is proposed guidance, and does not involve the collection of information by EPA, the Paperwork Reduction Act does not apply to this action.

IX. Statutory Authority

Authority for the action proposed in this notice is granted to EPA by section 211(m) of the Clean Air Act as amended by the Clean Air Act Amendments of 1990.

Dated: January 22, 1992.

William K. Reilly,

Administrator.

Appendix—Oxygenated Gasoline Credit Programs

(a) Scope. This Appendix applies to credit programs employed in state oxygenated gasoline programs under section 211(m) of the Clean Air Act, as amended (the Act).

(b) Definitions.

(1) *Averaging period*—The period of time over which all gasoline sold or dispensed for use in a control area by any control area responsible party must comply with the average oxygen content standard.

(2) *Blender control area responsible party (Blender CAR)*—A person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending facility.

(3) *Carrier*—Any person who transports, stores or causes the transportation or storage of gasoline at any point in the gasoline distribution network, without taking title to or otherwise having ownership of the gasoline and without altering the quality or quantity of the gasoline.

(4) *Control area*—A geographic area in which only gasoline under the oxygenated gasoline program may be sold or dispensed, with boundaries determined in accordance with § 211(m) of the Act.[1]

(5) *Control area oxygenate blending facility*—Any facility or truck at which oxygenate is added to gasoline which is intended for use in any control area, and at which the quality or quantity of gasoline is not otherwise altered, except through the addition of deposit-control additives.

(6) *Control area responsible party (CAR)*—A person who owns oxygenated gasoline which is sold or dispensed from a control area terminal.

(7) *Control area terminal*—A terminal which is capable of receiving gasoline in bulk, i.e., by pipeline, marine vessel or barge, and/or at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives. Gasoline which is intended for use in any control area is sold or dispensed into trucks at these control area terminals.

(8) *Control period*—The period during which oxygenated gasoline must be sold and dispensed in any control area, pursuant to section 211(m)(2) of the Act.[2]

(9) *Distributor*—Any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

(10) *Gasoline*—Any fuel sold for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

(11) *Non-oxygenated gasoline*—Any gasoline which does not meet the definition of oxygenated gasoline.

(12) *Oxygen content of gasoline blends*—Percentage of oxygen by weight contained in a gasoline blend, based upon its percentage oxygenate by volume, excluding denaturants and other non-oxygen-containing components. All measurements shall be adjusted to 60 degrees Fahrenheit.

(13) *Oxygenate*—Any substance which, when added to gasoline, increases the amount of oxygen in that gasoline blend. Lawful use of any combination of these substances requires that they be "Substantially Similar" under section 211(f)(1) of the Clean Air Act,[3] or be permitted under a waiver granted by the Administrator under the authority of section 211(f)(4) of the Clean Air Act.

(14) *Oxygenate blender*—A person who owns, leases, operates, controls or supervises a control area oxygenate blending facility.

(15) *Oxygenated gasoline*—Any gasoline which contains at least 2.0% oxygen by weight and has been included in the oxygenated gasoline program accounting by a control area responsible party and which is intended to be sold or dispensed for use in any control area.

(16) *Refiner*—Any person who owns, leases, operates, controls, or supervises a refinery which produces gasoline for use in a control area.

(17) *Refinery*—A plant at which gasoline is produced.

(18) *Reseller*—Any person who purchases gasoline and resells or transfers it to a retailer or a wholesale purchaser-consumer.

[19] 56 FR31151 (July 9.1991)

[1] The boundaries of the control areas are noted in a separate **Federal Register** notice, published on July 9, 1991, 56 FR 31151.

[2] EPA is required to determine the control periods, set by § 211(m) (2) of the Act, as that portion of the year in which the area is "prone to high ambient concentrations of carbon monoxide." In another **Federal Register** notice published today, EPA is establishing lengths of the control periods for the different areas covered by section 211(m).

[3] 56 FR 5352 (February 11, 1991).

(19) *Retail outlet*—Any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in motor vehicles.

(20) *Retailer*—Any person who owns, leases, operates, controls or supervises a retail outlet.

(21) *Terminal*—A facility at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer facilities.

(22) *Wholesale purchaser-consumer*—Any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

(c) Average oxygen content standard.

(1) All gasoline sold or dispensed during the control period, for use in each control area, by each CAR or blender CAR as defined in paragraph (b) of this appendix, shall be blended for each averaging period to contain an average oxygen content of not less than 2.7% by weight. Oxygen content calculations shall be performed in accordance with paragraph (d).

(2) The averaging period over which all gasoline sold or dispensed in the control area is to be averaged shall be equal to the length of the control period as established by the Administrator, except that programs with control periods of six months or longer shall have averaging periods of three months.[4]

(d) Sampling, testing and oxygen content calculations.

(1) For the purpose of determining compliance with the requirements of this Appendix, the oxygen content of gasoline shall be determined by:

(i) Sampling. Use of the sampling methodologies specified in Appendix A of this Appendix to obtain a representative sample of the gasoline to be tested;

(ii) Testing.

(A) Use of the test method specified in Appendix B of this Appendix. This method is used to determine the mass concentration of each oxygenate in the gasoline sampled; or

(B) Use of the test method specified in Appendix C of this Appendix beginning with September 1, 1994, or sooner if an oxygenate is not identifiable using the method specified in Appendix B. This method is used to determine the mass concentration of each oxygenate in the gasoline sampled.

(iii) Oxygen Content Calculations.

(A) Calculation of the oxygen content of the gasoline sampled by multiplying the mass concentration of each oxygenate in the gasoline sampled by the oxygen molecular weight contribution of the oxygenate set forth in paragraph (d)(2) of this Appendix; and

(B) All volume measurements shall be adjusted to 60 degrees Fahrenheit.

(2) For purposes of this Appendix, the oxygen molecular weight contributions of oxygenates currently approved for use in the United States are the following:

TABLE 1

	Oxygen molecular weight contribution	Specific gravity at 60 degrees F
Methanol	0.4993	0.796
Ethanol	0.3473	0.794
Propanols	0.2662	0.789
Butanols	0.2158	0.810
Pentanols	0.1815	0.817
Methyl Tertiary-Butyl Ether (MTBE)	0.1815	0.744
Hexanols	0.1566	0.823
Tertiary Amyl Methyl Ether (TAME)	0.1566	0.770
Ethyl TertiaryButyl Ether	0.1569	0.755

(e) Alternative compliance options. Each CAR or blender CAR shall comply with the standard specified in paragraph (c) of this Appendix by means of the method set forth in either paragraph (e) (1) or (e) (2) of this Appendix.

(1) Compliance calculation on average basis.

(i) To determine compliance with the standard in paragraph (c), the CAR or blender CAR shall, for each averaging period and for each control area:

(A) Calculate the total volume of gasoline sold or dispensed in the control area which is the sum of:

(1) The volume of each separate batch or truck load of oxygenated gasoline that is sold or dispensed;

(2) Plus the total volume of oxygenated gasoline associated with purchased credits;

(3) Minus the total volume of oxygenated gasoline associated with sold credits.

(B) Calculate the required total content of oxygen by multiplying the total volume in gallons of oxygenated gasoline sold or dispensed by 2.7 percent.

(C) Calculate the actual total content of oxygen which is the sum of:

(1) The oxygen content of each batch or truck load of oxygenated gasoline that was sold or dispensed in the control area multiplied by the associated volume of the batch or truckload;

(2) Plus the oxygen content multiplied by the associated volume of each individual purchase of credits;

(3) Minus the oxygen content multiplied by the associated volume of each individual credit which was sold.

(D) Compare the actual total content of oxygen with the required total content of oxygen. If the actual total content of oxygen is greater than or equal to the required total content of oxygen, then the standard in paragraph (c) is met. If the actual total content of oxygen is less than the allowed total content of oxygen then oxygen credits are required in order to achieve compliance.

(E) In transferring credits, the transferor shall provide the transferee with the volume and oxygen content of the gasoline associated with the credits.

(ii) To determine the oxygen content associated with each batch or truck load of oxygenated gasoline sold or dispensed into the control area, use the running weighted oxygen content (RWOC) (see (iii) below) of the tank from which the batch or truckload was received at the time the batch or truckload was received. In the case of batches or truckloads of gasoline to which oxygenate is added outside of the terminal storage tank from which it was received, use the weighted average of the RWOC and the oxygen content added as a result of the volume of the additional oxygenate added.

(iii) Running weighted oxygen content. The RWOC accounts for the volume and oxygen content of all gasoline which enters or leaves the terminal storage tank, and all oxygenates which are added to the tank. The RWOC must be calculated each time gasoline enters or leaves the tank or whenever oxygenates are added to the tank. The RWOC is calculated weighing the following:

(A) The volume and oxygen content of the gasoline in the storage tank at the beginning of the averaging period;

(B) The volume and oxygen content by weight of gasoline entering the storage tank;

(C) The volume and oxygen content by weight of gasoline leaving the storage tank;

(D) The volume, type and oxygen content by weight of the oxygenates added to the storage tank.

(iv) Credit transfers. Credits may be used in the compliance calculation in (e)(1)(A), provided that:

(A) The credits are generated in the same control area as they are used, i.e., no credits may be transferred between nonattainment areas;

(B) The credits are generated in the same averaging period as they are used;

(C) The ownership of credits is transferred only between CARs or blender CARs;

(D) The credit transfer agreement is made no later than 15 days after the final day of the averaging period in which the credits are generated; and

(E) The credits are properly created.

(v) Improperly created credits.

(A) No party may transfer any credits to the extent such a transfer would result in the transferor having a negative credit balance at the conclusion of the averaging period for which the credits were transferred. Any credits transferred in violation of this paragraph are improperly created credits.

(B) In the case of credits which were improperly created, the following provisions apply:

(1) Improperly created credits may not be used, regardless of a credit transferee's good faith belief that it was receiving valid credits;

(2) The transfer of credits in violation of (A) above constitutes a violation of these requirements, for which the transferor will be deemed to be in violation; and

(3) Where any credits are transferred in violation of (A) above, the transferor's properly-created credits will be applied first to any credit transfers before the transferor may apply any credits to achieve its own compliance.

(2) Compliance calculation on per gallon basis. Each gallon of gasoline sold or dispensed by a CAR or blender CAR for use within each control area during the averaging period as defined in paragraph (c) shall have an oxygen content of at least 2.7% by weight. In addition, the CAR or Blender CAR is

[4] EPA shall determine the length of the control period during the State Implementation Plan review and approval process.

prohibited from selling oxygen credits based on gasoline for which compliance is calculated under this alternative per-gallon method.

(f) Minimum oxygen content.

(1) Any gasoline which is sold or dispensed by a CAR or a Blender CAR for use within a control area, as defined in paragraph (b), during the control period, shall contain not less than 2.0% oxygen by weight, unless it is sold or dispensed to another registered CAR or Blender CAR. This requirement shall begin five working days before the applicable control period and shall apply until the end of that period.

(2) This requirement shall apply to all parties downstream of the CAR. Any gasoline which is offered for sale, sold or dispensed to an ultimate consumer within a control area, as defined in paragraph (b), shall contain not less than 2.0% oxygen by weight. This requirement shall apply during the entire applicable control period.

(3) Every refiner or importer must determine the oxygen content of each gallon of gasoline produced by use of one of the methodologies in the Appendices as described in section (d). This determination shall include the percent oxygenate by weight and the type of oxygenate, and percent by volume.

(g) Registration.

(1) One month in advance of any control period in which a party will meet the definition of CAR or blender CAR, such party shall petition for registration as a CAR or blender CAR in each state that the person intends to serve. A party may petition for registration as a CAR or blender CAR after the beginning of a control period but should do so at least 30 days before they intend to conduct activities as a CAR or blender CAR. This petition for registration shall be on forms prescribed by the state, and shall include the following information:

(i) The name and business address of the control area responsible party;

(ii) The address and physical location of each of the control area terminals from which the control area responsible party operates;

(iii) The address and physical location of each control area oxygenate blender facility which is owned, leased, operated, controlled or supervised by a Blender CAR; and

(iv) The address and physical location where documents which are required to be retained by this Appendix will be kept by the CAR.

(2) Within thirty days of any occasion when the registration information previously supplied by a CAR becomes incomplete or inaccurate, the CAR or Blender CAR shall submit updated registration information to the state.

(3) No party shall participate in the averaging program under paragraph (e) of this Appendix as a CAR or blender CAR until it has been notified by the state that it has been registered as a CAR or Blender CAR, and has been issued a unique CAR identification number. This should occur within 30 days of the submission of the registration application to the state. Registration by a state shall be valid for the time period specified by the state. The state shall issue each CAR and Blender CAR a unique identification number.

(h) Recordkeeping and reporting.

(1) Records. All parties in the gasoline distribution network, as described below, shall maintain records containing compliance information enumerated or described below. These records shall be retained by the regulated parties for a period of time established by the state which is consistent with its relevant statute of limitations.

(i) Refiners and Importers. Refiners and importers shall, for each separate quantity of gasoline produced or imported for use in a control area during a control period, maintain records containing the following information:

(A) Results of the tests utilized to determine the types of oxygenates and percentage by volume;

(B) Oxygenate content by volume;

(C) Oxygen content by weight;

(D) Total volume; and

(E) Name and address of the party to whom each separate quantity of gasoline was sold or transferred.

(ii) Control area terminal operators. Persons who own, lease, operate or control gasoline terminals which serve control areas shall maintain records containing the following information:

(A) The owner of each batch of gasoline;

(B) Volume of each batch or truckload of gasoline going into or out of the terminal;

(C) For all batches or truckloads of gasoline leaving the terminal, the RWOC of the batch or truckload;

(D) Type of oxygenate, purity, and percentage by volume if available;

(E) Oxygen content by weight of all batches or truckloads received at the terminal;

(F) Destination of each tank truck sale or batch of gasoline, that is, whether it was within a control area or not;

(G) The name and address of the party to whom the gasoline was sold or transferred and the date of the sale or transfer; and

(H) Results of the tests for oxygenates, if performed, of each sale or transfer, and who performed the tests.

(iii) CARs and Blender CARs. CARS and Blender CARs must maintain records containing the information listed in paragraph (iii) above, plus the following information:

(A) CAR or Blender CAR identification number.

(B) Records supporting and demonstrating compliance with the averaging standard listed in paragraph (c) of this Appendix.

(C) For any credits bought, sold, traded or transferred, the dates of the transactions, the names, addresses and CAR or Blender CAR numbers of the CARs or Blender CARs involved in the individual transactions, and the amount of credits (oxygen content and volume of gasoline) transferred. Any credits transferred must be accompanied by a demonstration of how those credits were calculated. Also included must be adequate documentation that both parties have agreed to all credit transactions.

(D) The name and address of the auditor, and the results of the attest engagement conducted pursuant to paragraph (k) of this Appendix.

(E) The name and address of the person from whom each shipment of gasoline was received, and the date when it was received.

(F) Data on each shipment of gasoline received, including:

(1) The volume of each shipment;

(2) Type of oxygenate, purity, and percentage by volume; and

(3) Oxygen content by weight.

(G) The volume of each receipt of bulk oxygenates.

(H) The name and address of the parties from whom bulk oxygenate was received.

(I) Date and destination of each sale of gasoline, that is, whether it was intended for use within a control area or not.

(J) Data on each shipment of gasoline sold or dispensed including:

(1) The volume of each shipment.

(2) Type of oxygenate, purity, and percentage by volume; and

(3) Oxygen content by weight.

(K) Documentation of the results of all tests done regarding the oxygen content of gasoline.

(L) The names, addresses and CAR or Blender CAR identification numbers of the parties to whom any gasoline was sold or dispensed, and the dates of these transactions.

(iv) Retailers and wholesale purchaser-consumers within a control area must maintain the following records:

(A) The names, addresses and CAR or blender CAR identification numbers of the parties from whom all shipments of gasoline were purchased or received, and the dates when they were received; and

(B) Data on every shipment of gasoline bought, sold or transported, including:

(1) Volume of each shipment;

(2) Type of oxygenate, purity, and percentage by volume;

(3) Oxygen content by weight; and

(4) Destination of each sale or shipment of gasoline, that is, whether it is intended for use within a control area.

(2) Reports.

(i) Each CAR and blender CAR shall submit a report for each averaging period as defined in paragraph (c) reflecting the compliance information detailed in paragraph (e) of this Appendix. Reports are due on the 30th day of each month following the averaging period for which the information is required. These reports shall be filed using forms provided by the state.

(ii) CARs or blender CARs shall also submit attest engagement reports as required by paragraph (k) of this Appendix. Attest engagements are to be conducted at the end of the control period, or every 6 months, whichever is shorter. The report is to be submitted to the state by the independent practitioner within 60 days following the end of the averaging period.

(3) Transfer Documents. Each time that physical custody or title of gasoline destined for a control area changes hands other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading, invoices, etc., a document containing information on that shipment. This document shall accompany every shipment of gasoline to a control area after it has been dispensed by a

terminal, or the information shall be included in the normal paperwork which accompanies every shipment of gasoline. The information shall legibly and conspicuously contain the following information:

(i) The date of the transfer;

(ii) The name, address, and CAR or blender CAR identification number, if applicable, of the transferor;

(iii) The name, address and CAR or blender CAR identification number, if applicable, of the transferee;

(iv) The volume of gasoline which is being transferred;

(v) The proper identification of the gasoline as non-oxygenated or oxygenated;

(vi) The location of the gasoline at the time of the transfer;

(vii) Type of oxygenate; and

(viii) For gasoline which is in the gasoline distribution network between the refinery or import facility and the covered area terminal, the oxygen content by weight and the oxygenate volume of the gasoline.

(i) Prohibited activities.

(1) During the control period, no refiner, importer, oxygenate blender, carrier, distributor or reseller may manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of:

(i) Gasoline which contains less than 2.0% oxygen by weight, for use during the control period, in a CO nonattainment area subject to the requirements of § 211(m) of the Act; or

(ii) Gasoline represented as oxygenated which has an oxygen content which is improperly stated in the documents which accompany such gasoline.

(2) No retailer or wholesale purchaser-consumer may dispense, offer for sale, sell or store, for use during the control period, gasoline which contains less than 2.0% oxygen by 100 weight in a CO nonattainment area subject to the requirements of § 211(m) of the Act.

(3) No person may operate as a CAR or Blender CAR or hold themselves out as such unless they have been properly registered by the state(s) involved. No CAR or Blender CAR may offer for sale, store, sell or dispense gasoline to any person not registered as a CAR for use in a control area, unless:

(i) The average oxygen content of the gasoline during the averaging period meets the standard established in paragraph (c) of this Appendix; and

(ii) The gasoline contains at least 2.0% oxygen by weight on a per-gallon basis.

(4) For terminals which sell or dispense gasoline intended for use in a control area during the control period, the terminal owner or operator may not accept gasoline into the terminal unless:

(i) Transfer documentation accompanies it containing the information specified in paragraph (h)(3); and

(ii) The terminal owner or operator conducts a quality assurance program to verify the accuracy of this information.

(5) No person may sell or dispense non-oxygenated gasoline for use in any control area during the control period, unless:

(i) The non-oxygenated gasoline is segregated from oxygenated gasoline;

(ii) Clearly marked documents accompany the non-oxygenated gasoline marking it as "non-oxygenated gasoline, not for sale to ultimate consumer in a control area", and

(iii) The non-oxygenated gasoline is in fact not sold or dispensed to ultimate consumers, during the control period, in the control area.

(6) No named person may fail to comply with the recordkeeping and reporting requirements contained in section (h).

(7) No person may sell, dispense or transfer oxygenated gasoline, except for use by the ultimate consumer at a retail outlet or wholesale purchaser-consumer facility, without transfer documents which accurately contain the information required by section (h)(3).

(8) Liability for violations of the prohibited activities.

(i) Where the gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer, or oxygenate blender is found in violation of the prohibitions described in sections (1)(i) or (2) of this paragraph, the following persons shall be deemed in violation:

(A) The retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer, or oxygenate blender who owns, leases, operates, controls or supervises the facility where the violation is found; and

(B) Each oxygenate blender, distributor, reseller, and carrier who, downstream of the control area terminal, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(ii) Where the gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer, or oxygenate blender is found in violation of the prohibitions described in section (1)(ii) or (2) of this paragraph, the following persons shall be deemed in violation:

(A) The retailer, wholesale purchaser-consumer, distributor, reseller, carrier, refiner, importer, or oxygenate blender who owns, leases, operates, controls or supervises the facility where the violation is found; and

(B) Each refiner, importer, oxygenate blender, distributor, reseller, and carrier who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation.

(9) Defenses for prohibited activities.

(i) In any case in which a refiner, importer, oxygenate blender, distributor, reseller or carrier would be in violation under paragraph (i)(1), it shall be deemed not in violation if it can demonstrate:

(A) That the violation was not caused by the regulated party or its employee or agent;

(B) That it possesses documents which should accompany the gasoline, which contain the information required by paragraph (h); and

(C) That it conducts a quality assurance sampling and testing program as described in (i)(10).

(ii) In any case in which a retailer or wholesale purchaser-consumer would be in violation under paragraph (i)(2), it shall be deemed not in violation if it can demonstrate:

(A) That the violation was not caused by the regulated party or its employee or agent; and

(B) That it possesses documents which should accompany the gasoline, which contain the information required by paragraph (h).

(iii) Where a violation is found at a facility which is operating under the corporate, trade or brand name of a refiner, that refiner must show, in addition to the defense elements required by paragraph (i)(9)(i), that the violation was caused by:

(A) An act in violation of law (other than the Act or this part), or an act of sabotage or vandalism; or

(B) The action of any reseller, distributor, oxygenate blender, carrier, or a retailer or wholesale purchaser-consumer which is supplied by any of the persons listed above in paragraph (i)(9)(i), in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite periodic sampling and testing by the refiner to ensure compliance with such contractual obligation; or

(C) The action of any carrier or other distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, despite specification or inspection of procedures and equipment by the refiner or periodic sampling and testing which are reasonably calculated to prevent such action.

(iv) In this paragraph (i)(9), the term "was caused" means that the party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(10) Quality Assurance Program. In order to demonstrate an acceptable quality assurance program, a party must conduct periodic sampling and testing to determine if the oxygenated gasoline has oxygen content which is consistent with the product transfer documentation.

(j) Attest engagements.

(1) The attest engagement shall consist of a review of the information used by a party to prepare required reports to the state, for accuracy, completeness, and conformance with regulatory requirements.

(2) The attest engagement shall be conducted by an independent Certified Public Accountant (CPA) who is not an employee of the regulated party.

(3) CPAs are required to exercise due diligence in conducting the attest engagement in accordance with the Standards for Attestation established by the American Institute of Certified Public Accountants (AICPA). The CPA is also required to comply with the general code of conduct and ethics as prescribed by the state in which he is licensed and the AICPA.

(4) The attest engagement shall include the review and analysis of the following applicable records of a CAR or Blender CAR:

(i) Records which show the quantity and oxygen content of gasoline entering the terminal and leaving the terminal in bulk;

(ii) Records which show the destination, quantity and oxygen content of truckloads of oxygenated gasoline going to specific covered areas;

(iii) Records which show the oxygen content of gasoline in storage tanks from which trucks are loaded, and the calculations which formed the basis for claimed characteristics;

(iv) Testing results for storage tanks when additional gasoline is added; and

(v) Records showing the oxygenate type and amount which was blended;

(5) The attestation report shall consist of the following items:

(i) A description and the location of all records reviewed during the attest engagement;

(ii) The names and positions of all persons responsible for preparing the regulated party's report to the state, including persons who gathered information, operational personnel, and officers;

(iii) The location and a description of the refinery, import facility, or terminal audited, including its operating procedures and structures of internal controls;

(iv) Specific reports which were examined, accompanied by examples of calculations performed in the conduct of the attest engagement;

(v) Summaries or duplicates of records which support the CPA's findings, analyses, and conclusions; and

(vi) A complete list of all discrepancies that the CPA found during the conduct of the attest engagement.

Appendix A—Sampling Procedures

EPA's sampling procedures are detailed in appendix D of 40 CFR part 80.

Appendix B—Testing Procedure

Designation 4815–89

Method—ASTM Standard Test Method for Determination of C_1 to C_4 Alcohols and MTBE in Gasoline by Gas Chromatography

1. Scope

1.1 This test method covers a procedure for determination of methanol, ethanol, isopropanol, n-propanol, isobutanol, sec-butanol, tert-butanol, n-butanol, and methyl tertiary butyl ether (MTBE) in gasoline by gas chromatography.

1.2 Individual alcohols and MTBE are determined from 0.1 to 10 volume %.

1.3 SI (metric) units of measurement are preferred and used throughout this standard. Alternative units, in common usage, are also provided to improve the clarity and aid the user of this test method.

1.4 *This standard may involve hazardous materials, operations, and equipment. This standard does not purport to address all of the safety problems associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability or regulatory limitations prior to use.*

2. Referenced Documents

2.1 ASTM Standards:

D4057 Practice for Manual Sampling of Petroleum and Petroleum Product

D4307 Practice for Preparation of Liquid Blends for Use as Analytical Standards

D4626 Practice for Calculation of Gas Chromatographic Response Factors

E260 Practice for Packed Column Gas Chromatographic Procedures

E355 Practice for Gas Chromatography Terms and Relationships

3. Terminology

3.1 Descriptions of Terms Specific to This Standard:

3.1.1 Low volume connector—a special union for connecting two lengths of tubing 1.6 mm inside diameter and smaller. Sometimes this is referred to as a zero dead volume union.

3.1.2 MTBE—methyl tertiary butyl ether.

3.1.3 Oxygenates—used to designate fuel blending components containing oxygen, either in the form of alcohol or ether.

3.1.4 Split ratio—a term used in gas chromatography using capillary columns. The split ratio is the ratio of the total flow of the carrier gas to the sample inlet versus the flow of carrier gas to the capillary column. Typical values range from 10:1 to 500:1 depending upon the amount of sample injected and the type of capillary column used.

3.1.5 TCEP—1,2,3-tris-2cyanoethoxypropane—a gas chromatographic liquid phase.

3.1.6 WCOT—abbreviation for a type of capillary column used in gas chromatography that is wall-coated open tubular. This type of column is prepared by coating the inside of the capillary with a thin film of stationary phase.

4. Summary of Test Method

4.1 An internal standard, tertiary amyl alcohol, is added to the sample which is then introduced into a gas chromatograph equipped with two columns and a column switching valve. The sample first passes onto a polar TCEP column which elutes lighter hydrocarbons to vent and retains the oxygenated and heavier hydrocarbons. After methylcyclopentane, but before MTBE elutes from the polar column, the valve is switched to backflush the oxygenates onto a WCOT non-polar column. The alcohols and MTBE elute from the non-polar column in boiling point order, before elution of any major hydrocarbon constituents. After benzene elutes from the non-polar column, the column switching valve is switched back to its original position to backflush the heavy hydrocarbons. The eluted components are detected by a flame ionization or thermal conductivity detector. The detector response, proportional to the component concentration, is recorded; the peak areas are measured; and the concentration of each component is calculated with reference to the internal standard.

5. Significance and Use

5.1 Alcohols and other oxygenates may be added to gasoline to increase the octane number. Type and concentration of various oxygenates are specified and regulated to ensure acceptable commercial gasoline quality. Drivability, vapor pressure, phase separation, and evaporative emissions are some of the concerns associated with oxygenated fuels.

5.2 This test method is applicable to both quality control in the production of gasoline and for the determination of deliberate or extraneous oxygenate additions or contamination.

6. Apparatus

6.1 Chromatograph:

6.1.1 A gas chromatographic instrument which can be operated at the conditions given in Table 1, and having a column switching and backflushing system. Carrier gas flow controllers shall be capable of precise control where the required flow rates are low (table 1).

TABLE 1.—CHROMATOGRAPHIC OPERATING CONDITIONS

	Temperatures (°C)	Flows	mL/min	Other parameters, carrier gas helium
Column Over	60	to injector	75	Sample size, µL—3.
Injector	200	Column	5	Split ratio—15:1.
Detector				
TCD	200	Auxillary	3	Backflush, min—0.2–0.3.
FID	250	Makeup	18	Valve reset time, min—8–10.
Valve	60			Total analysis, time, min—18–20.

Pressure control devices and gages shall be capable of precise control for the typical pressures required.

6.1.2 Detector—A thermal conductivity detector or flame ionization detector, may be used. The system shall have sufficient sensitivity and stability to obtain a recorder deflection of at least 2 mm at a signal-to-noise ratio of at least 5 to 1 for 0.005 volume % concentration of an oxygenate.

6.1.3 Switching and backflushing Valve—A valve, to be located within the gas chromatographic column oven, capable of performing the functions described in section 11.0 and illustrated in Fig.1. The valve shall

be of low volume design and not contribute significantly to chromatographic deterioration.

6.1.3.1 Valco Model No. CM-VSV-10-HT, 1.6-mm (1/16-in.) fittings. This particular valve was used in the majority of the analyses used for the development of section 15.

6.1.3.2 Valco Model No. C10W, 0.8-mm (1/32-in.) fittings. This valve is recommended for use with columns of 0.32-mm inside diameter and smaller.

6.1.4 Although not mandatory, an automatic valve switching device is strongly recommended to ensure repeatable switching times. Such a device should be synchronized with injection and data collection times. If no such device is available, a stopwatch, stated at the time of injection, should be used to indicate the proper valve switching time.

6.1.5 Injection System—The chromatograph should be equipped with a splitting—type inlet device. Split injection is necessary to maintain the actual chromatographed sample size within the limits of column and detector optimum efficiency and linearity.

6.1.6 Sample Introduction—Any system capable of introducing a representative sample into the split inlet device. Microliter syringes, automatic syringe injectors, and liquid sampling valves have been used successfully.

6.2 Data Presentation or Calculation, or Both;

6.2.1 Recorder—A recording potentiometer or equivalent with a full-scale deflection of 5 mV or less. Full-scale response time should be 1 s or less with sufficient sensitivity and stability to meet the requirements of 6.1.2.

6.2.2 Integrator or Computer—Devices capable of meeting the requirements of 6.1.2, and providing graphic and digital presentation of the chromatographic data are recommended for use. Means shall be provided for determining the detector response. Peak heights or areas can be measured by computer, electronic integration of manual techniques.

6.3 Columns, two as follows:

6.3.1 Polar column—This column performs a pre-separation of the oxygenates from volatile hydrocarbons in the same boiling point range. The oxygenates and remaining hydrocarbons are backflushed onto the non-polar column in section 6.3.2. Any column with equivalent or better chromatographic efficiency and selectivity to that described in 6.3.1.1 can be used. The column shall perform at the same temperatures as required for the column in 6.3.2.

6.3.1.1 TCEP Micro-Packed Column, 560 mm (22 in.) by 1.6-mm (1/16-in.) outside diameter by 0.38-mm (0.015-in.) inside diameter stainless steel tube packed with 0.14 to 0.15 g of 20% (mass/mass) TCEP on 80/100 mesh Chromosorb P(AW). This column was used in the cooperative study to provide the Precision and Bias data referred to in section 15.

6.3.2 Non-polar (Analytical) Column—Any column with equivalent or better chromatographic efficiency and selectivity to that described in 6.3.2.1 can be used.

6.3.2.1 WCOT Methyl Silicone Column, 30m (1181 in.) long by 0.53 mm (0.021-in.) inside diameter fused silica WCOT column with a 2.6 μm film thickness of cross-linked methyl siloxane. This column was used, in the cooperative study to provide the Precision and Bias data referred to in section 15.

7. Reagents and Materials

7.1 Carrier Gas—Carrier gas appropriate to the type of detector used. Helium has been used successfully. The minimum purity of the carrier gas used must be 99.95 mol %.

7.2 Standards for Calibration and Identification—Standards of all components to be analyzed and the internal standard are required for establishing identification by retention time as well as calibration for quantitative measurements. These materials shall be of known purity and free of the other components to be analyzed.

Note 1: Warning—These materials are flammable and may be harmful or fatal if ingested or inhaled

7.3 Preparation of Calibration Blends—For best results, these components must be added to a stock gasoline or petroleum naphtha, free of oxygenates (Warning—See Note 2). Refer to Test Method D 4307 for preparation of liquid blends. The preparation of several different blends, at different concentration levels covering the scope of the method, is recommended. These will be used to establish the linearity of the component response.

Note 2: Warning—Extremely flammable. Vapors harmful if inhaled.

7.4 Methylene Chloride—Used for column preparation. Reagent grade, free of non-volatile residue.

Note 3: Warning—Harmful if inhaled. High concentrations may cause unconsciousness or death.

8. Preparation of Column Packings

8.1 TCEP Column Packing:

8.1.1 Any satisfactory method, used in the practice of the art that will produce a column capable of retaining the C_1 to C_4 alcohols and MTBE from components of the same boiling point range in a gasoline sample. The following procedure has been used successfully.

8.1.2 Completely dissolve 10 g of TCEP in 100 mL of methylene chloride. Next add 40 g of 80/100 mesh Chromosorb P(AW) to the TCEP solution. Quickly transfer this mixture to a drying dish, in a fume hood, without scraping any of the residual packing from the sides of the container. Constantly, but gently, stir the packing until all of the solvent has evaporated. This column packing can be used immediately to prepare the TCEP column.

9. Preparation of Micro-Packed TCEP Column

9.1 Wash a straight 560 mm length of 1.6-mm outside diameter (0.38-mm inside diameter) stainless steel tubing with methanol and dry with compressed nitrogen.

9.2 Insert 6 to 12 strands of silvered wire a small mesh screen or stainless steel frit inside one end of the tube. Slowly add 0.14 to 0.15 g of packing material to the column and gently vibrate to settle the packing inside the column. When strands of wire are used to retain packing material inside the column, leave 6.0 mm (0.25 in.) of space at the top of the column.

9.3 Column Conditioning—Both the TCEP and WCOT columns are to be briefly conditioned before use. Connect the columns to the valve (see 11.1) in the chromatographic oven. Adjust the carrier gas flows as in 11.3 and place the valve in the RESET position. After several minutes, increase the column over temperature to 120 °C and maintain these conditions for 5 to 10 min. Cool the columns below 60 °C before shutting off the carrier flow.

10. Sampling

10.1 Gasoline samples to be analyzed by this test method shall be sampled using procedures outlined in Practice D 4057.

11. Preparation of Apparatus and Establishment of Conditions

11.1 Assembly—Connect the WCOT column to the valve system using low volume connectors and narrow bore tubing. It is important to minimize the volume of the chromatographic system that comes in contact with the sample, otherwise peak broadening will occur.

11.2 Adjust the operating conditions to those listed in table 1, but do not turn on the detector circuits. Check the system for leaks before proceeding further.

11.3 Flow Rate Adjustment:

11.3.1 Attach a flow measuring device to the column vent with the valve in the RESET position and the pressure to the injection port to give 5.0 mL/min flow (14 psig). Soap bubble flow meters are suitable.

11.3.2 Attach a flow measuring device to the split injector vent and adjust the flow from the split vent using the A flow controller to give a flow of 70 mL/min. Recheck the column vent flow set in 11.3.1 and adjust if necessary.

11.3.3 Switch the valve to the BACKFLUSH position and adjust the variable restrictor to give the same column vent flow set in 11.3.1. This is necessary to minimize flow changes when the valve is switched.

11.3.4 Switch the valve to the inject position RESET and adjust the B flow controller to give a flow of 3.0 to 3.2 mL/min at the detector exit. When required for the particular instrumentation used, add makeup flow or TCD switching flow to give a total of 21 mL/min at the detector exit.

11.4 When a thermal conductivity detector is used, turn on the filament current and allow the detector to equilibrate. When a flame ionization detector is used, set the hydrogen and air flows and ignite the flame.

11.5 Determine the Time to Blackflush—The time to backflush will vary slightly for each column system and must be determined experimentally as follows. The start time of the integrator and valve timer must be synchronized with the injection to accurately reproduce the backflush time.

11.5.1 Initially assume a valve BACKFLUSH time of 0.23 min. With the valve RESET, inject 3 μL of a blend containing at least 0.5% or greater oxygenates (7.3), and simultaneously begin timing the analysis. At 0.23 min, rotate the valve to the BACKFLUSH position and leave it there until the complete elution of benzene is realized. Note this time as the RESET time, which is the time at which the valve is returned to the RESET

position. When all of the remaining hydrocarbons are backflushed the signal will return to a stable baseline and the system is ready for another analysis.

11.5.2 It is necessary to optimize the valve BACKFLUSH time by analyzing a standard blend containing oxygenates. The correct BACKFLUSH time is determined experimentally by using valve switching times between 0.2 and 0.3 min. When the valve is switched too soon, C_6 and lighter hydrocarbons are backflushed and are co-eluted in the C_4 alcohol section of the chromatogram. When the valve BACKFLUSH is switched too late, part or all of the MTBE component is vented resulting in an incorrect MTBE measurement.

12. Calibration and Standardization

12.1 Idenfication—Determine the retention time of each component by injecting small amounts either separately or in known mixtures or by comparing the relative retention times with those in table 2.

12.2 Standardization—The area under each peak in the chromatogram is considered a quantitative measure of the corresponding compound. Measure the peak area of each oxygenate and of the internal standard by either manual method or electronic integrator. Calculate the relative volume response factor of each oxygenate, relative to the internal standard, according to Test Method D 4626.

13. Procedure

13.1 Preparation of Sample—Precisely add a quantity of the internal standard to an accurately measured quantity of sample. Concentrations of 1 to 5 volume % have been used successfully.

13.2 Chromatographic Analysis—Introduce a representative aliquot of the sample, containing internal standard, into the chromatograph using the same technique as used for the calibration analyses. An injection volume of 3 μL with a 15:1 split ratio has been used successfully.

13.3 Interpretation of Chromatogram—Compare the results of sample analyses to those of calibration analyses to determine identification of oxygenates present.

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TABLE 2 Retention Characteristics for TCEP/WCOT Column Set
Conditions as in Table 1

Component	Retention Time, min	Relative Retention Time (t-Amyl Alcohol = 1.00)
Methanol	3.21	0.44
Ethanol	3.58	0.50
Isopropanol	3.95	0.56
tert-Butanol	4.31	0.61
n-Propanol	4.75	0.68
MTBE	5.29	0.76
sec-Butanol	5.63	0.82
Isobutanol	6.33	0.93
n-Butanol	7.55	1.10
Benzene	7.88	1.17

14. Calculation

14.1 After identifying the various oxygenates, measure the area of each oxygenate peak and that of the internal standard. Calculate the volume percent of oxygenate as follows:

$$V_1 = \frac{V_s \times PA_I \times 100}{PA_s \times S_I \times V_G}$$

where:

V_1 = volume percent of oxygenate to be determined,

V_s = volume of internal standard (tert-amyl alcohol) added,

V_G = volume of gasoline sample taken,

PA_I = peak area of the oxygenate to be determined,

PA_s = peak area of the internal standard (tert-amyl alcohol), and

S_i = relative volume response factor of each component (relative to the internal standard).

14.2 Report the volume percent of each oxygenate.

15. Precision and Bias[1]

15.1 Precision-The precision of this test method as determined by the statistical examination of the interlaboratory test results is as follows:

15.1.1 Repeatability-The difference between successive results obtained by the same operator with the same apparatus under constant operating conditions on identical test material would, in the long run, in the normal and correct operation of the test method exceed the following values only in one case in twenty (see Table 3):

Methanol 0.086 X (V+0.070)

Isobutanol 0.064 X (V+0.086)

Ethanol 0.083 X (V+0.000)

sec-Butanol 0.014 X $\sqrt{V}$

Isopropanol 0.052 X (V+0.150)

tert-Butanol 0.052 X (V+0.388)

n-Propanol 0.040 X (V+0.026)

[1] Supporting data are available from ASTM Headquarters. Request RR: DO2-1221.

n-Butanol 0.043 X (V+0.020)

MTBE 0.104 X (V+0.028)

where V is the mean volume percent.

TABLE 3 Precision Intervals-Determined from Cooperative Study Data Summarized in Section 15

Components	Volume %							
	0.20	0.50	1.00	2.00	3.00	4.00	5.00	6.00
				Repeatability				
Methanol	0.02	0.05	0.09	0.18	0.26	0.35	0.44	0.52
Ethanol	0.02	0.04	0.08	0.17	0.25	0.33	0.42	0.50
Isopropanol	0.02	0.03	0.06	0.11	0.16	0.22	0.27	0.32
n-Propanol	0.01	0.02	0.04	0.08	0.12	0.16	0.20	0.24
tert-Butanol	0.03	0.05	0.07	0.12	0.18	0.23	0.28	0.33
sec-Butanol	0.01	0.01	0.01	0.02	0.02	0.03	0.03	0.03
Isobutanol	0.02	0.04	0.07	0.13	0.20	0.26	0.33	0.39
n-Butanol	0.01	0.02	0.04	0.09	0.13	0.17	0.22	0.26
MTBE	0.02	0.05	0.11	0.21	0.31	0.42	0.52	0.63
				Reproducibility				
Methanol	0.10	0.21	0.39	0.75	1.11	1.47	1.83	2.19
Ethanol	0.07	0.19	0.37	0.75	1.12	1.49	1.87	2.24
Isopropanol	0.07	0.14	0.25	0.46	0.67	0.89	1.10	1.32
n-Propanol	0.04	0.09	0.17	0.33	0.49	0.68	0.82	0.98
tert-Butanol	0.10	0.16	0.25	0.43	0.60	0.78	0.96	1.14
sec-Butanol	0.12	0.20	0.28	0.39	0.48	0.55	0.62	0.68
Isobutanol	0.05	0.10	0.19	0.37	0.55	0.73	0.91	1.09
n-Butanol	0.09	0.22	0.42	0.84	1.25	1.67	2.08	2.50
MTBE	0.05	0.12	0.23	0.45	0.68	0.90	1.13	1.35

15.1.2 Reproducibility - The difference between two single and independent results obtained by different operators working in different laboratories on identical material would in the long run, exceed the following values only in one case in twenty

(see Table 3):

Methanol 0.361 X (V+0.070)

Isobutanol 0.179 X (V+0.086)

Ethanol 0.373 X (V+0.000)

sec-Butanol 0.277 X $\sqrt{V}$

Isopropanol 0.214 X (V+0.150)

tert-Butanol 0.178 X (V+0.388)

n-Propanol 0.163 X (V+0.026)

n-Butanol 0.415 X (V+0.020)

MTBE 0.224 X (V+0.028)

where V is the mean volume percent.

15.2 Bias - Since there is no accepted reference material suitable for determining bias for the procedure in this test method, bias cannot be determined.

For additional information please see ASTM Designation D 4815 - 88.

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Appendix C—Test Procedure

Method—EPA Test for the Determination of Oxygenates in Gasoline

1. *Scope and Application*

1.1 The following single column direct injection gas chromatographic procedure is described in detail to completely define a single technique for qualifying and quantifying the oxygenate content of gasoline. Other procedures with similar capabilities are allowed provided they comply with the quality control requirements of section 8 below.

1.2 This method covers the qualitative and quantitative determination of the oxygenate content of gasoline through the use of an oxygenate flame ionization detector (OFID); The procedure's calibration range is 0.25 to 12.0 volume percent. Samples above this level should be diluted to fall within the specified range.

1.3 Where trade names or specific products are noted in the method, equivalent apparatus and chemical reagents may be used. Mention of trade names or specific products is for the assistance of the user and does not constitute endorsement by the U.S. Environmental Protection Agency.

2. *Summary of Method*

2.1 A measured volume of a gasoline sample is spiked to introduce an internal standard, mixed, placed into a sealed ampule, and injected into a gas chromatograph (GC) equipped with an oxygenate flame ionization detector (OFID). After chromatographic resolution the sample components enter a cracker reactor in which they are stoichiometrically converted to carbon monoxide (in the case of oxygenates), elemental carbon, and hydrogen. The carbon monoxide then enters a methanizer reactor for conversion to water and methane. Finally, the methane is detected by a flame ionization detector (FID).

2.2 All oxygenated gasoline components (water, alcohols, ethers, etc.) may be assessed by this method.

2.3 The total concentration of oxygen in the gasoline, due to oxygenated components, may also be determined with this method by summation of all peak areas except for dissolved oxygen, water, and the internal standard. Sensitivities to each component oxygenate must be incorporated in the calculation.

3. *Sample Handling and Preservation*

3.1 Samples should be collected and stored in containers which will protect them from changes in the oxygenated component contents of the gasoline, such as loss of volatile fractions of the gasoline by evaporation.

3.2 If samples have been refrigerated they should be brought to room temperature prior to analysis.

3.3 Gasoline is extremely flammable and should be handled cautiously and with adequate ventilation. The vapors are harmful if inhaled and prolonged breathing of vapors should be avoided. Skin contact should be minimized.

4. *Apparatus*

4.1 A GC equipped with an oxygenate flame ionization detector.

4.2 An autosampler for the GC is highly recommended.

4.3 A 60 m length x 0.32 mm ID 5.0μm film thickness nonpolar capillary GC column (J&W DB-1 or equivalent).

4.4 An integrator or other acceptable system to collect and process the GC signal.

4.5 A positive displacement pipet (200 μL) for adding the internal standard.

5. *Reagents*

Note: Gasoline and many of the oxygenate additives are extremely flammable and may be toxic over prolonged exposure. Methanol is particularly hazardous. Persons performing this procedure must be familiar with the chemicals involved and all precautions applicable to each.

5.1 Reagent grade oxygenates for internal standards and for preparation of standard solutions.

5.2 Supply of oxygenate-free gasoline for blank assessments and for preparation of standard solutions.

5.3 Calibration standard solutions containing known quantities of suspected oxygenates in gasoline.

5.4 Calibration check standard solutions prepared in the same manner as the calibration standards.

5.5 Reference standard solutions containing known quantities of suspected oxygenates in gasoline.

6. *Calibration.*

6.1 Calibration standard solutions (made in gasoline).

6.1.1 Reagent grade or better oxygenates (primarily methanol, absolute ethanol, t-butanol, and MTBE) are to be diluted with gasoline that has been previously determined by GC/OFID to be free of oxygenates. Newly-acquired stocks of reagent-grade oxygenates shall be analyzed for contamination by GC/FID and GC/OFID before use.

6.1.2 Required calibration standards (% by volume in gasoline):

Oxygenate	Range (%)	No. of standards (minimum)
Methanol	0.25–12.00	5
Ethanol	0.25–12.00	5
t-Butanol	0.25–12.00	5
MTBE	0.25–15.00	5

The standards should be as equally spaced as possible within the range and may contain more thanone oxygenate. A blank for zero concentration assessments is also to be included. Additional standards should be prepared for other oxygenates of concern.

6.2 Precisely add an aliquot of an internal oxygenate standard (such as 0.20 mL of i-propanol) as an internal standard to 5.00 mL of each of the prepared standards. The addition of an internal standard reduces errors caused by variations in injection volumes. To ensure adequate method detection limits, the volume of the internal standard added should be minimized (such as 5% or less than the volume of the sample). Transfer approximately 2 mL of each of these solutions to vials compatible with the autosampler.

6.3 Based on chromatographic operating conditions (section 7.1 below), determine the retention time of each component oxygenate by analyzing dilute aliquots either separately or in known mixtures. Approximate retention times for selected oxygenates under these conditions are as follows:

Oxygenate	Retention time (minutes)
Dissolved oxygen	5.50
Water	7.20
Methanol	9.10
Ethanol	12.60
Propanol	15.00
2-Propanol	15.70
t-Butanol	18.00
n-Propanol	21.10
MTBE	23.80
2-Butanol	26.30
i-Butanol	30.30
ETBE	31.10
n-Butanol	33.50
TAME	35.30
i-Pentanol	38.10

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6.4 Determine the peak area of each oxygenate and of the internal standard. After dilution corrections, calculate the stoichiometric relative volume response factor of each oxygenate, relative to the internal standard as follows:

$$V_j = \frac{V_s \times PA_j \times 100}{PA_s \times S_j \times V_g}$$

where:

V_j = volume percent of oxygenate to be determined,

V_s = volume of internal standard added,

V_g = volume of gasoline sample taken,

PA_j = peak area of the oxygenate to be determined,

PA_s = peak area of the internal standard, and

S_j = relative volume response factor of each component (relative to the internal standard).

6.5 Obtain a linear calibration curve by performing a least squares fit of tne corrected component peak areas to the standard concentrations.

7. *Procedure.*

7.1 GC operating conditions:

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7.1.1 Oxygenate free helium carrier gas: 15 mL/min (1 bar):

7.1.2 Carrier gas split ratio: 1:10.

7.1.3 Zero air FID fuel: 370 mL/min (2 bar).

7.1.4 Oxygenate free hydrogen FID fuel: 15 mL/min (2 bar).

7.1.5 Injector temperature: 250 °C.

7.1.6 Cracker reactor temperature: sufficiently high temperature to ensure reduction of all hydrocarbons to the elemental states (ie., $C_xH_{2x} -> C + H_2$, etc.).

7.1.7 FID temperature 400 °C.

7.1.8 Oven temperature program: 50 °C for 12 min, followed by 5 °C/min to 70 °C for 14 min, followed by 25 °C/min to 195 °C for 5 min.

7.2 Prior to analysis of any samples, inject a sample of nonoxygenated gasoline into the GC to test for hydrocarbon breakthrough overloading the cracker reactor. If breakthrough occurs, the OFID is not operating effectively and must be corrected before samples can be analyzed.

7.3 Add precisely the same quantity of the internal standard (as in section 6.4 above) to 500 mL of the gasoline sample. Transfer approximately 2 mL of this solution to a vial compatible with the autosampler.

7.4 Report the volume percent of each oxygenate. If the volume percent exceeds the calibrated range, dilute the original sample to a concentration within the calibration range and repeat the procedures in section 7.3 above.

7.5 Sufficient sample should be retained to permit reanalysis.

8. Quality Control of Precision and Accuracy

8.1 The laboratory shall routinely monitor the precision of its analyses. At a minimum this shall include:

8.1.1 The preparation and analysis of laboratory duplicates at a rate of one per analysis batch and at least one per ten samples.

8.1.2 Laboratory duplicates shall be carried through all sample preparation steps independently.

8.1.3 The average range (absolute difference) for duplicate samples shall not exceed 0.4 volume% and/or the average relative range shall not exceed 8.0% where the relative range is defined as: 100% × (range/[(initial concentration + duplicate concentration)/2]. The maintenance of control charts is one acceptable method for ensuring compliance with this specification.

8.2 The laboratory shall routinely monitor the accuracy of its analyses. At a minimum this shall include:

8.2.1 Calibration check standards shall be developed independent of the calibration standards.

8.2.2 Calibration check standards shall be analyzed at a rate of one per analysis batch and at least one per ten samples.

8.2.3 If the measured concentration of a calibration check standard is outside the range 100±10% from the theoretical concentration, the sources of error in the analysis must be determined, corrected, and all analyses subsequent to and including the last standard analysis confirmed to be within the compliance specifications must be repeated. The maintenance of control charts is one acceptable method for ensuring compliance with this specification.

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8.2.4 Independent reference standards shall be purchased or prepared from materials that are independent of the calibration standards.

8.2.5 Independent reference standards shall be analyzed at a rate of per analysis batch or at least one per 100 samples.

8.2.6 If the measured concentration of an independent reference standard is outside the range of 100 $\pm$ 10% from the theoretical concentration, the results of the analysis batch shall be considered suspect. The sources of error in the analysis must be determined, corrected, and all analyses subsequent to and including the last independent reference standard analysis confirmed to be within the compliance specifications in that batch must be repeated. The maintenance of control charts is one acceptable method for ensuring compliance with this specification.

8.2.7 Spiked samples shall be prepared and analyzed at a rate of one per analysis batch and at least one per ten samples.

8.2.8 Spiked samples shall be prepared by adding a volume of a standard to a known volume of sample. To ensure adequate method detection limits, the volume of the standard added to the sample should be minimized to 5% or less than the volume of the sample. The spiked sample should be carried through the same sample preparation steps as the background sample.

8.2.9 The percent recovery of spiked samples should be calculated as follows:

$$\text{Recovery} = \frac{100\% \times (C_m(V_o + V_1) - C_oV_o}{C_sV_1}$$

where:

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V_o = Volume of sample
V_1 = Volume of spiking standard added (mL)
C_m = Measured concentration of spiked sample
C_o = Measured background concentration of sample
C_s = Known concentration of spiking standard

8.2.10 If the percent recovery of a spiked sample is outside the range 100±10% from the theoretical concentration, the sources of error in the analysis must be determined, corrected, and all analyses subsequent to and including the last analysis confirmed to be within the compliance specifications must be repeated. The maintenance of control charts is one acceptable method for ensuring compliance with this specification.

[FR Doc. 92-2156 Filed 2-4-92; 8:45 am]

BILLING CODE 6560-50-M

[CFRL-4100-1]

Small Business Stationary Source; Technical and Environmental Compliance Assistance Program (SBAP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Guidelines Available.

SUMMARY: The States, in implementing the provisions of the Clean Air Act (CAA), are or will be regulating small businesses that frequently lack the technical expertise or financial resources to evaluate State regulations and determine the appropriate mechanisms for compliance. The Congress, in anticipation of the impact of these requirements on small businesses, added provisions designed to be implemented by EPA and the States to provide technical assistance and compliance information to small businesses. The provisions designed to provide small business assistance are described in title V, section 507, of the 1990 CAA Amendments. As required by section 507, EPA has issued the Guidelines for Implementation of section 507 of the 1990 Clean Air Amendments. The guidelines provide guidance to the States and other interested parties on what will be an acceptable State SBAP to be incorporated into a federally-approved State implementation plan.

The purpose of this notice is to announce the availability of the final guidelines.

Availability of the Final Guidelines:

The guidelines are available from EPA, OAQPS, AQMD, ROB (MD-15), Research Triangle Park, North Carolina 27711. Please refer to the Guidelines for Implementation of section 507 of the 1990 Clean Air Act Amendments.

FOR FURTHER INFORMATION CONTACT: Ms. Racqueline Shelton at (919) 541-0898, U.S. Environmental Protection Agency, AQMD (MD-15), Research Triangle Park, North Carolina 27711.

J. B. Weigold,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 92-2658 Filed 2-4-92; 8:45 am]

BILLING CODE 6560-50-M.

[OPP-100101; FRL-4044-1]

Computer Sciences Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Computer Sciences Corporation (CSC) has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to CSC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2). This transfer will enable CSC to fulfill the obligations of the contract and serves to notify affected persons.

DATES: CSC will be given access to this information no sooner than February 10, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-W0-0043, work order No. 182, CSC will provide technical and operational support services to the Office of Pesticide Programs in support of a wide variety of system information management efforts. CSC employees will have access to all data and software within the system environment. This access is incidental to their work, which involves loading and maintenance of all system and applications software, system performance tuning, data file backup services, diagnosis and remedy of system hardware and software failures, routing and distribution of printed system output, production of system utilization statistics, and implementation of EPA-directed security protocols within the system environment. While CSC employees may have complete access to all data within the systems environment, they do not use the data within its subject-matter contexts. This contract involves no subcontractor.

The Office of Pesticide Programs has determined that access by CSC to information on all pesticide chemicals is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with CSC prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, CSC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officers for this contract in the EPA Office of Pesticide Programs. All information supplied to CSC by EPA for use in connection with this contract will be returned to EPA when CSC has completed its work.

Dated: January 17, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-2280 Filed 2-4-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100098; FRL-4043-7]

Science Applications International Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Science Applications International Corporation (SAIC) has been awarded a contract to perform work for the EPA Office of Solid Waste, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2). This transfer will enable SAIC to fulfill the obligations of the contract and serves to notify affected persons.

DATES: SAIC will be given access to this information no sooner than February 10, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-W0-0025, work order 053, SAIC will assist in the development of technical guidance for the development of hazardous waste disposal regulations and inspection documents, to provide general logistics and technical support for training and outreach activities, and to support the implementation of guidance for States and EPA Regional Offices. This work order involves no subcontractor.

The Office of Solid Waste and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(i)(2), the contract with SAIC prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SAIC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Work Order Manager for this contract in the EPA Office of Pesticide Programs. All information supplied to SAIC by EPA for use in connection with this contract will be returned to EPA when SAIC has completed its work.

Dated: January 17, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-2282 Filed 2-4-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100099; FRL-4043-8]

Mitchell Systems Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Mitchell Systems Corporation has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Mitchell Systems Corporation consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2). This transfer will enable Mitchell Systems Corporation to fulfill the obligations of the contract and serves to notify affected persons.

DATES: Mitchell Systems Corporation will be given access to this information no sooner than February 10, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-D9-0040, Mitchell Systems Corporation will provide a data base to support a program for the management of suspended, canceled and recalled pesticides. The data base will be developed as a prototype to provide for the immediate requirements of the parathion program. This system will combine data and information from various data bases within EPA. The data base will be expanded to satisfy the total requirements of EPA's program for the management of suspended, canceled and recalled pesticides. This contract involves no subcontractor.

The Office of Pesticide Programs has determined that access by Mitchell Systems Corporation to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Mitchell Systems Corporation prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Mitchell Systems Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officers for this contract in the EPA Office of Pesticide Programs. All information supplied to Mitchell Systems Corporation by EPA for use in connection with this contract will be returned to EPA when Mitchell Systems Corporation has completed its work.

Dated: January 17, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-2283 Filed 2-4-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-100100; FRL-4043-9]

Computer Sciences Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Computer Sciences Corporation (CSC) has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to CSC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(h)(2). This transfer will enable CSC to fulfill the obligations of the contract and serves to notify affected persons.

DATES: CSC will be given access to this information no sooner than February 10, 1992.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7460.

SUPPLEMENTARY INFORMATION: Under Contract No. 68-W0-0043, work order No. 444, CSC will provide technical support in the enhancement of an automated reference data base of pesticide use information derived from labeling of registered pesticide products. CSC will also assist in enhancing the operating software and expanding the repertoire of the reports and integration with other existing OPP data base systems. This contract involves no subcontractor.

The Office of Pesticide Programs has determined that access by CSC to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with CSC prohibits use of the information for any purpose other than purposes specified in the contract; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, CSC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officers for this contract in the EPA Office of Pesticide Programs. All information supplied to CSC by EPA for use in connection with this contract will be returned to EPA when CSC has completed its work.

Dated: January 17, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-2281 Filed 2-4-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-30329; FRL-4009-3]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 6, 1992.

ADDRESSES: By mail submit comments identified by the document control number (OPP-30329) and the registration/file number, attention Product Manager (PM) named in each application at the following address: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Attn: (Product Manager (PM) named in each registration), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

In person: Contact the PM named in each registration at the following office location/telephone number:

Product Manager	Office location/ telephone number	Address
PM10 Richard Mountfort	Rm. 208, CM #2 (703-305-6502).	Environmental Protection Agency 1921 Jefferson Davis Hwy Arlington, VA 22202
PM 18 Phil Hutton	Rm. 213, CM #2 (703-305-7690).	-Do-
PM 22 Cynthia Giles-Parker	Rm. 229, CM #2 (703-305-5540).	-Do-

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 59228-R. Applicant: Horse Sense Inc., 3200 Jasmine Drive, Delray Beach, FL 33483. Product name:

Flea Flee Pet Collar. Repellent. Active ingredients: Brewer's yeast 97.9 percent and Garlic powder 1.25 percent. Proposed classification/Use: None. For use on dogs and cats to kill fleas. Type registration: Conditional. (PM 10)

2. File Symbol: 65262-R. Applicant: L and F Enterprises, Ltd. Oak Brook Plaza, 2211 York Rd, Suite 207, Oak Brook, IL 60521. Product name: MF-201. Insecticide. Active ingredient: Sodium carboxymethyl cellulose 100 percent. Proposed classification/Use: None. For control of aphids, whiteflies, mites, and other insects on indoor and outdoor ornamentals and vegetable plants. (PM 10)

3. File Symbol: 707-EGN. Applicant: Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. Product name: RH-7592 Technical Agricultural Fungicide. Fungicide. Active ingredient: Fenbuconazole alpha-[2-(4-chlorophenyl) ethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile 98.3 percent. Proposed classification/Use: None. For formulation and manufacture of fungicides only. (PM 22)

4. File Symbol: 707-EGR. Applicant: Rohm and Haas Co. Product name: Indar 2F Agricultural Fungicide. Fungicide. Active ingredient: Fenbuconazole alpha-[2-(4-chlorophenyl) ethyl]-alpha-phenyl-1*H*-1,2,4-triazole-1-propanenitrile 22.8 percent. Proposed classification/Use: General. For control of certain diseases on pecans and stonefruits. (PM 22)

5. File Symbol: 63947-A. Applicant: Bactec Corporation, 9601 Katy Freeway, Suite 350, Houston, TX 77024. Product name: Bactec Technical Powder II. Insecticide. Active ingredient: *Bacillus thuringiensis*, var *morrisoni*, at 97.9 percent. Proposed classification/Use: General. For formulating use only into registered end-use insecticides. (PM 18)

6. File Symbol: 63947-L. Applicant: Bactec Corporation. Product name: Bactec Bernan II Biological Larvicide Dry Flowable. Insecticide. Active ingredient: *Bacillus thuringiensis*, var *morrisoni*, at 3.2 percent. Proposed classification/Use: General. For the control of larval pests in fields and greenhouses. (PM 18)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operations Division (PRPRB) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PRPRB office (703-305-5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: January 24, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-2538 Filed 2-4-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-51785; FRL 4047-8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of 31 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-416, 92-417, 92-418, 92-419, 92-420, 92-421, 92-422, 92-423, April 19, 1992.

P 92-424, 92-425, 92-426, 92-427, 92-428, 92-429, 92-430, 92-431, 92-432, 92-433, 92-434, 92-435, 92-436, 92-437, 92-438, 92-439, 92-440, 92-441, 92-442, 92-443, April 20, 1992.

P 92-444, 92-445, 92-446, April 21, 1992.

Written comments by:

P 92-416, 92-417, 92-418, 92-419, 92-420, 92-421, 92-422, 92-423, March 20, 1992.

P 92-424, 92-425, 92-426, 92-427, 92-428, 92-429, 92-430, 92-431, 92-432, 92-433, 92-434, 92-435, 92-436, 92-437, 92-438, 92-439, 92-440, 92-441, 92-442, 92-443, March 21, 1992.

P 92-444, 92-445, 92-446, March 22, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-51785)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. L-100, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The completenonconfidential document is available in the TSCA Public Docket Office NE -G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-416

Importer. Confidential.

Chemical. (G) N-Butyl methacrylate, polymer with methacrylic acid, methyl methacrylate, glycidyl methacrylate derivative and 2-hydroxyethyl methacrylate derivative.

Use/Import. (G) Ingredient of photoresist. Import range: Confidential.

Toxicity Data. Mutagenicity: negative.

P 92-417

Importer. Confidential.

Chemical. (G) Ester of diazo naphthoquinone.

Use/Import. (G) Ingredient of photoresist. Import range: Confidential.

Toxicity Data. Mutagenicity: negative.

P 92-418

Manufacturer. Ciba-Geigy Corporation.

Chemical. (G) 3,3'-Diaminodiphenyl sulfone, epoxide adduct.

Use/Production. (S) Aerospace adhesive. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 4,490 mg/kg species (rat). Acute dermal toxicity: > 4,000 mg/kg species (rabbit).

P 92-419

Importer. Huls America, Inc.

Chemical. (G) Reaction product of aryl and alkyl dicarboxylic acids and alkane diols with isocyanato cycloalkyl urethane.

Use/Import. (G) Curable polymer. Import range: Confidential.

P 92-420

Manufacturer. Confidential.
Chemical. (G) Modified chlorinated hydrocarbon.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 8,000–25,000 kg/yr.

P 92-421

Manufacturer. Confidential.
Chemical. (G) Modified chlorinated hydrocarbon.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 8,000–25,000 kg/yr.

P 92-422

Manufacturer. Confidential.
Chemical. (G) Modified chlorinated hydrocarbon.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 8,000–25,000 kg/yr.

P 92-423

Manufacturer. Confidential.
Chemical. (G) 2,5-Dimercapto-1,3,4-thiadiazole reaction product.
Use/Production. (S) Additive for lubricants. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 6.48 g/kg species (rat). Acute dermal toxicity: > 2.0 m/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-424

Manufacturer. Confidential.
Chemical. (G) 2,5-Dimercapto-1,3,4-thiadiazole reaction product.
Use/Production. (S) Additive for lubricants. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 6.48 g/kg species (rat). Acute dermal toxicity: > 2.0 m/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-425

Manufacturer. R.T. Vanderbilt Company, Inc.
Chemical. (G) 2,5-Dimercapto-1,3,4-thiadiazole reaction product.
Use/Production. (S) Additive for lubricants. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 6.48 g/kg species (rat). Acute dermal toxicity: > 2.0 m/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-426

Manufacturer. R.T. Vanderbilt Company, Inc.
Chemical. (G) 2,5-Dimercapto-1,3,4-thioadiazole reaction product.
Use/Production. (S) Additive for lubricants. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 6.48 g/kg species (rat). Acute dermal toxicity: > 2.0 m/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-427

Manufacturer. R.T. Vanderbilt Company, Inc.
Chemical. (G) 2,5-Dimercapto-1,3,4-thiadiazole reaction product.
Use/Production. (S) Additive for lubricants. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 6.48 g/kg species (rat). Acute dermal toxicity: > 2.0 m/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-428

Manufacturer. R.T. Vanderbilt Company, Inc.
Chemical. (G) 2,5-Dimercapto-1,3,4-thiadiazole reaction product.
Use/Production. (S) Additive for lubricants. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 6.48 g/kg species (rat). Acute dermal toxicity: > 2.0 m/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-429

Manufacturer. R.T. Vanderbilt Company, Inc.
Chemical. (G) 2,5-Dimercapto-1,3,4-thiadiazole reaction product.
Use/Production. (S) Additive for lubricants. Prod. range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 6.48 g/kg species (rat). Acute dermal toxicity: > 2.0 m/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-430

Importer. Confidential.
Chemical. (G) (Diamino sulfophenyl)azo-(chlorophenyl)azo-(dimethoxyphenyl)azo-4-hydroxy-2-naphthalenesulfonic acid sodium salt.
Use/Import. (G) Open, nondispersive use. Import range: Confidential.
Toxicity Data. Acute oral toxicity: LD50 > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit).

P 92-431

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted metanilic acid salt.
Use/Production. (S) Intermediate for dyestuff synthesis. Prod. range: 12,500–37,500 kg/yr.

P 92-432

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted metanilic acid salt.
Use/Production. (S) Intermediate for dyestuff synthesis. Prod. range: 12,500–37,500 kg/yr.

P 92-433

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted metanilic acid salt.
Use/Production. (S) Intermediate for dyestuff synthesis. Prod. range: 12,500–37,500 kg/yr.

P 92-434

Importer. Hoechst Celanese Corproation.
Chemical. (G) Oil modified alkyd resin, amine salt.
Use/Import. (S) Water dilutable alkyd resin for water based fillers. Import range: 22,500–32,000 kg/yr.

P 92-435

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalene disulfonic acid.
Use/Production. (S) Intermediate for dyestuff synthesis. Prod. range: 12,500–37,500 kg/yr.

P 92-436

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalene disulfonic acid.
Use/Production. (S) Intermediate for dyestuff synthesis. Prod. range: 12,500–37,500 kg/yr.

P 92-437

Manufacturer. Hoechst Celanese Corporation.
Chemical. (G) Substituted naphthalene disulfonic acid.
Use/Production. (S) Intermediate for dyestuff synthesis. Prod. range: 12,500–37,500 kg/yr.

P 92-438

Importer. Hoechst Celanes Corporation.
Chemical. (G) Modified acrylic copolymer, amine salt.

Use/Import. (G) Auto paint. Import range: 200–1,500 kg/yr.

P 92–439

Importer. Hoechst Celanese Corporation.

Chemical. (G) Saturated carboxylated polyester resin.

Use/Import. (S) Resin for formulation of powder coating. Import range: 22,500–32,000 kg/yr.

P 92–440

Manufacturer. Confidential.

Chemical. (G) Polyurethane resin.

Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.

P 92–441

Manufacturer. Interplastic Corporation.

Chemical. (G) Vinyl ester resin.

Use/Production. (S) Coating resin. Prod. range: 225,000–1,000,000 kg/yr.

P 92–442

Manufacturer. Uniroyal Chemical Company.

Chemical. (G) Aryl-alkyl substituted nitrogen heterocycle.

Use/Production. (S) Chemical blowing agent for plastics. Prod. range: Confidential.

Toxicity Data. Eye irritation: practically none species (rabbit). Skin irritation: minimal species (rabbit). Skin sensitization: negative species (guinea pig).

P 92–443

Importer. Air-Products and Chemicals, Inc.

Chemical. (G) Vinylchloride-ethylene-vinyllaurate terpolymer.

Use/Import. (S) Resin binder. Import range: Confidential.

P 92–444

Manufacturer. E.I.Du Pont De Nemours & Co., Inc.

Chemical. (G) Silane grafted ethylene based polymer.

Use/Production. (G) Sealant. Prod. range: Confidential.

P 92–445

Manufacturer. Confidential.

Chemical. (G) Fatty acid amine condensate, polycarboxylic acid salts.

Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

P 92–446

Manufacturer. Confidential.

Chemical. (G) Coco acid triamine condensate, polycarboxylic acid salts.

Use/Production. (G) Corrosion inhibitor. Prod. range: Confidential.

Dated: January 30, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–2757 Filed 2–4–92; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL ELECTION COMMISSION

[Notice 1992–2]

Computerized Magnetic Media Requirements for Presidential Committees

AGENCY: Federal Election Commission.

ACTION: Announcement of Changes to the Computerized Magnetic Media Requirements for Presidential Primary and General Election Committees.

SUMMARY: The Commission has revised its document entitled "Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding" (CMMR). The CMMR sets forth technical standards designed to ensure the compatibility of magnetic media provided for Commission use during the matching fund submission process and mandatory audits of these publicly-funded campaign committees. These changes provide campaigns with more options than the former version. The Revised CMMR is available on request from the Commission's Public Records Office or the Audit Division. Further information is provided in the supplementary information which follows:

EFFECTIVE DATE: January 30, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph F. Stoltz, Deputy Assistant Staff Director; or Richard L. Hooper, Director, Data Systems Development Division; 999 E Street, NW., Washington, DC 20463, (202) 219–3720 (Mr. Stoltz), (202) 219–3730 (Mr. Hooper), or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On June 21, 1990, the Federal Election Commission adopted a document entitled "Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding" (CMMR). The CMMR sets forth technical standards designed to ensure the compatibility of magnetic media provided for Commission use during the matching fund submission process and the mandatory audits of publicly-funded Presidential campaign committees. Each Presidential candidates must agree to maintain and provide computerized magnetic media in the format prescribed by the CMMR, if the committee maintains or uses computerized information containing any specified categories of data. See 11 CFR 9003.1(b)(4) and 9033.1(b)(5).

The technical standards in the CMMR include general requirements for magnetic tape and magnetic diskettes, as well as file format specifications for records of receipts and disbursements, including contributors, vendors, invoices, bank accounts and check files. The revisions to these standards provide campaigns more options than the previous version. All are contained in page 2 under section 3 of the CMMR.

First, the maximum amount of data that may be submitted on diskette has been increased from 10 megabytes to 20.

Second, the versions of MS–DOS that the Commission will accept have been expanded from 2.1–4.01 to 2.1–5.0. This change reflects the existence of more recent versions of the software.

Finally, a section has been added to permit the use of a process that some campaigns are now utilizing, data compression and decompression utilities, under certain circumstances. Before a campaign can utilize such a program, it must provide the Commission's Data Systems Development Division with a sample file, to insure compatibility with the Commission's processing equipment.

A data compression program allows substantially more data to be packed onto a single diskette than would otherwise be possible. The data decompression program restores the data to a standard format. Since campaigns are limited to one diskette per file, this program makes the use of diskettes for larger files possible. This section requires that if a data compression utility is used to create a file, the campaign must supply the corresponding data decompression utility. This will eliminate the potential for problems between various versions of the software.

The CMMR is available upon request from the Commission's Public Records Office or the Audit Division. The technical standards found in the CMMR are also included in a supplement to the Commission's Guideline for Presentation in Good Order, to ensure distribution to the committees affected by the technical specifications. The Commission continues to encourage committees to provide samples of their magnetic tape or magnetic diskettes, so that the Commission may determine whether the samples comply with the specifications established.

Please note that the technical requirements found in the CMMR are not intended to promote or discourage the use of any particular computer system or software. The Commission

believes that committees should have as much discretion as possible in selecting the computer equipment they wish to use, determining what types of financial records and information should be computerized, and deciding how the computerized information is maintained. However, committees are expected to present this financial information to the Commission in the format specified in the CMMR.

Dated: January 31, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-2754 Filed 2-4-92; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM

DunC Corp; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has 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)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application 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.

Comments regarding this application must be received not later than February 26, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. DunC Corp., Belvidere, Illinois; to become a bank holding company by acquiring 50.8 percent of the voting shares of Capron Bancorp, Inc., Capron, Illinois, and thereby indirectly acquire Capron State Bank, Capron, Illinois.

Board of Governors of the Federal Reserve System, January 30, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2730 Filed 2-4-92; 8:45 am]

BILLING CODE 6210-01-F

The Fuji Bank, Limited, 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 February 26, 1992.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. The Fuji Bank, Limited, Tokyo, Japan; to acquire certain assets of the First Capital divisision of The Financial Center Bank, N.A., San Francisco, California, and thereby to engage indirectly in commercial financing activities pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; to acquire Dakota Data Processing, Inc., Fargo, North Dakota, and thereby indirectly acquire data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 30, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2731 Filed 2-4-92; 8:45 am]

BILLING CODE 6210-01-F

Society Corp.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 26, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Society Corporation, Cleveland, Ohio; to expand the nonbanking activities of its subsidiary, Green Machine Network Corporation, North Olmstead, Ohio, to include providing data processing services to non-financial institutions pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 30, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2732 Filed 2-4-92; 8:45 am]

BILLING CODE 6210-01-F

The Tokai Bank, Limited, Nagoya, Japan; Application to Engage De Novo in Providing Investment Advice, and Execution and Clearance of Futures Contracts and Options on Futures Contracts on Stock Indexes

The Tokai Bank, Limited, Nagoya, Japan ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to acquire 25.04 percent of the outstanding voting shares of Indosuez Carr Futures Inc., Chicago, Illinois ("Company"), and thereby engage in those activities which Company is authorized to engage in by the Board. Company is currently the wholly-owned indirect subsidiary of Banque Indosuez, Paris, France, which in turn is the wholly-owned subsidiary of Compagnie de Suez, Paris, France. Company engages as a futures commission merchant in the execution and clearance on major commodity exchanges of various futures contracts and options thereon and in providing certain investment advice regarding these instruments. These activities are conducted on a nationwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Based on the guidelines established in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229, 1237 (D.C. Cir. 1975), a particular activity may be found to meet the "closely related to banking test" if it is demonstrated that: (1) Banks generally have in fact provided the proposed activity; (2) banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or (3) banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. The *National Courier* guidelines are not, however, the exclusive basis for finding a proposed activity closely related to banking, and the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking.

Company has received approval from the Board to engage in the following activities: Acting as a futures commission merchant and providing investment advice pursuant to §§ 225.25(b)(18) and (19) of the Board's Regulation Y (12 CFR 225.25(b)(18), (19)). Company has also received the Board's approval to act as a futures commission merchant with respect to, and provide investment advice on the following: The foreign currency options traded on the Philadelphia Stock Exchange ("PHLX"); the stock index options traded on the Chicago Board Options Exchange; the S&P 500 stock index futures contract and the options traded thereon traded on the Chicago Mercantile Exchange ("CME"); the Major Market Index stock index futures contract traded on the Chicago Board of Trade ("CBOT"); the Nikkei Stock Average futures contract ("Nikkei futures contract") traded on the Singapore International Monetary Exchange ("SIMEX"); the FT-SE 100 Equity Index futures contract traded on the London International Financial Futures Exchange; the Tokyo Stock Price Index futures contract ("TOPIX futures contract") traded on the Tokyo Stock Exchange ("TSE"); the Hang Seng Stock Index futures contract and options thereon traded on the Hong Kong Futures Exchange; the All Ordinaries Share Index futures contract traded on the Sydney Futures Exchange; the New York Stock Exchange Composite Index futures contract traded on the New York Futures Exchange; and the Value Line Average stock index futures contract traded on the Kansas City Board of Trade.

Company also provides brokerage and advisory services with respect to futures contracts (and options on futures contracts) on bullion, foreign exchange, government securities, Eurodollars, and other money market instruments that a bank may buy or sell in the cash market for its own account, and also executes and clears orders for PHLX foreign currency options. Company provides discount brokerage services with respect to United States Government and agency securities pursuant to § 225.25(b)(15) of the Board's Regulation Y (12 CFR 225.25(b)(15)).

In addition, by separate application Company has applied to engage *de novo* in providing investment advice and engaging in the execution and clearance on the CME of the Nikkei futures contract and options thereon, and on the CBOT of the TOPIX futures contract and options thereon. Applicant takes the position that the proposed activities with respect to the Nikkei futures contract and the TOPIX futures contract are "closely related to banking" under the *National Courier* standard.

Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously approved the execution and clearance of, and provision of investment advice with respect to, all of the futures contracts and options thereon noted above with four exceptions. *See, e.g., Chemical Banking Corporation*, 76 Federal Reserve Bulletin 660 (1990)(Standard & Poor's 500 Stock Price Index futures contract ("S&P 500") and options thereon traded on the CME); *The Long-Term Credit Bank of Japan, Limited*, 74 Federal Reserve Bulletin 573 (1988)(S&P 500; options on the S&P 500). The Board has not previously approved

the execution and clearance of the Nikkei futures contract and options thereon traded on the CME or the TOPIX futures contract and options thereon traded on the CBOT. Applicant asserts that these proposed activities are functionally similar to activities previously approved by the Board. *See, e.g., The HongKong and Shanghai Banking Corporation*, 76 Federal Reserve Bulletin 770 (1990)(Nikkei futures contract traded on the SIMEX; TOPIX futures contract traded on the TSE); *Chemical Banking Corporation, supra*. In conducting these activities, Applicant states that Company would comply with the commitments set forth in §§ 225.25(b)(18) and (19) of the Board's Regulation Y (12 CFR 225.25(b)(18), (19)), as well as the prudential limitations established by the Board in previous Orders. Accordingly, Applicant contends that the proposed activities are functionally similar to those currently being conducted by banks and bank holding companies and are therefore closely related to banking.

Applicant takes the position that the proposed activities will benefit the public. Applicant believes that the proposed activities will promote competition and provide added convenience to customers of Company and gains in efficiency. Moreover, Applicant believes that these benefits will outweigh any possible adverse effects of the proposed activities and that, indeed, no adverse effects are currently foreseen.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC, 20551, not later than February 19, 1992. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how that party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, January 30, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-2733 Filed 2-4-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0003]

RIN 0905-AA06

Antacid and Acetaminophen Combination Drug Products in a Solid Dosage Form; Marketing Status for Over-the-Counter Human Use; Notice of Enforcement Policy

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an enforcement policy allowing over-the-counter (OTC) marketing of antacid and acetaminophen combination drug products in solid oral dosage forms. The OTC marketing of such drug products is being permitted pending establishment under the OTC drug review of an amendment to the final monograph for OTC antacid drug products. FDA anticipates that antacid and acetaminophen combination products in a solid oral dosage form will be determined to be generally recognized as safe and effective and not misbranded.

EFFECTIVE DATE: The enforcement policy is effective February 5, 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-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 4, 1974 (39 FR 19862), FDA issued a final monograph for OTC antacid drug products (21 CFR part 331). Section 331.15(b) (21 CFR 331.15(b)) of the monograph provides for the combination of an antacid and any generally recognized as safe and effective analgesic ingredient(s), if the combination is indicated for use solely for concurrent symptoms, e.g., headache and acid indigestion, and is marketed in a form intended for ingestion as a solution. These combinations were limited to administration in solution because all the evidence of safety submitted for review under the rulemaking for OTC antacid drug products was derived from studies and experience with products administered as solutions (39 FR 19862 at 19869).

Subsequent to the publication of the final rule for OTC antacid drug products, the Advisory Review Panel for OTC Internal Analgesic and Antirheumatic Drug Products (the Internal Analgesic Panel) reviewed data on OTC antacid/analgesic combinations and recommended conditions for their safe and effective use in its report on OTC internal analgesic, antipyretic, and antirheumatic drug products (42 FR 35346, July 8, 1977). This Panel recommended that acetaminophen could be combined with a Category I antacid ingredient provided the product was labeled for the concurrent symptoms involved, e.g., "For the temporary relief of occasional minor aches, pains, and headache, * * *, and for acid indigestion." The Panel did not specify any specific dosage form.

In the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, published in the **Federal Register** of November 16, 1988 (53 FR 46204), FDA proposed that acetaminophen may be combined with any antacid ingredient(s) and may be labeled only for concurrent symptoms (see § 343.20(b)(1), 53 FR 46204 at 46255). In the same issue of the **Federal Register** (53 FR 46190), FDA also published a notice of proposed rulemaking to amend the final monograph for OTC antacid drug products to revise the conditions for marketing combination antacid/analgesic drug products. The agency proposed to update the antacid final monograph to be consistent with the proposals being made in part 343 (the internal analgesic, antipyretic, and antirheumatic tentative final monograph) to allow: (1) Antacid and acetaminophen ingredients to be combined and labeled only for concurrent symptoms, and (2) aspirin and antacid ingredients when marketed in a form intended for ingestion as a solution to be combined and labeled for concurrent symptoms as well as analgesic indications alone. The agency also stated that because of the interrelationship of the amendment to the antacid final monograph and the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, the agency did not intend to finalize the amendment to the antacid monograph until the comments to the internal analgesic, antipyretic, and antirheumatic tentative final monograph have been fully evaluated. Interested persons were given until March 16, 1989 to submit comments or objections to the proposal to amend the antacid monograph. No comments or objections were received.

After carefully reviewing all of the available information regarding antacid-acetaminophen combination drug products, the agency is issuing a notice of enforcement policy permitting OTC marketing of these drug products in a solid oral dosage form, a new dosage form that has not previously been marketed. The agency has determined that there are no unresolved safety or effectiveness issues relating to the OTC use of antacid-acetaminophen combination drug products in a solid oral dosage form. Accordingly, the agency finds no reason to continue to bar the interim marketing of such products.

As noted above, the November 16, 1988 proposed amendment of the antacid monograph also addressed aspirin and antacid combinations in a form intended for ingestion as a solution. Such combination drug products are presently being marketed. Therefore, it is not necessary to address their marketing status in this notice.

The agency advises that any antacid ingredient in § 331.11 (21 CFR 331.11) may be combined with acetaminophen in a solid oral dosage form (in accord with proposed § 343.20(b)(1) (53 FR 46204 at 46255)) provided the product is intended and labeled for OTC use only for the concurrent symptoms involved, i.e., "For the temporary relief of minor aches and pains with * * * heartburn, sour stomach, or acid indigestion * * *." See proposed § 343.60(b)(2) (53 FR 46258). Such products may be marketed pending issuance of a final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products and an amendment to the final monograph for OTC antacid drug products to provide for this new antacid-acetaminophen combination and dosage form. Marketers of such products are subject to the risk that the agency may, in the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products, or in the amendment to the final monograph for OTC antacid drug products, adopt a other regulatory action.

Because the antacid component of this combination drug product is regulated by a final monograph, marketing of antiacid-acetaminophen combination drug products with labeling that is not in accord with the labeling proposed in the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (proposed 21 CFR part 343) and contained in the current final monograph for OTC antacid drug products (21 CFR part 331) may result in regulatory action against the product, the marketer, or both. The labeling for antacid-acetaminophen combination drug products in a solid oral dosage form is stated below. This labeling is required for marketing any antacid-acetaminophen combination drug product for ingestion in a solid oral dosage form.

Statement of Identity

For a combination drug product that has an established name, the labeling of the product states the established name of the combination drug product, followed by the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For a combination drug product that does not have an established name, the labeling of the product states the statement of identity for each ingredient in the combination, as established in the statement of identity sections of the applicable OTC drug monographs. For antacid-acetaminophen combination drug products, the statement of identity for the antacid component in § 331.30(a) and the statement of identity for the internal analgesic component in proposed § 343.50(a) must be used.

Indications

The labeling of the product states, under the heading "Indications," the indication(s) for each ingredient in the combination, as identified in proposed § 343.60(b)(2).

Warnings

The labeling of the product states, under the heading "Warnings," the applicable warning(s) for each ingredient in the combination, as established in the warnings sections in § 331.30(c) and in proposed § 343.50(c) and in the drug interaction precautions section in § 331.30(d).

Directions

The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in section § 331.30(e) and in proposed § 343.50(d). When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product may not exceed any maximum dosage limits established for the individual ingredients in § 331.11 and in proposed § 343.50(d).

Warnings and directions for use, respectively, applicable to each ingredient in the product may be combined to eliminate duplicate words or phrases so that the resulting information is clear and understandable.

The final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products and the amendment to the final monograph for OTC antacid drug products, when published, will establish the final labeling requirements for OTC antacid-acetaminophen combination drug products in a solid oral dosage form.

Interested persons may submit written comments to the Dockets Management Branch (address above). Such comments will be considered in determining whether further amendments to or revisions of this policy are warranted. Three copies of all comments shall be submitted, except that individuals may submit single copies. 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.

Dated: January 30, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-2727 Filed 2-4-92; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Low Income Levels for Health Professions and Nursing Programs

The Health Resources and Services Administration (HRSA) is updating income levels used to identify a "low income family" for the purpose of providing training for individuals from disadvantaged backgrounds under various health professions and nursing programs included in titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the Federal Register low income levels used by the Public Health Service for grants and cooperative agreements to institutions providing training for individuals from disadvantaged backgrounds. A "low income level" is one of the factors taken into consideration to determine if an individual qualifies as a disadvantaged student for purposes of health professions and nursing programs.

The programs under the Act that use "low income levels" as one of the factors in determining disadvantaged backgrounds include the Health Careers Opportunity Program (section 787), the Program of Financial Aid for Disadvantaged Health Professions Students (section 787(b)), the Scholarships for Undergraduate

Education of Professional Nurses Grant Program (section 843), and Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds (section 827). Loans to Disadvantaged Students (section 740(c)), Scholarships for Health Professions Students From Disadvantaged Backgrounds (section 760), Disadvantaged Health Professions Faculty Loan Repayment Program (section 761) were added to title VII by the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101–527) and are also using the low income levels. Other factors used in determining "disadvantaged backgrounds" are included in individual program regulations and guidelines.

Health Careers Opportunity Program (HCOP), Section 787

Awards grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, podiatric medicine, allied health, chiropractic and public or nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities that assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools.

Financial Aid for Disadvantaged Health Professions Students (FADHPS), Section 787(b)

Awards grants to accredited schools of medicine, osteopathic medicine, and dentistry to provide financial assistance, without a service or financial obligation, to individuals from disadvantaged backgrounds who are of exceptional financial need, to help pay for their health professions education.

Scholarships for Undergraduate Education of Professional Nurses (SUEPN), Section 843

Awards grants to accredited schools of nursing to provide financial assistance, with a service obligation, for tuition and fees to individuals who are enrolled as undergraduate nursing students in diploma, associate, or baccalaureate degree programs, or in programs of nursing education leading to a first degree in professional nursing and who are in financial need with respect to attending these schools. Schools must give preference in awarding scholarships to individuals from disadvantaged backgrounds.

Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds, Section 827

Awards grants to accredited schools of nursing and other public or nonprofit private entities to meet costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds.

Loans to Disadvantaged Students, Section 740(c)

Awards are made to certain accredited schools of medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, and veterinary medicine for financially needy students from disadvantaged backgrounds.

Scholarships for Health Professions Students From Disadvantaged Backgrounds, Section 760

Awards grants to schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, allied health, or public health, or schools that offer graduate programs in clinical psychology for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who enrolled (or are accepted for enrollment) as full-time students.

Disadvantaged Health Professions Faculty Loan Repayment Program, Section 761

Awards grants to repay the health professions education loans of disadvantaged health professionals who have agreed to serve for at least 2 years as a faculty member of a school of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or a school that offers a graduate program in clinical psychology.

The following income figures were taken from low income levels published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal programs. That index includes multiplication by a factor of 1.3 for adaptation to health professions and nursing programs which support training for individuals from disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1991.

Size of parents family [1]	Income level [2]
1	$9,100
2	11,800
3	14,100
4	18,000
5	21,300
6 or more	23,900

[1] Includes only dependents listed on Federal income tax forms.
[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1991.

Dated: January 30, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–2764 Filed 2–4–92; 8:45 am]

BILLING CODE 4160–15–M

Indian Health Service

List of Recipients of Indian Health Scholarships Under the Indian Health Scholarship Program

The regulations governing Indian Health Care Improvement Act Programs (Pub. L. 94–437) provide at 42 CFR 36.334 that the Indian Health Service shall publish annually in the **Federal Register** a list of recipients of Indian Health Scholarships, including the name of each recipient, school and tribal affiliation, if applicable. These scholarships were awarded under authority of section 102 and 104 of Public Law 100–713, The Indian Health Care Amendments of 1988 (25 U.S.C. 1613–1613a). The following is a list of Indian Health Scholarship recipients for Fiscal Year 1991:

Aaberg, Aaden-Elleph, University of Alaska, Aleut
Abeita, Camila Ann, University of New Mexico, Isleta Pueblo
Adair, Nonita B., University of Arizona, Navajo
Adkins, Torland Eugene, Weber State College, Chickahominy
Adkison, Dean Wendell, Loma Linda University, Aleut
Akins, Thea Lorena, Weber State College, Penobscot
Albert, Corrina Dynalle, New Mexico State University, Laguna Pueblo
Albert, Melissa Francine, New Mexico State University, Navajo
Allard, Stephanie Marie, North Dakota State University, Turtle Mt. Chippewa
Allen, Phylomine W., University of South Dakota, Turtle Mt. Chippewa
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Arviso, Angela Mary, Arizona State University, Navajo
Arviso, Anthony Lionel, Eastern New Mexico University, Navajo
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Barnett Sr., Ronald Ray, Boston University, Creek
Barrong, Michael Todd, University of Washington, Choctaw
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Bartmess, Valene Nancy, University of Oklahoma, Creek
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Becenti, Roland, Northern Arizona University, Navajo
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Begay, Lelia, Mohave Community College, Navajo
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Benally, Cheryl Lynn, University of Arizona, Navajo
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Berryhill, Wayne Edward, University of Oklahoma, Creek
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Johnson, Shari Kaye, North Dakota State University, Minnesota Chippewa
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Quam, Paula, University of New Mexico, Zuni
Quam, Yolana Margaret, University of New Mexico, Navajo
Quisno, Jacqueline Elaine, Montana State University, Oglala
Red Cloud, Linda Ann, Oglala Lakota College, Oglala Sioux
Redman, Teresa Leah, University of Miami, Delaware Tribe
Reece, Donna Jean, Northeastern Oklahoma State University, Cherokee
Reed, Robin Anne, Western Carolina College, Eastern Band Cherokee
Reidhead, Charles Tyler, University of Colorado, Three Affiliated
Reynolds, Victoria A., University of Nevada, Te-Moak Western Shoshone
Rhoads, Michael Shawn, Northeastern State University, Cherokee
Rhodes, Sherry-Lynne, East Central University, Creek
Richards-Senior, Ella Day, University of North Dakota, Oglala Sioux
Riggs, Jr., Jack, Southern Illinois University, Cheyenne
Roanhorse, Elaine Yazzie, New Mexico State University, Navajo
Roberts, Matthew Johnson, Northeastern Oklahoma A & M College, Creek
Rock, Dianna Joy, University of Montana, Blackfeet
Rock, Patrick Michael, University of North Dakota, Minnesota Chippewa
Rohr, Katherine Marie, Grays Harbor College, Quileute
Roubidoux, Katy Jen, Tulsa Junior College, Creek
Rutter IV, James Dull, University of Oklahoma, Cherokee
Sam, Orena Ann, University of New Mexico, Navajo
Samson, Debra Ellen, University of Alaska, Alaska Native
Sandoval, Lucinda, University of New Mexico, San Felipe Pueblo
Sandoval, Philip, University of New Mexico, San Felipe Pueblo
Santiago, Jacqueline Kaye, Marymount University, Blackfeet
Sargent, Christopher John, Western Washington University, Eskimo
Saunsoci, Deborah Mae, Dakota Westleyan University, Yankton Sioux
Sawyer, Marie Louise, University of Oklahoma, Kiowa
Schlidt, Brenda, Northern Arizona University, San Carlos Apache
Schroeder, Debbie Joyce, University of North Dakota, Turtle Mt. Chippewa
Scott, Larry Brent, Oklahoma Christian College, Cherokee
Scott, Mary, Northern Arizona University, Navajo
Self, Andrea Joy, Connors State College, Cherokee
Shackelford, Michael, University of Oklahoma, Osage
Shadaram, Cynthia Donna, Southwestern Oklahoma State University, Cheyenne
Shangreau, Geraldine, University of Bridgeport, Oglala Sioux
Shepro, Constance Ann, Bellin College of Nursing, Potawatomie
Shields, Marion Louise, Salish-Kootenai, Upper Sioux
Shipp, Darren, Southeastern Oklahoma State University, Ponca
Shuman, Tweed W., Wisconsin Indianhead Tech. College, Lake Superior Chippewa
Simeona, Carmelita Davis, University of New Mexico, Navajo
Simon, Ramona Patricia, Cheyenne River Lakota, Cheyenne
Simpson, Colleen Mae, University of North Dakota, Crow
Simpson, Loren Patrick, University of North Dakota, Washoe
Singer, Christine, University of New Mexico, Navajo
Sky, Francine, University of New Mexico, Navajo
Small, Arlene, Salish-Kootenai College, Assiniboine
Smallcanyon, Elroy, Pima Medical Institute, Navajo
Smalley, Jack Owen, University of Missouri, Standing Rock Sioux
Smith, Judith Marlene Billi, Nicholls State University, United Houma Nation
Smith, Lisa Lynn, Northeastern State University, Chickasaw
Smith, Margie Ida, University of Washington, Kiana Village
Smith, Marian D., University of Hawaii, Confederated Tribes of Yakima
Smith, Martin Douglas, Washington State University, Assiniboine
Smith, Rhoda Ellena, Dartmouth Medical School, Te-Moak Shoshone
Smith, Theresa Marie, Lutheran College, Winnebago
Snyder, Orrenzo Benally, University of Iowa, Navajo
Soap, Chris Lee, Northeastern State University, Cherokee
Spencer, April Lee, Northeastern State University, Choctaw
Spencer, Irene B., Albuquerque Technical Vocational Institute, Navajo
St. John, Arlene Ernestine, South Dakota State University, Crow Creek
Standingwater, Louella Ann, Flaming Rainbow, Cheyenne
Starritt, Glenna Ann, California State University/Chico, Hoopa Valley
Stevens, Andrew Levi, University of North Dakota, Cheyenne
Stewart, Millie Faith, Montana State University, Crow
Street, Ivenette Dolores, Montana State University, Tonkawa
Street Jr., Willie Jesse, Wichita State University, Tonkawa
Strickland, Steve Allen, Pembroke State University, Lumbee
Sully, Debra Jo, Oglala Lakota College, Rosebud Sioux
Summers, Heather Dawn, East Central Oklahoma State University, Chickasaw
Sunday, Robyn Rachelle, University of South Carolina, Cherokee
Susan, Myrtis, Central Arizona University, White Mountain Apache
Taber, Sherra, Eastern Oklahoma State College, Choctaw
Talbert, Yoland J., University of Colorado, Navajo
Tapaha, Tobias Titus, Northeastern State University, Navajo
Taylor, Alice-Faye, Oklahoma University Heath Science Center, Choctaw
Taylor, Lori Lynn, Western Carolina University, Eastern Band of Cherokee
Teague, Gloria Ann, University of Oklahoma, Cherokee
Teehee, Michael Don, Conner State College, Cherokee
Teller, Donnell Rae, Northern Arizona University, Navajo
Thomas, Jennifer Lee, Turtle Mountain Community College, Turtle Mt. Chippewa
Thomas, Pauletta, University of New Mexico, Navajo
Thomas, Quinton Keith, University of North Dakota, Navajo
Thompson, Karen-Lee, South Dakota State University, Cheyenne
Thompson, Tracy Lee, College of Osteopathic Medicine, Oklahoma State, Cherokee
Thomsen, Randall Vernon, Stanford University, Pit River Indian Tribe
Thornton, Luella Vann, Loma Linda University of Public Health, Cherokee
Thurber, Wanda Faye, Bacone College, Cherokee
Tims, Janice Kathleen, University of Oklahoma, Choctaw
Tincher, Michelle, University of North Dakota, Ft. Belknap
Tobias, Scott Warren, Pacific University College of Optometry, Creek
Todicheeney, Debbie B., Gateway Community College, Navajo
Tollefsen, Cheryl Collins, University of North Dakota, Arapahoe
Toppah-Bearbow, Kathleen Louise, Southwestern Oklahoma State University, Kiowa
Torivio, Cheryl Ann, New Mexico Highland University, Hopi
Towne, Jana Marie, Pacific Lutheran University, Hydaburg
Trottier, Timothy Carl, Washington University, Turtle Mt. Chippewa
Truesdell, Michael Paul, University of Arizona, White Mountain Apache
Tsadiasi, Glenda, University of New Mexico, Zuni
Tsatoke, Gordon Dale, University of Oklahoma, Kiowa
Two Bears, Shantell Marie, University of North Dakota, Standing Rock Sioux
Underwood, Michael Randolph, University of Oklahoma, Navajo
Valderas, Anna M., University of Oklahoma Health Science Center, Choctaw
Van Curen, Preston Lee, University of Wyoming, Seneca

Van Tuyl-Ziegler, Amy Sandell, University of Oklahoma, Cherokee
Vanatta, Elizabeth Ann, Neosho County College, Cherokee
Vanbuskirk, Paula Elaine, University of Oklahoma, Chicksaw
Vandall, Kristen Dawn, Northern Montana College, Turtle Mt. Chippewa
Varner, Denise Ann, Humboldt State University, Creek
Veit, Lisa Marie, Cheyenne River Lakota, Cheyenne
Vent, Liza Sarah, University of Alaska, Huslia
Vicenti, Nelson, University of New Mexico, Redwood Valley Rancherio of Pomo
Vickers, Francine Judith, University of New Mexico, Isleta Pueblo
Vilas, Arleigh Wayne, Bemidji State University, Minnesota Chippewa
Vizenor, Kristi Jeanne, North Dakota State University, Minnesota Chippewa
Waconda, Alan Keith, Weber State College, Laguna Pueblo
Wagner, Sharon Silvas, University of California, Blackfeet
Wahkinney, Michael Allen, University of Oklahoma, Comanche
Waldroup, Anthony Wayne, Southeastern Oklahoma State, Tonkawa
Walker, Carrie Ann, University of North Dakota, Creek
Walker, Thomas Stuart, University of North Dakota, Three Affiliated
Wanna, Katherine Nora, University of North Dakota, Sisseton
Wanoskia, Floydina Shelley, University of New Mexico, Jicarilla Apache
Warhol, Peter Joseph, University of Minnesota, Sisseton
Warren, William Earl, University of Minnesota, Minnesota Chippewa
Watts, Kenneth L., Southwestern State College School of Pharm., Choctaw
Weasel Bear, Lucille Pansy, Oglala Lakota College, Oglala Sioux
Webber Jr., George Stewart, University of Montana, Blackfeet
Webster, Nina Theodora, Mount St. Mary's College, Isleta Pueblo
Wedding, Pamella Sue, Oklahoma State University, Cherokee
Welch, Trudy Ella, Western Carolina University, Eastern Band Cherokee
Wells, Craig James, South Dakota School of Mines & Technology, Cheyenne
Wero, Anthony, Northern Arizona University, Navajo
Wesley, Carol Joy, University of Tulsa, Red Lake Chippewa
West, Jess, Cheyenne River Lakota, Cheyenne
West Jr., Michael Curtis, University of Maryland, Choctaw
Westbrook, Sonja Marie, California School of Professional Psychology, Comanche
Wetselline, Michael Lynn, University of Science & Arts of Oklahoma, Apache
White Eyes, Robbi, Cheyenne River Lakota, Cheyenne
White Horse, Marilyn Ruth, University of North Dakota, Three Affiliated
White Horse, Wyatt Arthur, Augustana College, Rosebud Sioux
Whiterock, Sue Ann, University of New Mexico, Navajo
Whiteskunk, Anna Marie, Southwestern Oklahoma State University, Cheyenne
Widow, Norma Mary, Cheyenne River Lakota, Cheyenne
Wiegand, Shannon Lea, University of Washington, Chippewa
Wight, Teresa Lynn, Carroll College, Crow
Wilcox, Christopher Michael, Northeastern State University, Cherokee
Wilkie, Penny Marie, University of North Dakota, Turtle Mt. Chippewa
Wilkie, Tracy A., University of North Dakota, Turtle Mt. Chippewa
Willhoite, Lois Darlene, Rogers State College, Cherokee
Williams, Bonnie-Loretta, University of Tulsa, Cherokee
Williams, Carmelita Jean, University of New Mexico, Navajo
Williams, Jeana Lynn, George Washington University, Cherokee
Williams, Karen Elizabeth, University of Alaska, Alaska
Williams, Pauletta Lynn, Arizona State University, Navajo
Williams, Randall Alan, East Central University, Chickasaw
Williams, Regina, University of New Mexico, Navajo
Williams, Verdi Elizabeth, Pacific Lutheran University, Sitka
Williams, Vern Raymond, Boise State University, Creek
Williams, Veronica J., Georgetown Univ. School of Medicine, Jicarilla Apache
Williams, Winona Delores, Salish-Kootenai College, Ft. Belknap
Williamson, Tracy Lynn, University of Montana, Blackfeet
Wills, Susan Elaine, University of Missouri, Creek
Wilson, Lavina Mae, Eastern Oklahoma State College, Choctaw
Wind, William Alva, Eureka College, Creek
Wood, Scott Edward, East Central Oklahoma State University, Chickasaw
Wood, Susan Kay, University of Tulsa, Cherokee
Wright, Wenda Leann, University of New Mexico, Rosebud Sioux
Wynecoop, Teresa Ann, Eastern Washington State College, Spokane
Yazzie, Elvira Eva, Northern Arizona University, Navajo
Yazzie, Laura, University of New Mexico, Navajo
Yazzie, Lucille, University of Utah, Navajo
Yellow Cloud, Kendra Estelle, South Dakota State University, Oglala
Yellowman, Marilyn Frances, Mesa Community College, Navajo
Yellowmule, Luzenia Angela, Rocky Mountain College, Crow
Yonnie, Albert, Northern Arizona University, Navajo
Young, Roseann, Mesa Community College, Navajo
Yuselew, Melissa, New Mexico State University, Zuni
Zaste, Sherri Lynne, University of North Dakota, Turtle Mt. Chippewa
Zavala, Geneva Dawn, University of Oregon, Colville
Zegiel, Catherine Marie, Weber State College, Standing Rock Sioux
Zonnie, Bertha C., Northern Arizona University, Navajo

FOR FURTHER INFORMATION CONTACT: Mr. Wesley J. Picciotti, Chief, Scholarship Branch, Indian Health Service, Twinbrook Metro Plaza, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland 20852; Telephone 301/443-6197.

Dated: January 30, 1992.

Everett R. Rhoades,

Assistant Surgeon General, Director.

[FR Doc. 92-2728 Filed 2-4-92; 8:45 am]

BILLING CODE 4160-16-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meeting: Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Transplantation Biology and Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, March 2, 1992, at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

The meeting will be open to the public from 8:30 a.m. to 9:45 a.m. on March 2 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:45 a.m. until adjournment on March 2. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of

Health, Bethesda, Maryland 20892, telephone 301-496-5717, will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Mark L. Rohrbaugh, Scientific Review Administrator, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Solar Building, room 4C39, Rockville, Maryland 20892, telephone 301-496-8208, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93.855, Immunology, Allergy, and Immunologic Diseases Research, National Institutes of Health)

Dated: January 27, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-2769 Filed 2-4-92; 8:45 am]

BILLING CODE 4140-01-M

Additional Regional Meetings

Notification was provided previously that the National Institutes of Health (NIH) had scheduled two regional hearings to receive public comment on the draft NIH Strategic Plan. Because of the overwhelming response to the first announcement, notice is hereby given that the NIH will convene two additional regional meetings. The first meeting of this round will take place on March 3, 1992, at Emory University School of Medicine, Atlanta, Georgia. The second meeting will be held on March 5, at Washington University School of Medicine, St. Louis, Missouri.

To ensure that the momentum of biomedical research will go forward and that the past Federal investment in biomedical research will continue to be capitalized, NIH has been engaged in a synergistic process involving all its organizational components, as well as the Alcohol, Drug Abuse and Mental Health Administration, to develop a framework for discussion of strategies to guide the NIH as it advances into the 21st century. This "framework" identifies research that promises extraordinary dividends for the Nation's future health. It has a scope that transcends immediate interests and is responsive to changing public and national health needs. Importantly, it builds on past accomplishments, organizational strengths, and mechanisms and approaches of proven value. Finally, it creates a framework for ordering NIH's corporate thinking and charts an initial course for our efforts. This framework will guide the subsequent development of the NIH Strategic Plan.

These regional meetings will be of one day duration, beginning at 9 a.m. and ending at 5 p.m. The meetings will begin with a plenary session where an overview of the NIH planning process will be presented and questions by the participants concerning the Framework for Discussion of Strategies for the NIH will be considered. The meeting will then break out into five panel sessions to discuss five broad trans-NIH objectives and the specific functional components which are key to realizing the objectives. These panels will meet concurrently from 10 a.m. until 3 p.m., will be chaired by senior NIH officials, and will be organized as follows: (1) Critical technologies, (2) research capacity, (3) intellectual capacity, (4) stewardship of public resources, and (5) public trust. The meeting will end with a plenary session to report on the panels' deliberations. The oral testimony originally planned is being deferred in favor of the sharing of your views during the panel sessions; however, written comments will be accepted at the meeting.

If you will be attending one of the regional meetings, please notify Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, room 103, 9000 Rockville Pike, Bethesda, Maryland 20892, by mail or facsimile (301-402-1759) by February 19, 1992.

If you have already notified the NIH of plans to attend one of the previously scheduled hearings but you will attend the Atlanta or St. Louis meeting instead, please indicate which of the formerly scheduled sites you had selected. Please indicate your first and second preference for panel participation. In order to achieve balance in the panel discussions and to accommodate to space limitations, the NIH reserves the option to reassign participants to panels. A copy of the Framework for Discussion of Strategies for the NIH, as well as additional information about the meetings, will be sent in advance of the regional meetings to the participants.

If you or others from your organization who plan to attend one of these regional meetings have any special needs that require assistance, please inform the office listed above. If you have questions concerning either of the two regional meetings, please contact Ms. Mary Demory (301) 496-1454.

Dated: January 30, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92-2768 Filed 2-4-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Preliminary Notice of Adverse Impact on Great Smoky Mountains National Park Under Section 165(d)(2)(C)(ii) of the Clean Air Act

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of preliminary determination under section 165(d)(2)(C)(ii) of the Clean Air Act.

SUMMARY: This notice announces the preliminary determination by the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, as the Federal Land Manager of Great Smoky Mountains National Park (NP) that, in accordance with the Prevention of Significant Deterioration (PSD) air quality requirements of the Clean Air Act, (1) air pollution is causing adverse impacts on the air quality related values of this PSD class I area, and (2) emissions of pollutants of concern from proposed major emitting facilities in the vicinity of the park will contribute to and exacerbate these impacts. At this time, the Federal Land Manager is recommending that the Tennessee Air Pollution Control Division, as well as the permitting authorities of other States in the region (i.e., North Carolina, South Carolina, Georgia), not issue permits for new major sources in the vicinity of the park unless measures are taken to ensure that these proposed sources would not contribute to adverse impacts on park resources. By this notice, the Department of the Interior invites public discussion of this decision during a 30-day comment period, after which time the Federal Land Manager will make a final determination on the basis of the best available information. The intent of this notice is to solicit comments on the preliminary determination and to alert interested parties to the availability of supporting documentation.

Today's action is "generic" in the sense that it sets a general policy for all major sources within approximately 120 miles of Great Smoky Mountains NP that seek to increase pollutants of concern. A separate action is currently underway concerning a proposed new boiler at the Tennessee Eastman facility in Kingsport, TN. Public comment on the Federal Land Manager's November 5, 1991, preliminary adverse impact determination concerning this source will be taken by the State of Tennessee in the context of the public hearing on Tennessee Eastman's proposed permit.

DATES: Comments must be received on or before March 6, 1992.

ADDRESSES:

Comments. Comments should be submitted (in duplicate, if possible) to: Chief, Policy, Planning, and Permit Review Branch, National Park Service-Air, P.O. Box 25287, Denver, Colorado 80225.

Supporting documentation. Copies of the technical support document entitled, "Technical Support Document Regarding Adverse Impact Determination for Great Smoky Mountains National Park," including references, are available for public inspection and copying between the hours of 8 a.m. and 4 p.m., Monday through Friday, at the following locations: National Park Service, Main Interior Building, room 3229, 18th and C Streets NW., Washington, DC; Air Quality Division, 12795 West Alameda Parkway, Lakewood, Colorado, room 215; and Great Smoky Mountains National Park Headquarters, Gatlinburg, Tennessee. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine L. Shaver, Chief, Policy, Planning, and Permit Review Branch, National Park Service-Air, P.O. Box 25287, Denver, Colorado 80225, telephone number (303) 969-2071.

SUPPLEMENTARY INFORMATION:

Background

Purposes and Values of Great Smoky Mountains National Park

Great Smoky Mountains NP was established in 1926 "for the benefit and enjoyment of the people." The park encompasses 800 square miles of massive mountain ridges and deep-cliff valleys in the States of Tennessee and North Carolina. It is world-renowned for the diversity of its plant and animal resources, the beauty of its ancient mountains, the quality of its remnants of American pioneer culture, and the depth and integrity of the wilderness sanctuary within its boundaries. Its status is emphasized by the fact that it is both an International Biosphere Reserve and a World Heritage Site.

As a unit of the National Park System, Great Smoky Mountains NP is managed consistent with the general mandate of the Organic Act of 1916 which states that the National Park Service (NPS) shall:

> Promote and regulate the use of * * * national parks * * * by such means and measures as conform to the fundamental purpose of the said parks, * * * which purpose is to conserve the scenery and the natural and historic objects and wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. 16 U.S.C. 1.

The 1978 amendments to the Organic Act further clarify the importance Congress placed on protection of park resources, as follows:

> The authorization of activities shall be construed and the protection, management, and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. 16 U.S.C. 1a-1.

Clean Air Act Requirements

In 1970, Congress passed the Clean Air Act (the Act), establishing national policy toward preserving, protecting, and enhancing air quality. In 1977, Congress amended the Clean Air Act, *inter alia*, designating all national parks, established as of August 7, 1977, that exceeded 6,000 acres in size, as mandatory class I areas. Class I areas are afforded the greatest degree of air quality protection under the Act. There are 48 units of the National Park System, including Great Smoky Mountains NP, designated as class I. The 1977 Clean Air Act Amendments also contain a section that specifically requires visibility protection for mandatory Federal class I areas. Section 169A sets, as a national goal, the prevention of any future, and remedying of any existing, manmade visibility impairment in mandatory class I areas. The Act requires that reasonable progress be made toward this national goal. The 1990 Amendments to the Clean Air Act left intact the requirements for class I area protection, while providing additional tools to accomplish the protection (e.g., visibility transport commissions). Under the Prevention of Significant Deterioration (PSD) program of the Act, major sources of air pollution that propose to build new, or significantly modify existing facilities in relatively unpolluted areas of the country ("clean air regions"), are subject to certain requirements generally designed to minimize air quality deterioration. Where emissions from new or modified facilities might affect class I areas, like Great Smoky Mountains NP, set aside by Congress for their pristine air quality or other natural, scenic, recreational, or historic values potentially vulnerable to air pollution, the Act imposes special requirements to ensure that the pollution will not adversely affect such values. In addition, the Act gives the Federal Land Manager and the Federal official charged with direct responsibility for management of class I areas an affirmative responsibility to protect air quality related values, and to consider in consultation with the permitting authority whether a proposed major emitting facility will have an adverse impact on such values.

The Clean Air Act establishes several tests for judging a proposed facility's impact on the clean air regions in general, and on the class I areas in particular. One such test is the "class I increment" test. The class I increments represent the extremely small amount of additional pollution that Congress thought, as a general rule, should be allowed in class I areas.

Congress realized, however, that in certain instances sensitive air quality related resources could be adversely affected at air pollution levels below the class I increments. Therefore, the Act establishes the "adverse impact" test, which requires a determination of whether proposed emissions will have an "adverse impact" on the air quality related values, including visibility, of the class I area. If the Federal Land Manager demonstrates to the satisfaction of the permitting authority that proposed emissions will adversely affect the air quality related values of the class I area, even though they will not cause or contribute to concentrations which exceeds the class I increments, then the permitting authority may not authorize the proposed project. Thus, the adverse impact test is critical for proposed facilities with the potential to affect a class I area.

Adverse Impact Considerations

The legislative history of the Clean Air Act provides direction to the Federal Land Manager on how to comply with the affirmative responsibility to protect air quality related values in class I areas:

> The Federal land manager holds a powerful tool. He is required to protect Federal lands from deterioration of an established value, even when class I numbers are not exceeded * * * While the general scope of the Federal Government's activities in preventing significant deterioration has been carefully limited, the Federal land manager should assume an aggressive role in protecting the air quality values of land areas under this jurisdiction. * * * In cases of doubt the land manager should err on the side of protecting the air quality-related values for future generations. Sen. Report No. 95-127, 95th Cong., 1st Sess. (1977).

The Assistant Secretary for Fish and Wildlife and Parks, as Federal Land Manager for class I areas managed by the National Park Service and U.S. Fish

and Wildlife Service, has stated that air pollution effects on resources in class I areas constitute an unacceptable adverse impact if such effects:

1. Diminish the national significance of the area; and/or
2. Impair the quality of the visitor experience; and/or
3. Impair the structure and functioning of ecosystems.

(*See, e.g.*, 47 FR 30223 (1982)).

Factors that are considered in the determination of whether an effect is unacceptable, and therefore adverse, include the projected frequency, magnitude, duration, location, and reversibility of the impact. In addition, the Federal visibility protection regulations, 40 CFR 51.300, *et seq.*, 52.27, define "adverse impact on visibility" as:

> * * * visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with: (1) Times of visitor use of the Federal class I area, and (2) the frequency and timing of natural conditions that reduce visibility. Id. 51.301(a).

Summary of Proposed Action

The action which is the subject of this notice concerns the Federal Land Manager's preliminary determination that air pollution is causing unacceptable, adverse impacts on visibility and other air quality related values in Great Smoky Mountains NP, and that emissions of the pollutants of concern from proposed major emitting facilities in the vicinity of the park would contribute to and exacerbate these impacts. Therefore, the Federal Land Manager would recommend that the Tennessee Air Pollution Control Division and the permitting authorities of other States in the region not issue permits for proposed new major sources in the vicinity of the park (within approximately 200 kilometers) unless measures are taken—e.g., offsets—to ensure that these proposed sources would not contribute to adverse impacts on park resources.

This action is "generic" in the sense that it sets a general policy for all major new sources (and major modifications of existing sources) within approximately 120 miles of Great Smoky Mountains NP that seek to increase pollutants of concern. A separate action is currently underway concerning a proposed major source permit for a new boiler at the Tennessee Eastman facility in Kingsport, TN. The proposed boiler would increase nitrogen oxide emissions in the area by 1,542 tons per year. Given the time constraints of the Tennessee Eastman permit proceeding, the Federal Land Manager has asked the State of Tennessee to solicit comments on the Federal Land Manager's November 5, 1991, preliminary determination of adverse impact in the context of the State's public hearing on the proposed permit. Thus, a final determination on the Tennessee Eastman permit need not await a final determination on the "generic" policy set forth today.

Potential Impacts of New Air Pollution Sources

To be able to assess the potential impacts of emissions from new sources, the Federal Land Manager first performed a comprehensive assessment of the current air quality conditions at Great Smoky Mountains NP. As summarized below and discussed in detail in the Technical Support Document, this assessment shows that air quality related values at Great Smoky Mountains NP (i.e., terrestrial and aquatic resources, visibility) are currently being adversely affected by air pollution.

Potential Impacts on Biological and Aquatic Resources

Ozone monitoring results to date indicate that frequent ozone levels sufficient to cause injury to plants exist in the park. Both Cove Mountain and Lock Rock ambient ozone monitoring stations exhibit typical mountaintop patterns of little diurnal fluctuations, chronic sustained ozone exposure and peak concentrations delayed into the evening. This pattern increases with elevation.

Observations in Great Smoky Mountains NP of foliar injury typically associated with ozone prompted researchers to initiate extensive ozone studies in the park. Since 1987, field surveys have identified 95 native plant species that exhibit ozone-like foliar injury in the park. Thirty-nine of these have been exposed to ozone under controlled conditions in fumigation chambers at the Uplands Research Laboratory in the park. Ten of the fumigated species have been shown to be extremely sensitive to ozone with foliar injury occurring on greater than 50 percent of the plants in the ambient chambers. Ten species are moderately sensitive, with foliar injury on less than 50 percent of the plants in the ambient treatment, but greater than 50 percent of the plants in the 2.0 times ambient treatment. Another 7 species are slightly sensitive, with foliar injury occurring in the 2.0 times ambient chambers only. In addition to the visible foliar injury, reduced plant growth and early leaf loss have been recorded for a number of species. The results of monitoring data show that ozone levels at higher elevation sites in the park (Look Rock, for example) can be up to 2 times greater than the levels recorded at the Uplands Research Lab. From the monitoring data, we can conclude that 27 of the 39 species tested, to date, can be injured at ozone levels that occur in the park.

In summer 1991, to quantify the extent of foliar injury in Great Smoky Mountains NP, and to better understand the amount of injury associated with various ozone levels, researchers installed a total of 8 permanent field monitoring plots near the ambient ozone monitors at Look Rock, Cove Mountain, and the Uplands Research Lab in the park. Ozone injury was observed on black cherry (*Prunus serotina*) and sassafras (*Sassafras albidumn*) leaves at all three locations. Although the injury observed on the black cherry trees near the Uplands Research Lab was slight, at the higher elevation Cove Mountain and Look Rock sites, over 90 percent of the individuals exhibited ozone injury with up to 75 percent of the black cherry leaf area injured. Ambient monitoring data reveal that summer 1991 ozone levels in Great Smoky Mountain NP are comparable to those of previous years.

Great Smoky Mountains NP embraces the largest remaining area of red spruce (*Picea rubens*)-Fraser fir (*Abies fraseri*) forests in the world, and the park also receives the highest deposition of nitrate of all monitored national parks. In fact, the 1989 National Acid Precipitation Assessment Program (NAPAP) Annual Report (1990) cited the high elevation red spruce forests of the eastern United States as the only instance of apparent evidence of forest damage in North America related to the direct effects of acidic deposition. From 1984 to 1989, surveys funded by NPS, NAPAP, and the Forest Service in high elevation forests within the park revealed a series of decline symptoms. These symptoms included an abrupt reduction, beginning in the early 1970's, in the amount of new wood reduced each year (produced annual radial increment) in red spruce growing above 6,000 ft; a general thinning of spruce resulting from the gradual loss of foliage; and the occurrence of necrotic spots (flecking) on the upper surface of spruce needles, which functionally reduces photosynthetic area. On average, the percentage of live spruce subactively classified as "healthy," based on needle

retention and crown fullness, steadily decreased during each annual evaluation. In 1985, 85 percent of the red spruce in Great Smoky Mountains NP were considered "healthy." By 1989, that number had decreased to a mere 51 percent. Crown conditions appear to worsen with increasing elevation. These forest decline symptoms could be caused by air pollution. It has further been suggested that atmospheric deposition is predisposing sensitive Fraser fir (a species recently designated by Tennessee as threatened) to balsam woolly adelgid (*Adelges piceae*) infestation and mortality. In Great Smoky Mountains NP, Fraser fir mortality due to woolly adelgid infestations exceeds 90 percent of the trees.

Nutrient cycling in two red spruce-Fraser fir sites in the park has been studied as part of the Integrated Forest Study, a large research project that looked at the potential for acidification in twelve locations around the U.S. and additional sites in Canada and Norway. It has been concluded that aboveground cycling of nutrients at the park sites was dominated by atmospheric deposition rather than by litterfall. The study found that the soils in the two sites are acidic and are essentially nitrogen-saturated. The belief is that the soils acidified naturally, although atmospheric deposition may have accelerated the process. Although the soil itself will probably not acidity further with continued atmospheric input, there are other considerations that cause concern. First, certain soil solutions are dominated by nitrates, sulfates, and hydrogen and aluminum (Al) cations. Pulses of nitrate and, to a lesser extent sulfate, in the soil solution caused Al to occasionally reach levels shown to inhibit root growth and calcium and magnesium uptake in red spruce seedlings in solution culture studies performed in the laboratory. There is concern that increased nitrate input will increase soil solution Al concentrations to levels toxic to plants.

Second, although the soil itself may not acidify further, the soil solution that enters the surrounding streams may contain increasing amounts of nitrates and acidity. Precipitation chemistry monitoring performed under the direction of the National Atmospheric Deposition Program has shown an average monthly, volume-weighted precipitation pH of between 4.0 and 5.0. Surveys of lakes and streams in the region show that most are poorly buffered and potentially sensitive to acidification. Watershed studies in the park in the 1980's found that although base flow pH of the high elevation streams draining Newfound Gap averaged 6.0 to 6.5, storms sometimes caused the pH to drop below 6.0. The researchers found that some of these high-elevations streams were extremely sensitive to acidification, with an acid neutralizing capacity (ANC) of only zero to 20 microequivalents per liter (ueq/L). In general, waters with an ANC of 200 ueq/L or less are considered sensitive. They also found moderately high levels of nitrates in the streams they studied. They concluded that although the nitrate concentrations are not presently high enough to acidify the streams, increased nitrate input could cause stream acidification. Other researchers confirmed that alkalinity and pH decrease, and nitrate concentrations increase, with increasing elevation in the park, indicating that the highest elevation streams are the most sensitive. Also of concern are the high levels of A1 recorded in the soil solution. It has been shown that this A1 washes into the streams during storm events, and may reach concentrations that are toxic to fish.

Concern about the potential for stream acidification and impacts on aquatic biota has prompted the National Park Service to undertake two stream studies in Great Smoky Mountains NP. One involves a high elevation stream water chemistry and fish survey that will be conducted over the next three to four years. The other is an intensive study of the Noland Divide watershed adjacent to the site of the Integrated Forest Study mentioned above. Preliminary data indicate that Noland Creek exhibits near-zero alkalinity and high nitrate and sulfate levels. The researchers will be doing continuous monitoring of pH, conductance, temperature, and discharge at Noland Creek in the spruce-fir zone, and will be attempting to quantify the frequency and extent of episodic acidification in the creek.

In summary, ozone-related injury already exists in the park. Given the Clean Air Act's affirmative responsibility to protect park resources, the Federal Land manager reasonably believes that increases in ozone precursor emissions, namely, volatile organic compounds (VOC) or nitrogen oxides (NO_x), are likely to exacerbate current ozone levels and related injury, and are therefore unacceptable without offsetting decreases in emissions. Also, studies reveal that soils in the park are already nitrogen-saturated; and streams in the park have been identified that have low alkalinity and are, therefore, sensitive to acidification. The Federal Land Manager concludes that the effects of additional sulfur dioxide (SO_2) and NO_x emissions in terms of increased acidic deposition are unacceptable and will adversely affect the structure, functioning, and national significance of the ecosystem at Great Smoky Mountains NP.

Potential Impacts on Visibility

Visibility is currently seriously degraded at Great Smoky Mountains NP. Through a 1979 **Federal Register** process, the Department of the Interior found, and the Environmental Protection Agency (EPA) agreed, that visibility is an important value in Great Smoky Mountains NP. See 44 FR 69122 (November 30, 1979). In a November 14, 1985, letter, the Department of the Interior informed the EPA that, with respect to uniform haze, the NPS visibility monitoring program has shown that scenic views at the Great Smoky Mountains NP (and other class I areas) are impaired by anothropogenic pollution more than 90 percent of the time.

The Department of the Interior's finding of significant existing visibility impairment at Great Smoky Mountains NP is supported by studies of historic and current visibility conditions. Under natural conditions, without the influence of air pollution, the State-of-Science/Technology report entitled Visibility: Existing and Historical Conditions—Causes and Effects (National Acid Precipitation Assessment Program 1990), states that visual range in the eastern United States is estimated to be 150 km (+/− 45 km). Visibility is strongly affected by light scattering and absorption by fine particulate matter (<2.5 microns in diameter). The NAPAP report estimates that under natural conditions, fine particulate matter concentrations in the eastern U.S. would be about 3.3 micrograms per cubic meter ug/m^3). As explained further below, among the constituents of the fine particulate matter, fine sulfate particles (which result from the atmospheric conversion of gaseous sulfur dioxide emissions) are currently responsible for most of the visibility impairment throughout the East. Natural levels of sulfate have been estimated to be about 0.2 ug/m^3.

Studies examining historical visibility trends in the East show that annual average visibility in the southeastern United States declined 60 percent between 1948 and 1983, with an 80 percent decrease in summer months and a 40 percent decrease in winter months. Visual range in rural areas of the East currently averages 20–35 km,

substantially lower than the estimated 150 km natural condition. Many of the constituents of the haze that degrades visibility are not emitted directly but are formed by chemical reactions in the atmosphere. Gaseous "precursor" emissions from a source are converted though very complex reactions into "secondary" aerosols. Sulfur oxides convert to nitric acid and ammonium sulfates, nitrogen oxides convert to nitric acid and ammonium nitrate, and hydrocarbons become organic aerosols. Haziness over the eastern U.S. since the late 1940's has been dominated by sulfur. Declining visibility is well correlated with increasing emissions of sulfur dioxide.

The National Park Service has been monitoring visibility at Great Smoky Mountains NP since 1984 as part of its visibility monitoring network and more recently (since 1988) as part of EPA's national visibility monitoring network for class I areas known as the IMPROVE network. Initially, teleradiometers and cameras were used to monitor views and determine visual range.

In 1985, the NPS began monitoring fine particulate matter at Great Smoky Mountains NP using a Stacked Filter Unit (SFU) which was replaced by the more sophisticated IMPROVE sampler in 1988. In addition to providing a more accurate cut-point for fine particles less than 2.5 microns in diameter, the IMPROVE sampler allows for the collection and analysis of a greater number of atmospheric pollutants, such as chloride, sulfate, and nitrate ions, and elemental and organic carbon.

The analysis of fine particle data collected at Great Smoky Mountains NP from March 1988 through February 1991 using the IMPROVE sampler indicates that monthly average fine particle concentrations have ranged from 8.7 to 25.1 ug/m^3 during the summer (*i.e.*, June-September), or three to eight times higher than the estimated annual average natural background concentration. The summer average of fine particle mass concentrations measured at Great Smoky Mountain NP during the period March 1985 to February 1987 using the SFU was 9.3 ug/m^3, whereas the average for the entire sampling period was 6.4 ug/m^3. Thus, summer and annual average fine particle mass concentrations are three and two times, respectively, the estimated natural background.

Recent analyses of data collected at Great Smoky Mountains NP have shown that sulfates are responsible for 70–85 percent of the visibility impairment. Based on the SFU data, the summer average sulfate concentration between 1985 and 1987 ranged from 1.9–8.3 ug/m^3, a ten to forty-two fold increase from natural background. Similarly, the 3-year average sulfate concentration of 4.9 ug/m^3 during the 1985–1987 time period has experienced an almost twenty-five fold increase from natural background. The most recent data available from the IMPROVE sampler show an average summer (1988–1990) sulfate of 9.4 ug/m^3 and a 38-month average (Mar '88–Feb '91) of 5.7 ug/m^3, slightly higher than, but consistent with, the SFU data. On the average, organics are responsible for most of the remaining visibility impairment. Nitrate aerosols (resulting from atmospheric conversion of nitrogen oxide emissions) are generally responsible for only one percent of the visibility impairment and average less than 3 ug/m^3. However, at times, nitrates comprise up to 10 percent of the fine mass and could significantly affect visibility during some episodes. Thus, one can reasonably conclude that the existing poor visibility conditions at Great Smoky Mountains NP are likely a result of the dramatic increases in sulfate concentrations, primarily the result of an increase in man-made sulfur oxide emissions in the region, but the NO_x may contribute to the problem as well.

Using the fine particle data collected at Great Smoky Mountains NP and reconstructing the extinction (standard visual range) from the particle data, one can describe the effect of the increased fine particulate and sulfate concentration on visibility at Great Smoky Mountains NP. Median visual range at Great Smoky Mountains NP is 39 km, with a median summertime visual range of 19 km. In other words, the "average" visibility day at Great Smoky Mountains NP has experienced a degradation through time to one-fourth of estimated natural conditions. This degradation is likely attributable to increases in man-made sulfur oxide emissions. Visibility conditions at the park show a strong seasonal pattern, with the worst visibility occurring during the summer, when visitation at Great Smoky Mountains NP is highest. During summer months the average visibility ranges from 23-43 km, or less than one-third the estimated natural visual range.

The chronic visibility at Great Smoky Mountains NP typically manifests itself as a uniform haze. Such impairment is a homogeneous haze the reduces visibility in every direction from an observer. It appears as though the observer were peering through a grey or white translucent curtain placed in front of the scene. Colors appear washed out and less vivid, and geologic features become less discernible or may disappear.

In a November 14, 1985, letter, the Department of the Interior informed the EPA that, with respect to this uniform haze, the NPS visibility monitoring program has shown that more than 90 percent of the time scenic views at Great Smoky Mountains NP (and other class I areas) are affected by anthropogenic pollution.

As noted above, the Federal visibility protection regulations, 40 CFR 51.300, 52.27, define "adverse impact on visibility" as visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with: (1) Times of visitor use of the Federal class I area, and (2) the frequency and timing of natural conditions that reduce visibility. Based on this general definition and the data summarized above, manmade pollution clearly causes adverse impacts on visibility at Great Smoky Mountains NP. Although the extent of the problem varies in magnitude, visibility at Great Smoky Mountains NP is substantially impaired most of the time.

Good visibility in scenic areas has many aesthetic and economic benefits. The vistas offered at Great Smoky Mountains NP represent an important value to the visitors who come to enjoy them. Futhermore, considerable economic benefit accrues to communities near areas of great scenic beauty, like Great Smoky Mountains NP, as millions of visitors come to these areas annually.

One of the reasons people visit parks is to see and enjoy the scenery. Poor visibility is a frequent complaint made by visitors to Great Smoky Mountains NP. Studies conducted by the NPS show that visitors are aware of visibility conditions and that clean, clear air is integral to the enjoyment of visiting the parks. A survey conducted in 1985 by the NPS revealed that park visitors rank air quality attributes higher than any other park attributes, and that viewing scenery was the most common visitor activity.

It is unlikely that any proposed visibility-impairing pollutants (i.e., SO_2, NO_x, and VOC) would be visible as a distinct, coherent plume in the park. These proposed emissions would likely, however contribute to uniform haze, the more pervasive visibility problem in Great Smoky Mountains NP. In fact, NPS research has shown that both local

(*e.g.*, within 200 km) and long-distant sources contribute to such visibility impairment at Great Smoky Mountains NP. In addition to Tennessee, source areas in the States of Ohio, Kentucky, West Virginia, Virginia, Indiana, North Carolina, and Illinois have been estimated to contribute to the park's haze.

Given the existing impacts on the visibility at Great Smoky Mountains NP, any significant increase in emissions which contributes to visibility impairment at Great Smoky Mountains NP would adversely affect this class I resource.

In sum, with respect to visibility, the Federal Land Manager believes that any increases in visibility-impairing pollutants would contribute to existing adverse impacts on visibility at Great Smoky Mountains NP. The Federal Land Manager further believes that allowing a significant increase in visibility-impairing pollutants would interfere with—rather than promote—achievement of the national visibility goal and the need to make reasonable progress toward that goal.

Based on the above findings and discussion, the Federal Land Manager concludes that the present visibility conditions at Great Smoky Mountains NP meet the adverse impact criteria discussed above, and therefore, are adverse. Specifically, the present conditions interfere with the management, protection, preservation and enjoyment of the visitor's visual experience, thereby diminishing the national significance of the area.

Summary of Potential Impacts

The Federal Land Manager believes that, because of the significant and widespread existing air pollution effects occurring within the Great Smoky Mountains NP, any significant increase in SO_2, NO_x, or VOC emissions in the vicinity of the park could potentially cause or contribute to adverse impacts, Indeed, additional emissions would adversely impact sensitive resources at Great Smoky Mountains NP by: (1) Contributing to already high ozone levels, at times approaching the national standard, thereby impacting ozone-sensitive vegetation; (2) depositing additional nitrogen on soils which are already nitrogen-saturated, which will mobilize nitrogen and aluminum in the soil and leach these toxic elements into sensitive streams and vegetation within the park, with resulting adverse effects on aquatic and terrestrial life; and (3) exacerbating existing adverse visibility conditions at Great Smoky Mountains NP.

Proposed Finding and Recommendation

Based on the above information, the Federal Land Manager preliminarily finds that existing air pollution effects interfere with the management, protection, and preservation of park resources and values, and diminish visitor enjoyment, and, therefore, are adverse. The Federal Land Manager also preliminarily finds that the effects of additional SO_2, NO_x, and VOC emissions associated with major new sources (or major modifications of existing sources) proposed for the area would likely contribute to and exacerbate the existing adverse effects and are, therefore, unacceptable.

Based on these findings and the Department's legal responsibilities and management objectives for Great Smoky Mountains NP, the Federal Land Manager would recommend that the Tennessee Air Pollution Control Division and the permitting authorities of other States in the region not permit additional major air pollution sources with the potential to affect Great Smoky Mountains NP's resources unless these States can ensure, through offsets or other comparable measures, that such sources would not contribute to adverse impacts. The Federal Land Manager would further suggest that these States develop a Statewide emissions control strategy to protect the air quality related values of Great Smoky Mountains NP. This strategy might include (1) an offset program requiring a greater than one-for-one emission reduction elsewhere in the State to offset proposed emission increases associated with major new or modified sources; (2) a Statewide Reasonable Available Control Technology requirement to control existing sources of emissions; and (3) a provision setting a timeframe for determining maximum allowable levels of air pollutants in the State, which would involve Statewide emission caps as a primary method for achieving these maximum allowable levels. This emissions cap could reflect a level of allowable pollution that will provide long term protection for critical natural resources throughout the region.

The Federal Land Manager will consider the above possible approaches, as well as any additional alternatives received through the public comment process, in making final recommendations to the Tennessee Air Pollution Control Division and other permitting authorities in the region regarding the finding of adverse impact for Great Smoky Mountains NP.

Public Comments

Interested parties are invited to comment on this preliminary determination. Comments should specifically address the following issues; (1) Whether the existing air quality effects at Great Smoky Mountains NP are adverse; and (2) given the Congressional mandates related to Great Smoky Mountains NP and the Federal Land Manager's responsibilities, whether it is reasonable to conclude that proposed major increases in emissions of SO_2, NO_x, or VOC's in the area without offsetting decreases would contribute to adverse impacts on park resources.

Finally, the Federal Land Manager would welcome comments and recommendations as to possible emission control strategies that would address the air quality concerns at Great Smoky Mountains NP.

Dated: January 30, 1992.

Michael Hayden,

Assistant Secretary for Fish and Wildlife and Parks, and Federal Land Manager for Areas under the Jurisdiction of the National Park Service.

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Central Arizona Project (CAP) Water Allocations and Water Service Contracting; Final Reallocation Decision

AGENCY: Office of the Secretary (Secretary), Interior.

ACTION: Notice of final reallocation decision for uncontracted CAP non-Indian agricultural water allocations.

SUMMARY: The Final Reallocation Decision contained herein will reallocate 29.3 percent of CAP non-Indian agricultural water allocations in line with the Arizona Department of Water Resources (ADWR) recommendations and the Department of the Interior (Department) will offer amendatory or new subcontracts for such water to non-Indian agricultural water user entities. The contracting process which follows this Final Reallocation Decision will include consideration of a full range of contracting terms and conditions and will provide an opportunity for public review and comment on specific contract actions. Any non-Indian agricultural water reallocations that remain uncommitted after completion of the contracting process shall revert to the Secretary for discretionary use in Indian water rights settlements and other purposes.

FOR FURTHER INFORMATION CONTACT: For information on subcontract qualifying conditions or for copies of proposed subcontracts, interested parties should contact Mr. Donald Walker, Contracts and Repayment Specialist, Bureau of Reclamation, Department of the Interior, 1849 C Street, NW., Washington, DC 20240 (telephone: 202-208-5671) or Mr. Steve Hvinden, Regional Economist, Bureau of Reclamation, PO Box 61470, Boulder City, Nevada 89006-1470 (telephone 702-293-8651).

SUPPLEMENTARY INFORMATION:

Background

The CAP is a multi-purpose project which provides water for municipal and industrial (M&I), Indian, and non-Indian agricultural uses. The last allocations of CAP water, the conditions upon which those allocations were made, and the procedures for water service contracting were published in the **Federal Register** (48 FR 12446, March 24, 1983). That notice contained the Secretary's final decision, summarized CAP issues, and provided basic background information applicable to this reallocation.

In the 1983 notice, the Secretary allocated 638,823 acre-feet of water per year to non-Indian M&I water user entities and 309,828 acre-feet of water per year to Indian entities. The non-Indian agricultural water users were to receive any CAP supply that remained after the non-Indian M&I and Indian entities used their entitlements. The water supply allocated to each of the 23 non-Indian agricultural users was stated in terms of a percentage of the total non-Indian agricultural supply. That supply will amount to about 900,000 acre-feet per year, initially, and is predicted to decline to about 400,000 acre-feet per year, 50 years hence. In shortage years it will drop to zero. The actual amount available will be determined on an annual basis and will vary depending upon a number of factors, including but no limited to hydrologic conditions on the Colorado River and demand for water by users with higher priorities. The percentage represents each allottee's portion of the total irrigated acreage, with an adjustment to reflect any other surface water supply available to the allottee.

The Central Arizona Water Conservation District (CAWCD) and the Bureau of Reclamation (Reclamation) have been entering into long-term CAP water service subcontracts with those entities to whom allocations of CAP agricultural water were made in the 1983 notice. CAWCD is the entity which has contracted with Reclamation for repayment of the costs of the project. The combined entitlement for entities which have entered into CAP water service subcontracts subsequent to the 1983 notice represents 70.7 percent of the non-Indian agricultural supply. Eleven entities have declined their CAP water allocation for a total of 23.82 percent of the non-Indian agricultural supply. Two entities which were allocated the remaining 5.48 percent of the agricultural water supply have not yet contracted for such supply.

Water deliveries pursuant to the subcontracts will begin following Reclamation's issuance of a notice of substantial completion of the CAP. It is anticipated that such a notice will be issued sometime in late 1992. In the meantime, CAP water deliveries have been and are being made through completed portions of the CAP aqueduct pursuant to interim water service contracts.

The 1983 notice provided for a reallocation of the CAP water after the initial round of water service contracting had been completed. An interest in the reallocation has existed for several years, but the Department and ADWR have refrained from proceeding until there was more certainty about the amount of allocations involved and until ongoing negotiations for Indian water rights settlements had been completed. However, in November of 1988, the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (SRPMICWRSA) compelled the Secretary to request ADWR to make a recommended reallocation of uncontracted non-Indian CAP agricultural water to the Secretary. The amount of time that ADWR had to respond to the request was not specified. However, ADWR was required to complete its recommendation by January 7, 1991, by the decision of the Arizona Superior Court in *Central Arizona Irrigation and Drainage District et al.* v. *Plummer*, No. CIV-38812 (October 15, 1990).

In response to the request from Reclamation dated December 28, 1988, and in compliance with the Court order cited above, ADWR recommended to the Secretary by its letter dated January 7, 1991, how the remaining 29.3 percent of the non-Indian agricultural supply should be reallocated. In arriving at its recommendations, ADWR conducted an extensive public input and review process which elicited numerous opinions, options, and alternatives. By letter dated January 15, 1991, ADWR supplemented its recommendations to the Secretary with a report explaining the methodologies used to calculate the water recommendations, discussing the factors considered in making the recommendations, and addressing issues and concerns raised by public comments. ADWR's report, transmitted by letter dated January 15, 1991, was fully considered and used in developing options for consideration.

The notice of proposed water reallocation decision for uncontracted CAP non-Indian agricultural water allocations and request for comments was published in the **Federal Register** (56 FR 28404, June 20, 1991). Three options were presented and discussed in that notice. Brief summaries of the two options considered but not selected, options 1 and 2, follow.

Reallocation Options Considered

The essential difference in the options focused on who would receive the initial reallocations and how to dispose of that portion of the reallocation that might remain after the contracting process is completed. Option 1 was the ADWR recommendations without change. Those recommendations provide, among other things, for reallocation to existing and certain new subcontractors, some of which already have allocations from 1983. It also provided for pro rata upward adjustment of all allocations under subcontract to dispose of the portion of the reallocation remaining after the initial round of contracting. Based on the possibility that some portion of the reallocation may remain as a result of allottees refusing, not qualifying for, or accepting a lesser allocation than that offered for contracting, two other options were conceived.

Under Option 2, any remaining CAP non-Indian agricultural water supply would be initially reallocated pro rata among the 10 existing subcontractors with the stipulation that any reallocations not contracted for within 180 days of the reallocation decision would revert to the Secretary for discretionary use. This method would eliminate from the reallocation any new non-Indian agricultural entities and any non-Indian agricultural entities which have previously declined or failed to subcontract.

Option retained the reallocations recommended by ADWR, but, like Option 2, provides for reversion of uncontracted allocations. Option 3 was selected and is the foundation for the Final Reallocation Decision that follows.

Previous Notices and Decisions

Previous Departmental **Federal Register** notices relating to CAP water

allocations are as follows: 37 FR 28082, December 20, 1972; 40 FR 17297, April 18, 1975; 41 FR 45883, October 18, 1976; 45 FR 52983, August 8, 1980; 45 FR 81265, December 10, 1980; 46 FR 29544, June 2, 1981; 48 FR 12446, March 24, 1983; and 56 FR 28404, June 20, 1991. Previous **Federal Register** notices relating to compliance with the National Environmental Policy Act of 1969 and CAP water allocations are as follows: 46 FR 29544, June 2, 1981; 46 FR 59316, December 4, 1981; 46 FR 60658, December 11, 1981; and 47 FR 12689, March 24, 1982.

Authority

CAP water decisions are made pursuant to the Reclamation Act of 1902, as amended and supplemented (32 Stat. 388, 43 U.S.C. 391), the Boulder Canyon Project Act of December 21, 1928 (45 Stat. 1057, 43 U.S.C. 617), the Colorado River Basin Project Act of September 30, 1968 (82 Stat. 885, 43 U.S.C. 1501), the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988 (section 11(h) of Pub. L. 100-512, 102 Stat. 2559), the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR part 1505), the Implementing Procedures of the U.S. Department of the Interior (516 DM 5.4), and in recognition of the Secretary's trust responsibility to Indian tribes.

Compliance With the Requirements of the National Environmental Policy Act of 1969 (NEPA)

Reclamation has completed a Final Environmental Assessment, "Reallocation of Uncontracted, Central Arizona Project, non-Indian Agricultural Water" (Final EA) date July 1991, on the proposed reallocation decision. A "Finding of No Significant Impact" (FONSI) was signed August 6, 1991, by Reclamation's Regional Director of the Lower Colorado Region, Boulder City, Nevada. Anyone interested in receiving a copy of the Final EA, including the comments of interested and affected parties on the draft EA and the responses thereto, or the FONSI should contact Mr. Bruce Ellis, Chief, Environmental Division, Arizona Projects Office, Bureau of Reclamation, P.O. Box 9980, Phoenix, Arizona 85068 (telephone 602-870-6767). The Final Reallocation Decision commits the Department to carry out the requirements of NEPA, the Endangered Species Act, and the National Historic Preservation Act prior to any specific action to implement the reallocation.

Comments on the Proposed Reallocation and Responses

The **Federal Register** notice (56 FR 28404, June 20, 1991) of the Secretary's proposed water reallocation decision for uncontracted CAP non-Indian agricultural water allocations invited written comments from interested parties on or before July 22, 1991, and stated that all such comments would be considered. During the comment period, written and oral comments were received from officials of other Federal agencies, ADWR, municipalities, non-Indian irrigation districts, water resource associations, Indian tribes, and interest group representatives. In general, comments focused on the following broad areas: (1) The effect of distribution of the reallocated water among State of Arizona Active Management Areas (AMA), (2) the availability and the need for water allocations to settle Indian water rights claims; (3) whether new entities should be considered in the reallocation, and (4) whether the proposed reallocation is in accordance with existing laws and contracts. Response to comments on the draft EA, including comments on such peripheral subjects as the potential impacts associated with conversion of irrigation water to municipal and industrial use, implementation of exchange agreements, and administration of the Reclamation Reform Act are included in the Final EA. A synopsis of the comments and concerns of each commenter on the proposed reallocation and the Department's responses follows.

(1) Roosevelt Water Conservation District, April 22, 1991

Comment 1-1: The Department should set aside all or a significant portion of the unallocated CAP agricultural allocations for use in existing and potential Indian water rights settlements with the San Carlos Apache Tribe, the Gila River Indian Community, and the Tohono O'odham Nation. Under section 13 of the SRPMICWRSA, the Secretary has the discretion to use 1st round allocations for Indians, including the Southern Arizona Water Rights Settlement Act (SAWRSA).

Response 1-1: Section 11(h) of the SRPMICWRSA is clear that the Secretary must reallocate the uncontracted allocations for non-Indian use and thereafter offer amendatory or new subcontracts to non-Indian agricultural water users. The Secretary does not have the discretion to initially reallocate the uncontracted allocations for use by Indians. Furthermore, section 11(h) requires that the reallocation must be completed within 180 days of the date that the Secretary receives a recommendation from the ADWR. The Department believes that if Congress had desired that the uncontracted allocations be made available first for use by Indians, Congress could and would have so stated in the statute. Section 13 of the SRPMICWRSA provides that:

> Nothing in * * * this Act shall be construed in any way to quantify or otherwise affect the water rights, claims or entitlements to water of any Arizona Indian tribe, band, or community, other than the Community.

The Department does not believe that section 13 provides any discretion to the Secretary to make first-round reallocations available for use in SAWRSA. Furthermore, the Department does not believe that the proposed reallocation to non-Indian users would affect the rights, claims, or entitlements of the Tohono O'odham Nation under SAWRSA.

Comment 1-2: Having set aside the allocations as recommended in the previous comment, the Department should treat any of the allocations ultimately used in settlements with the tribes as contributions of water from the entities which would have received the reallocated water, but for its use in the particular Indian water rights settlement.

Response 1-2: See response 1-1. The Secretary does not have the authority to set aside the allocations as suggested. The Congress was aware in 1988 that water supplies were needed for existing and pending Indian water rights settlements, yet the Secretary was directed to reallocate the uncontracted allocations for non-Indian use. Moreover, the Congress directed the Secretary to perform the reallocation in a short time frame of 180 days. The Department does not believe that a suspension of the reallocation process would necessarily aid in the Indian water rights settlement process. The Department believes that the added uncertainty associated with a suspension could have the opposite effect and thereby frustrate attempts to reach water rights settlements.

Comment 1-3: If settlements are not achieved with the tribes within a reasonable period of time, determined at the sole discretion of the Secretary, the reallocation should proceed in accordance with the methodology set forth in the ADWR recommendations.

Response 1-3: See responses 1-1 and 1-2.

(2) Tucson Active Management Area (AMA) Water Augmentation Authority (TWAA), June 17, & July 9, 1991

Comment 2–1: The TWAA believes the non-contracted CAP agricultural water from the Tucson basin should be allocated to the Tohono O'odham Nation to meet part of the Secretary's obligation to the Nation under SAWRSA.

Response 2–1: See responses 1–1, 3–1, and 4–1.

(3) Tohono O'odham Nation (Nation). April 24, & July 11, 1991

Comment 3–1: The Nation objects to the ADWR recommendations because the proposed reallocations would substantially foreclose final settlement of the Nation's water rights under SAWRSA and would further eliminate a source of water essential for a fair and equitable resolution of the Nation's water claims in the Sif Oidak District.

Response 3–1: See response 1–1. The Secretary is required to allocate the uncontracted allocations for non-Indian agricultural water use and to offer amendatory or new subcontracts to the non-Indian water users. However, the Final Reallocation Decision provides that any allocations that are not contracted for would revert to the Secretary for his discretionary use. Allocations which might revert to the Secretary could be used for SAWRSA, or for water claims in the Sif Oidak District.

(4) Southern Arizona Water Resources Association (SAWRA), April 8, and July 9, 1991

Comment 4–1: SAWRA strongly objects to ADWR's recommended reallocations and its rationale for those allocations. During the process of reallocation of the agricultural water, ADWR ignored (1) the distinguishing hydrologic characteristics of the Tucson basin, (2) the historical context within which the original allocations were made, (3) the need and recent precedents for use of agricultural water to settle Indian water rights claims, and (4) the basic issues of fairness and equity.

Response 4–1: Section 11(h) of the SRPMICWRSA requires the Secretary to reallocate uncontracted non-Indian agricultural allocations to non-Indian agricultural water users. The Department does not believe that the water allocation relationships that existed in the 1983 CAP water allocation must be rigidly adhered to in the reallocation. The 1983 allocation of non-Indian agricultural water supplies and the proposed reallocation were both based on CAP eligible acres, adjusted for locally available surface water supplies. So far as the Department is aware, there was never any intent to use the non-Indian agricultural water allocations as a method to achieve a specific distribution of CAP water among the three affected AMAs. Since some of the irrigation districts have rejected their CAP water allocations, there are fewer eligible lands within the Tucson and Phoenix AMAs that can participate in the reallocation. Moreover, the AMAs are not losing a CAP water supply since they never had a CAP supply to begin with. Offers to contract were made to specific users within the AMAs. Since those users declined their CAP allocations, the water supplies are no longer destined for use within the AMA. While there may be frustrated expectations on the part of the AMAs, there would be essentially no impact as a result of the reallocation.

In order to address the concerns of the AMAs, the Secretary would have to develop a new allocation formula specifically designed to maintain the original distribution of water among the AMAs. This alternative has been considered and rejected. The Department recognizes that the decision of non-Indian agricultural water allottees within the Tucson AMA to not contract for CAP water has complicated the task of meeting the AMA goals. Nevertheless, the Department has deferred to the State with respect to how it chooses to initially reallocate CAP non-Indian allocations within the State. There are no other eligible, interested, non-Indian agricultural water users within the AMA to whom the water can be allocated.

The Department believes that the criteria established by ADWR for eligibility for an allocation recommendation are reasonable and consistent with the way that CAP water has been historically allocated to non-Indian agricultural water users. Those criteria included the following: (1) The entity must be located in an area of groundwater decline; (2) The entity must serve water for agricultural purposes; and (3) The entity must have lands which are eligible to be irrigated with CAP water.

Comment 4–2: The commenter strongly objects to reallocating water to McMullen Valley Water Conservation and Drainage District (MVWCDD). SAWRA asserts that MVWCDD is outside of the CAWCD service area and that the city of Phoenix is the real beneficiary. It views the reallocations to MVWCDD and RID as being made at the expense of the Tucson AMA's effort to reduce groundwater use.

Response 4–2: See responses 4–1, 5–1, and 20–3.

(5) Inter Tribal Council of Arizona, Inc., July 22, 1991

Comment 5–1: The Tribal Council requests that the proposed reallocation be modified to (1) exclude new entities and entities which previously declined to contract; (2) set conditions that limit subcontractors to contract to use the water on the subcontractors' land for agricultural use only; (3) require demonstration, to the satisfaction of the Secretary, that it is economically feasible for the subcontractors to use CAP water and pay any associated debt; (4) establish a 90-day timeframe for completion of the contracting process; and (5) reallocate any uncontracted municipal and industrial (M&I) water for Indian water rights settlements unless entities with an M&I water allocation demonstrate to the Secretary within 30 days that it is economically feasible for the entity to immediately contract for and put the water to beneficial use.

Response 5–1: The Department believes that the criteria established by ADWR to be eligible for a reallocation are reasonable. The Department does not believe that there is good rationale for excluding from the reallocation or contracting processes new entities or entities that have previously declined a subcontract if such entities meet the ADWR criteria and the conditions set forth in the Final Reallocation Decision that follows.

Regarding the second comment, the agricultural water service subcontracts provide that the CAP water must be used for agricultural purposes within the subcontractor's service area. Some agricultural subcontractors may choose to take delivery of their CAP water through an exchange. Exchanges can be an effective water management and conservation tool. Exchanges have always been envisioned as a vital part of the CAP. Section 1 of the CAP authorizing legislation contemplates the furnishing of CAP water "* * * through direct diversion or exchange of water." At this time, the Roosevelt Irrigation District (RID) is planning on exchanging its allocation of CAP water for city of Phoenix effluent water. Under this concept, RID would enter into a subcontract for the CAP water with the stipulation that the CAP water be delivered to the city of Phoenix. In return, the city of Phoenix would deliver effluent water to RID. Through the exchange the city of Phoenix would get an additional potable water supply and

RID would get an affordable irrigation water supply not otherwise available to either party. Therefore, the Department believes that physically limiting delivery of CAP non-Indian agricultural water to the subcontractor's agricultural service area would be unnecessarily restrictive when there are substantial benefits to be realized from an exchange arrangement.

Regarding the third comment, other than meeting certain financial and contractual obligation tests, the Department does not believe that it is appropriate to require the existing subcontractors to meet the kind of "economic" feasibility test suggested in the comment. The Final Reallocation Decision that follows provides that the new allottees must meet the same financial feasibility tests as other entities which received federally constructed distribution systems. It also requires that all subcontractors must be current with their financial and contractual obligations to the United States, CAWCD, and bond holders prior to execution of new or amendatory subcontracts.

Regarding the fourth and fifth comments, the Department believes that a 6-month time period to complete the contracting process for the existing subcontractors is reasonable. The reallocation of M&I water is beyond the scope of this allocation. However, the Department does intend to bring closure to the M&I subcontracting process soon so that it can determine how much of the M&I water might be available for reallocation.

(6) Dennis DeConcini and John McCain, U.S. Senators, and Jim Kolbe, Member of Congress, June 28, 1991

Comment 6–1: Individiauls and organizations in the Tucson area have contacted the Congressman expressing great concern that the ADWR recommendations, if adopted, will result in roughly 15 percent of the Tucson basin's original CAP agricultural water allocation being allocated outside the basin. If combined with possible similar reallocations of M&I water supplies in the future, nearly a third of the original CAP water allocated to the basin would be unavailable for use in the Tucson area. Such a result would have serious implications for Tucson's water future.

Response 6–1: See response 4–1.

(7) Gover, Stetson & Williams, P.C. (Tohono O'odham Nation), May 10, & July 22, 1991

Comment 7–1: The proposed course of Secretarial action is a continuation of a reallocation process which ignores the paramount water rights of Indian nations, and risks diversion of water resources to non-Indians to the point that the "wet" water supply for Indian nations will be lost.

Response 7–1: See response 1–1. The Department is well aware of the need for water for existing and pending Indian water rights settlements and is committed to finding water supplies for the settlements. However, in this case, the Secretary has been directed by the Congress to reallocate the uncontracted non-Indian agricultural water allocations to non-Indian uses. The Department believes that the reversion concept encompassed in the Final Reallocation Decision may provide a source of water for Indian water rights settlements.

(8) City of Phoenix (Phoenix), July 18, 1991

Comment 8–1: Phoenix fully supports making an allocation to MVWCDD and to the RID, but does not feel that it is necessary or desirable to establish a fixed deadline of 1 year from the date of the reallocation decision to meet the conditions required for the offer of a subcontract. A more flexible time frame, such as "within a reasonable period of time," would be preferable.

Response 8–1: The Department believes that the 1-year deadline is reasonable. However, the Department also understands that there may be extenuating circumstances beyond the entity's control which prevent the entity from meeting the 1-year deadline. As a result of the public review process for the proposed reallocation decision, ADWR has recommended that the Secretary consider extensions of the deadline under such circumstances, provided that under no circumstance would the deadline be extended for more than an additional 1-year period. The Final Reallocation Decision recognizes that concept.

Comment 8–2: Phoenix feels the ADWR should not be the party that is formally satisfied that the districts have met the conditions the Secretary has established.

Response 8–2: The Department concurs. The Final Reallocation Decision provides that after consulting with ADWR the Secretary will make the final decisions regarding the satisfaction of prerequisite conditions.

Comment 8–3: Phoenix fully supports a provision that all non-Indian agricultural water allocations which are not contracted for "within a reasonable period of time" shall revert to the Department.

Response 8–3: The Department acknowledges the comment.

(9) Maricopa-Stanfield Irrigation and Drainage District (MSIDD) July 19, 1991

Comment 9–1: The MSIDD expresses a concern that the reversion provision is not legal and opines that neither the CAP agricultural water service subcontracts nor the CAP master repayment contract provides a basis for the reversion provision. The MSIDD also states that SRPMICWRSA does not provide for the use of non-Indian agricultural water to satisfy Indian water rights claims. The MSIDD believes that the CAP agricultural water service subcontracts require that all agricultural allocations that are declined must be reallocated to non-Indian uses until the agricultural allocations are all under subcontract with non-Indian agricultural water users.

Response 9–1: Section 11(h) of the SRPMICWRSA does not address what happens if the agricultural entities to whom an allocation is made as a result of the reallocation process do not sign a new or amendatory CAP water service subcontract. Since Congress did not direct the Secretary to reallocate such allocations for a specific use or otherwise specify how they should be treated, the Secretary may reserve such allocations for his discretionary use. The Department does not agree with MSIDD's interpretation of the subcontracts. To the extent that section 11(h) of the SRPMICWRSA and the terms of the agricultural water service subcontracts are inconsistent, the Department believes section 11(h) of the SRPMICWRSA supersedes the subcontract provision and the Secretary can reserve the uncontracted allocations for his discretion. In addition, the legislative history for the SRPMICWRSA indicates that it was the intent of the Congress that the reallocation be performed consistent with the Secretary's obligations under the SAWRSA. It is the Department's view that the reversion concept is an appropriate and reasonable means for the Secretary to both follow the specific direction of the SRPMICWRSA and the intent of the Congress.

(10) Irrigation & Electrical Districts Association of Arizona (I&EDAA) July 19, 1991

Comment 10–1: The I&EDAA expresses concerns about the legal authority for the reversion mechanism.

Response 10–1: See response 9–1.

Comment 10–2: The I&EDAA argues that the stated intent of the non-Indian agricultural water subcontract language was that the agricultural water entitlement percentages would

ultimately total 100 percent and that the percentages would be adjusted in the reallocation process to accomplish that end. There is nothing in the law or the subcontracts that authorizes the reversion concept.

Response 10–2: See response 9–1. Under the reversion concept, the percentages would still total 100 percent. Any of the reallocated water made available to the Secretary under the reversion concept for other uses would retain its status as non-Indian agricultural water with a subordinate priority to Indian allocations and municipal and industrial allocations established by the 1983 decision (48 FR 12446–12449).

(11) Arizona Department of Water Resources, July 22, 1991

Comment 11–1: ADWR stated that it incorrectly interchanged the terms "financial feasibility" and "economic feasibility" in its recommendation to the Secretary. ADWR states all references to demonstration of feasibility should be in terms of "financial feasibility".

Response 11–1: The Department notes and accepts the comment. The Final Allocation Decision reflects consideration of the comment.

Comment 11–2: ADWR recommends that the conditions for new allottees must be satisfied within 1 year from the time the Secretary makes his decision on the reallocation. However, the Secretary should consider granting justifiable extensions of the 1-year period in 6-month increments for a maximum extension of 1 year.

Response 11–2: See response 8–1.

Comment 11–3: Concerning the reversion provision, ADWR requests that it be consulted before any discretionary allocations are made.

Response 11–3: The Department accepts the comment and will consult with ADWR before any reverted water is reallocated further or committed.

(12) McMullen Valley Water Conservation and Drainage District (MVWCDD) July 19, 1991

Comment 12–1: The MVWCDD is concerned about the use of the term "economically feasible" in the notice of proposed water reallocation decision (56 FR 29404, June 20, 1991).

Response 12–1: See response 11–1.

Comment 12–2: The MVWCDD suggests that imposition of a fixed 1-year deadline for meeting the conditions for contracting for a CAP reallocation is unreasonable and legally unwise.

Response 12–2: See response 8–1.

Comment 12–3: The MVWCDD states that it is redundant to separately impose any of the conditions in paragraph 4 of the ADWR recommendations as set forth in the notice of proposed water reallocation decision under Option 1 (56 FR 28404, June 20, 1991). Each of the conditions must be independently satisfied pursuant to other laws and/or contracts.

Response 12–3: The MVWCDD is suggesting that the 1-year deadline for the conditions is not required because the conditions will eventually need to be satisfied pursuant to other laws or contract. Given the large demand for uncontracted CAP allocations, the fact that CAP will soon be placed into repayment status, and the repayment problems being faced by some of the irrigation districts, the Department believes that it is reasonable and prudent to require the new allottees to meet the specified conditions prior to the execution of a CAP water service subcontract.

(13) Central Arizona Irrigation and Drainage District (CAIDD) July 19, 1991

Comment 13–1: The CAIDD objects to the reversion provision.

Response 13–1: See response 9–1.

(14) Roosevelt Irrigation District (RID), July 12 & 19, 1991

Comment 14–1: The RID expressed concerns about the fixed deadline for any new contractor to comply with paragraphs 4 and 6 of the ADWR recommendations as set forth in the proposed water reallocation decision under Option 1 (56 FR 28404, June 20, 1991).

Response 14–1: See responses 8–1 and 12–3.

Comment 14–2: The RID requests an express disclaimer that it would not be required to pay for any CAP water until the exchange facilities are complete.

Response 14–2: It is more appropriate to address that issue during negotiations for a CAP subcontract and the exchange agreement rather than as part of this reallocation decision.

Comment 14–3: The RID disagrees with ADWR's methodology for calculation of its allocation percentage.

Response 14–3: The Department acknowledges this comment. The Department has accepted ADWR's reallocation recommendations for the initial reallocations. Inherent in accepting ADWR's recommendations is the acceptance of ADWR's criteria used in developing the recommendations.

(15) Ellis, Baker & Porter on behalf of several Arizona Irrigation Districts, July 22, 1991

Comment 15–1: The commenter deplores the compressed schedule by which the Department seeks to review comments and make its decision on the CAP reallocation. The commenter suggests that the Department has already made a decision.

Response 15–1: Congress directed the Secretary to make the reallocation within 180 days of receiving ADWR's recommendations. Staff from the various Federal agencies involved in the reallocation decision have been working diligently over the 6-month period to meet the deadline. However, the reallocation process has been time consuming. It is possible that the Congress did not anticipate or consider the time required for completion of the NEPA process or that part of the 6-month period would have to be devoted to public review and comment and consideration of those comments.

The Department agrees that 6 calendar days (4 working days) are not sufficient to analyze the comments and make the Final Reallocation Decision. However, the Department has endeavored to complete the reallocation in the shortest period possible that is consistent with a full and proper evaluation of all comments received during the public comment period and adequate consideration of the information and issues involved.

Comment 15–2: The commenter registers disagreement with the reversion provision for uncontracted water, particularly in light of section 11(h) of the SRPMICWRSA.

Response 15–2: See response 9–1.

Comment 15–3: The commenter states that the Secretary has no authority to reserve CAP uncontracted water for Indian water rights settlements, and asserts that to do so would be to use "the State's water" to settle "Federal" obligations.

Response 15–3: See response 9–1. Also, the Department is not sure what is meant by "the State's water." If it means the Secretary lacks the authority to allocate and distribute among users Arizona's apportionment of 2.8 million acre-feet of mainstream water, the Department disagrees. The Supreme Court Opinion in *Arizona* v. *California* (June 3, 1963, 373 U.S. 579–580) states:

> Having undertaken this beneficial project, Congress, in several provisions of the Act, made it clear that no one should use mainstream water save in strict compliance with the scheme set up by the Act. . . . To emphasize that water could be obtained from the Secretary alone, Section 5 further declared, "No person should have or be entitled to have the use for any purpose of water stored as aforesaid except by contract made as herein stated." . . . These several provisions, even without legislative history, are persuasive that Congress intended the Secretary of the Interior, through his Section

5 contracts, both to carry out the allocation of the water of the main Colorado River among the Lower Basin States and to decide which users within each state would get water. The general authority to make contracts normally includes the power to choose with whom and upon what terms the contracts will be made.

The Supreme Court rejected the arguments that Congress in sections 14 and 18 of the Project Act took away practically all of the Secretary's power by permitting the States to determine with whom and on what terms the Secretary would make water contracts. It was the Court's view that nothing in those provisions affected the Court's decision that it is the Act and the Secretary's contracts, not the laws of prior appropriation, that control the apportionment of water among the States. Accordingly, the Court held that

. . . the Secretary in choosing between users within each State and in settling the term of his contracts is not bound by these sections to follow State law (373 U.S. 585).

Comment 15–4: The commenter asserts that critics may argue to the Secretary that the proposed reallocation would violate the Reclamation Reform Act of 1982. The delivery of agricultural water to a city for non-agricultural use is not recognized by either law or regulation and in such cases a city has to be treated as an excess landowner.

Response 15–4: The Department has not proposed to allocate or reallocate agricultural water to a city.

(16) Central Arizona Water Conservation District (CAWCD), July 22, 1991

Comment 16–1: CAWCD objects to the reversion concept.

Response 16–1: See response 9–1.

Comment 16–2: The time frames for the new allottees to meet the conditions required for the offering of a CAP subcontract and to complete the subcontracting process should not extend beyond the initiation of repayment for CAP.

Response 16–2: The Department agrees. See response 8–1.

Comment 16–3: In the interest of equity, the Tonopah Irrigation District's CAP water service subcontract should be amended to reduce the District's entitlement to CAP water to reflect the removal of eligible lands from agricultural use since the date of the original CAP water allocation.

Response 16–3: The Department agrees and intends to pursue such a modified subcontract with the District.

(17) Gila River Indian Community (Community), May 21, 1991

Comment 17–1: The Secretary should allocate 75 percent of the uncontracted allocations to the Community.

Response 17–1: Subsection 11(h) of SRPMICWRSA clearly states that the Secretary must reallocate the uncontracted previously allocated CAP agricultural water for non-Indian agricultural use and offer contracts for such water to non-Indian agricultural users. See response to comment 1–1.

Comment 17–2: The reference in section 11(h) of the SRPMICWRSA to "non-Indian agricultural users" does not refer to a racial grouping but to a water priority grouping. Therefore, the Secretary is authorized to allocate the uncontracted allocations to the Community.

Response 17–2: The Department believes that the phrase "non-Indian agricultural users" is self explanatory, in that it identifies a type of user that does not include Indian tribes, communities, nations, or reservations, and that the Department is therefore precluded from initially reallocating the uncontracted allocations to such Indian entities.

(18) San Carlos Apache Tribe, June 5, 1991

Comment 18–1: The final reallocation decision needs to be clear that the "excess Ak-Chin water" is not part of the pool that is being reallocated.

Response 18–1: The "excess Ak-Chin water" has been and continues to be considered as Indian water. Therefore, by definition, such water is not part of the pool being reallocated.

(19) City of Tucson (Tucson), July 5, & July 19, 1991

Comment 19–1: Tucson strongly advocates that all original uncontracted CAP water allocations from the Tucson AMA should be reallocated within the Tucson AMA.

Response 19–1: The Department disagrees. See responses 1–1 & 4–1.

Comment 19–2: Under the provisions of SAWRSA the United States is obligated to annually deliver 28,200 acre-feet of water suitable for agricultural use to the Tohono O'odham Nation, beginning October 12, 1992. The proposed reallocation serves to remove a well-suited solution to this Indian claim. The Secretary should reserve sufficient water to fulfill the Tohono O'odham entitlement prior to the reallocation process.

Response 19–2: The Department disagrees. See responses 1–1 & 3–1.

Comment 19–3: The proposed reallocation to the MVWCDD creates a potential conflict with the purpose of the CAP to protect Arizona's ground-water resources. The observation is made that the Phoenix owns 94 percent of the irrigated lands within the MVWCDD and intends to retire land from irrigation and export the ground water to meet future municipal needs. Tucson asserts that the allocation of CAP water for this purpose (to make ground water available to Phoenix from MVWCDD) would violate the purpose of the CAP and the Secretary's trust responsibility to Indian tribes, particularly the Tohono O'odham Nation.

Response 19–3: See response 20–3. With respect to the Secretary's trust responsibilities, the possibility of reallocation for Indian uses has been carefully considered, and the Department has concluded that within the constraints of existing law, the proposed action (i.e. reallocation with reversion for discretionary use) is the best way for the Secretary to comply with the statutory obligation and to meet his trust responsibilities.

(20) Groundwater Users Advisory Council, Tucson AMA, July 8, 1991

Comment 20–1: Reclamation may have misinterpreted section 11(h) of the SRPMICWRSA without consideration of section 13 of the Act. Section 13 of the SRPMICWRSA justifies an allocation for the SAWRSA.

Response 20–1: The Department disagrees. See response 1–1.

Comment 20–2: It is questionable whether the recommended reallocation to MVWCDD is truly to a non-Indian agricultural water user.

Response 20–2: MVWCDD meets the criteria established by the ADWR for its allocation recommendations, i.e., MVWCDD has lands eligible for irrigation with CAP water, MVWCDD is located in an area of ground-water decline, and MVWCDD provides water for irrigation purposes. Reclamation is aware that the Phoenix owns most of the land in MVWCDD and that the delivery and use of CAP water in McMullen Valley will allow Phoenix to conserve ground water in McMullen Valley for potential future conveyance to the Phoenix service area. However, without a change in section 304(c)(3) of the CAP authorizing legislation, the transfer of ground water from McMullen Valley to Phoenix would be prohibited.

The Final Reallocation Decision provides that MVWCDD must demonstrate that it can take and pay for CAP water based strictly on farm economics, in order to receive an offer of a subcontract. No financial assistance from Phoenix will be allowed to enter

into such a determination. Furthermore, MVWCDD must demonstrate that it will be able to comply with section 304(c)(1) of the CAP authorizing legislation regarding the limitation of irrigated acreage within a CAP contractor's service area.

The Department does not believe MVWCDD should be denied an allocation solely because of speculation about how Phoenix might benefit from its ownership of land in MVWCDD. Reclamation notes that a number of other cities in the Phoenix area own land in CAP agricultural districts and might wish to convey or exchange ground water to obtain CAP water for their service areas.

Comment 20–3: The commenter fails to see how the SRPMICWRSA precludes first-round reallocation to Indians, while allowing the use of the same water for Indian settlements after the contracting is completed.

Response 20–3: See response 1–1.

Comment 20–4: Use of some of this agricultural CAP water would avoid penalties to be paid by the Federal Government under the SAWRSA, and provide for the least expensive mechanism to fulfill the requirement for "exchange water" for 28,200 acre-feet per year of effluent.

Response 20–4: Regardless of financial considerations, the Secretary does not have the discretion to initially reallocate the uncontracted allocations for Indian water rights settlements. See response 1–1.

Comment 20–5: The AMA goal of safe yield is synonymous with the CAP purpose of eliminating ground-water overdraft.

Response 20–5: See response 4–1.

Comment 20–6: The impacts of this reallocation decision warrant preparation of an "Environmental Impact Statement" rather than a "Finding of No Significant Impact."

Response 20–6: The Final Reallocation Decision provides that the implementation of the reallocation of non-Indian agricultural water will be subject to further compliance with the requirements of the NEPA, and compliance with the requirements of the Endangered Species Act and the National Historic Preservation Act prior to execution of any new or amendatory water service subcontract actions and any distribution system repayment contract or construction actions.

Final Reallocation Decision

Introduction

Many diverse interests expressed wide-ranging and conflicting comments and recommendations that can not all be accommodated. The Department is satisfied that ADWR used reasonable criteria and developed its reallocation recommendations through an open public process. Historically, the Department has deferred to the State's recommendations regarding the allocation of CAP water among non-Indian entities. In this instance, the Department has modified the State's recommendations as follows.

(1) It is not in the best interest of the United States to obligate itself for water service to entities that are not current with financial and contractual obligations to the United States, CAWCD, or bond holders. Therefore, being current with financial and contractual obligations will be one prerequisite to execution of a new or amended subcontract for reallocated water.

(2) It is in the best interest of all parties for a reasonable amount of time to be available for potential subcontractors to meet all preconditions associated with being offered a new or amended subcontract. Therefore, the rigid time frames set forth in ADWR's initial recommendations and the proposed reallocation are relaxed to allow the granting of time extensions, within limits, when necessary.

(3) Providing water for Indian water rights settlements and other purposes from the CAP are current pressing problems for the Department.

Therefore, reallocated water not contracted for within the specified time frames will revert to the Department for discretionary use.

Decision

In consideration of the decisions of previous Secretaries on CAP water allocations, the draft and final environmental impact statements prepared on Water Allocations and Water Service Contracting, Central Arizona Project (INT–DES 81–50 and INT–FES 82–7 respectively), the Draft and Final Environmental Assessments on this reallocation of Non-Indian Agricultural Water (dated June 1991 and July 1991, respectively) and the public comments thereon, the recommendations, report and public review process of ADWR, the notice of proposed reallocation and the public comments, thereon, and this Final Reallocation Decision notice, I hereby reallocate the uncontracted CAP non-Indian agricultural water allocations as set forth below and direct the Commissioner of Reclamation, through his Regional Director, Lower Colorado Region, Boulder City, Nevada, to proceed with water service contracting pursuant to subsection 11(h) of SRPMICWRSA and in accordance with the terms and conditions of this decision. The Final Reallocation Decision is as follows:

1. Amendatory subcontracts will be offered to all existing CAP non-Indian agricultural subcontractors. Such amendatory subcontracts would adjust the water entitlements contained in subarticle 4.13(a) of the existing subcontracts as follows:

Irrigation district (subcontractor)	Existing allocation (percent)	New allocation (percent)
Central Arizona IDD	18.01	22.74
Chandler Heights Citrus ID	0.28	0.30
Harquahala Valley ID	7.67	8.73
HoHoKam ID	6.36	6.97
Maricopa-Stanfield IDD	20.48	22.75
New Magma IDD	4.34	7.23
Queen Creek ID	4.83	4.83
Roosevelt Water CD	5.98	6.33
San Tan ID	0.77	0.77
Tonopah ID	1.98	1.98

2. New subcontracts will be offered to agricultural entities to whom previous allocations were made in 1983 (**Federal Register** (48 FR 12446, March 24, 1983)) but were not heretofore subject to contracting deadlines. The new subcontracts would adjust the previous allocations as follows:

Subcontractor	Original allocation (percent)	Adjusted allocation (percent)
Farmers Investment Co. [FICO]	1.39	1.64
San Carlos IDD [SCIDD]	4.09	6.84

3. New subcontracts will be offered with the indicated allocations to the following entities:

Entity/subcontractor	Allocation (percent)
Arizona State Land Department:	
Lease #01–00694 (Picacho Pecans)	0.54
Lease #01–077685 (Aguirre)	0.11
McMullen Valley Water CDD [MVWCDD]	3.17
Roosevelt ID [RID]	5.07

4. No subcontract will be executed with any entity in paragraph 3 above unless the entity meets the following conditions within 1 year from the date of this decision, or within a longer period, not to exceed 1 year, as may be agreed to by the Regional Director, Bureau of Reclamation, Boulder City, Nevada.

a. Demonstrates to the satisfaction of the Secretary that it is financially feasible to distribute CAP water for agricultural production to the eligible lands in the entity's leasehold or service area and that there is no impediment to any necessary exchange agreements. To meet the financial feasibility requirement, the allottee must demonstrate, using Reclamation's farm budgeting process, that there is sufficient revenue from farm operations within its leasehold or service area to cover all expenses associated with farming, to provide a reasonable return to the farmer for the cost of the farmer's labor, management, and capital, to pay all costs of construction, operation, maintenance, and replacement associated with delivering CAP water from the CAP aqueduct to the point of use, to pay all CAP water costs, and to meet debt requirements, including repayment of Federal construction cost obligations over a period of not to exceed 40 years. In effect, the Department will expect the allottee to meet the same financial feasibility requirements as the other entities which received federally funded and constructed distribution systems. Willingness to pay from non-farming sources will not be considered in determining the ability of the allottee to meet the financial feasibility requirement. The determination that this condition has been met will be made in consultation with ADWR.

b. Commits to relinquish any allocation of "Hoover B" electric power, the incremental capacity and energy resulting from the up-rating program of the Hoover Dam Power plant pursuant to Public Law 98-381 (98 Stat. 1333).

c. Demonstrates to the satisfaction of the Secretary that there will be in place provisions to comply with section 304(c)(1) of Public Law 90-537 for any such entity located outside of an existing AMA or Irrigation Non-expansion Area. The determination that this condition has been met will be made in consultation with ADWR.

5. A determination of eligible acres will be made by the Secretary and the allocation will be adjusted, if necessary, in a manner consistent with the methodology used by ADWR in developing its recommended reallocation before a subcontract will be executed with any entity listed in paragraph 3.

6. Amendatory or new subcontracts must be executed with the existing subcontractors or entities to whom previous allocations were made in 1983 within 6 months of the date of this decision, unless the offering of the amendatory or new subcontract is delayed more than 4 months by the United States or CAWCD. In that event, the amendatory or new subcontract must be executed within 2 months from the time it is offered. New subcontracts must be executed with the allottees listed in paragraph 3 within 6 months after the requirements of paragraph 4 have been completed. No new or amendatory subcontract will be executed with any allottee that is not current with existing obligations to the United States, CAWCD, or bond holders when the time frames specified in this paragraph elapse.

7. If any allottee contracts for an amount less than the amount allocated herein, declines to contract, or is not eligible for a subcontract when the time frames specified in paragraph 6 elapse, then all such uncontracted for water will revert to the Secretary for discretionary use. All reverted water shall retain its status as non-Indian agricultural water with a priority subordinate to Indian allocations and M&I allocations established by the 1983 Decision (48 FR 12446-12449). While the reverted water may be used for M&I service, it will not have the right of conversion to M&I use and priority as provided for in the existing non-Indian agricultural subcontracts. The Department will consult with ADWR before committing reserved water to any specific use or user.

8. Implementation of the reallocation decision will be subject to compliance with the requirements of NEPA, the Endangered Species Act, the National Historic Preservation Act, and other applicable laws and regulations. Such compliance will be carried out prior to the execution of any new water service subcontracts, amendments to existing water service subcontracts, and any new water distribution system repayment contracts, and before commencing construction for any new water distribution systems.

Effective Date and Effect on Previous Decision

This Final Reallocation Decision is effective as of the date of this notice and supplements the previous allocation decision published by Secretary Watt on March 24, 1983 (48 FR 12446). Insofar as the March 24, 1983, decision is inconsistent with this Final Reallocation Decision, the affected provisions of the 1983 decision are hereby rescinded.

Dated: January 31, 1992.

Manuel Lujan Jr.,

Secretary of the Interior.

[FR Doc. 92-2762 Filed 2-4-92; 8:45 am]

BILLING CODE 4310-09-M

Bureau of Land Management

[MT-070-01-4212-21; MTM80639]

Realty Action: Leases, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, proposal to lease public land in Lewis and Clark County, Montana.

SUMMARY: The Bureau of Land Management proposes to issue a lease on the following described public lands to resolve an unintentional occupancy trespass.

Principal Meridian, Montana

T. 10 N., R. 1 W., Sec. 6, an unofficial Metes and Bounds Lot within Lot 2; comprising 0.57 acres.

The land is located at the upper end of Hauser Lake about 13 miles east of Helena, Montana. The lease would be issued under section 302 of the Federal Land Policy and Management Act (FLPMA) of 1976: 43 U.S.C. 1732, and would be issued noncompetitively. The lease would be issued for a term of 20 years and would be nonrenewable. Fair market rental will be collected for the use of the land, as well as full payment of past trespass liability and reasonable administrative and monitoring costs for processing the lease. A final determination on the lease of this public land will be made after completion of an environmental assessment.

DATES: On or before March 5, 1992, interested parties may submit comments to the Headwaters Resource Area Manager, P.O. Box 3388, Butte, Montana 59702.

FOR FURTHER INFORMATION CONTACT: Bob Rodman, 406-494-5059, at the above address.

Dated: January 24, 1992.

Merle Good,

Area Manager.

[FR Doc. 92-2735 Filed 2-4-92; 8:45 am]

BILLING CODE 4310-DN-M

[CO-050-4380-12]

Moratorium on Commercial Outfitting Permits

AGENCY: Bureau of Land Management, Interior.

ACTION: Establish a moratorium on the number of commercial outfitting permits for the Arkansas Headwaters Recreation Area within the BLM Canon City District, Colorado.

SUMMARY: The BLM Canon City District and the Colorado Division of Parks and

Outdoor Recreation (DPOR) jointly manage the Arkansas Headwaters Recreation Area (AHRA) through a Cooperative Management Agreement (CMA). Through this CMA, DPOR was delegated the management of the permitting of commercial outfitters in the AHRA. BLM and DPOR manage the AHRA through the decisions from the Arkansas River Recreation Management Plan. The Plan identified certain thresholds of use that would initiate the development of a rationing plan. The thresholds were met during the 1991 season and the development of a rationing plan has been initiated.

As part of the development of the rationing plan, BLM and DPOR determined that a moratorium on the number of commercial outfitting permits was desirable. In 1991 there were 70 commercial boating permittees on the Arkansas River. The development of an equitable rationing plan for this large number of outfitters will require extensive time and consideration. A moratorium will provide time to develop, through a public process, appropriate and specific procedures for rationing use within the prescribed capacities of outfitted boating use in the AHRA. The establishment of a moratorium was coordinated with the AHRA's Citizen Task Force.

The moratorium will go into effect on March 2, 1992. Only those commercial rafting outfitters that had a valid permit for the AHRA in 1991, and properly met the requirements of that permit, will be eligible to obtain a permit in 1992.

The moratorium will be in effect until the rationing plan is approved. At that time the moratorium will be lifted and constraints on the number of outfitting permits from the rationing plan, if any, will be implemented.

Sales of outfitting businesses and any transfer of permits that may apply during the period of the moratorium will be dealt with through BLM Manual H8372-1.

EFFECTIVE DATE: March 2, 1992.

FOR FURTHER INFORMATION CONTACT: Pete Zwaneveld, Outdoor Recreation Planner, BLM, Canon City District Office, P.O. Box 2200, Canon City, CO 81215-2200, telephone: (719) 275-0631.

SUPPLEMENTARY INFORMATION: Two exceptions to this moratorium have been identified. The first deals with several commercial kayaking and canoeing outfitters/schools. Due to confusion on the applicability of requirements, these outfitters have not been permitted in the past. Those outfitters that can document use in the AHRA in 1991 are exempt from the moratorium and are eligible for a permit.

The other exception deals with existing non-profit organizations. Again, due to some confusion these organizations did not get a permit in 1991. Those that can document use in 1991 are exempt from the moratorium and are eligible for a permit.

Nothing in this moratorium prevents the issuance of Special Event Permits to qualifying events, such as races, unique training opportunities for the Olympic team and special schools, fund raisers, etc., as authorized in the Arkansas River Recreation Management Plan.

Authority for implementing this action is contained in 43 CFR 8372.3.

Donnie R. Sparks,

District Manager.

[FR Doc. 92-2695 Filed 2-4-92; 8:45 am]

BILLING CODE 4310-JB-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 303-TA-22 (Final)]

Extruded Rubber Thread From Malaysia

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 303-TA-22 (Final) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Malaysia of extruded rubber thread,[1] provided for in subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States.

Pursuant to a request from petitioner under section 705(a)(1) of the act (19 U.S.C. 1671d(a)(1)), Commerce has extended the date for its final determination to coincide with that to be made in the ongoing antidumping investigation on extruded rubber thread from Malaysia. Accordingly, the Commission will not establish a schedule for the conduct of the countervailing duty investigation until Commerce makes a preliminary determination in the antidumping investigation (currently scheduled for February 14, 1992).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: December 30, 1991.

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 as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 303 of the act (19 U.S.C. 1303) are being provided to manufacturers, producers, or exporters in Malaysia of extruded rubber thread. The investigation was requested in a petition filed on August 29, 1991. by North American Rubber Thread Co., Inc., Fall River, MA.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or there representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's

[1] The merchandise covered by this investigation is vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross-sectional shape, measuring from 0.18 millimeter (0.007 inch or 140 gauge) to 1.42 millimeters (0.056 inch or 18 gauge) in diameter.

rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules.

By order of the Commission.

Issued: January 28, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-2743 Filed 2-4-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-331]

Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same; Hearing

Notice is hereby given that the hearing in this matter will commence at 9 a.m. on January 30, 1992, in Courtroom C (room 217), U.S. International Trade Commission, 500 E St. SW., Washington, DC.

The Secretary shall publish this notice in the **Federal Register.**

Issued: January 24, 1992.

Janet D. Saxon,

Administrative Law Judge.

[FR Doc. 92-2741 Filed 2-4-92; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-55]

Certain Novelty Glasses; Commission Order To Show Cause Why Exclusion Order Should Not Be Rescinded

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States International Trade Commission has ordered complainants Howw Manufacturing, Inc. and Plus Four, Inc. to show cause why the exclusion order issued July 11, 1979, in the above-captioned investigation should not be rescinded. The Commission ordered that such showing be made by written submission filed with the Office of the Secretary no later than thirty (30) days after service of the Order by the Commission.

FOR FURTHER INFORMATION CONTACT: Alesia M. Woodworth, Esq. or T. Spence Chubb, Esq., Office of Unfair Import Investigation, U.S. International Trade Commission, telephone 202-205-2571. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The above-captioned investigation was instituted on July 5, 1978, pursuant to a complaint and amendment filed by Howw Manufacturing, Inc. and Plus Four, Inc. 43 FR 29840 (July 11, 1978). The investigation was instituted to determined whether Yau Tak Ind., Ltd. and C.Y. Trading Company violated section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation or sale of certain novelty glasses which were alleged, *inter alia*, to unfairly copy complainants' trade dress.

On July 11, 1979, the Commission issued an order in the above-captioned investigation excluding from entry into the United States novelty glasses manufactured abroad which unlawfully copy the trade dress of certain of complainants' novelty glasses. The Order also requires Howw Manufacturing, Inc. and Plus Four, Inc. to report to the Commission, on a semi-annual basis, whether complainants are continuing to use the subject trade dress.

In 1991, complainants failed to submit to the Commission the semi-annual reports required by the Commission's Order. Consequently, the Commission has ordered complainants to show cause why the Commission's exclusion order in the above-captioned investigation should not be rescinded pursuant to Rule 211.57 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 211.57.

Public Inspection

The documents cited in this notice and all other nonconfidential documents on the record of this investigation will be made available for public inspection upon request during official business hours (8:45 a.m. to 5:15 p.m., Monday through Friday), in the Office of the Secretary U.S. International Trade Commission, 500 E Street, SW., Docket Section—room 112, Washington DC 20436, telephone 202-205-1802.

Issued January 27, 1992.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92-2742 Filed 2-4-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-320]

Certain Rotary Printing Apparatus Using Heated Ink Composition, Components Thereof and Systems, Containing Said Apparatus and Components; Commission Decision Extending Administrative Deadline for Completion of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the administrative deadline for completion of the above-captioned investigation by 30 days, *i.e.*, from January 29, 1992 to February 28, 1992.

ADDRESSES: Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-205-3092.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: On August 28, 1991, the presiding administrative law judge (ALJ) issued an ID finding a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the subject investigation.

On October 15, 1991, the Commission issued notice of its decision to review the ID in its entirety and to recall certain physical exhibits for which photographs had been substituted pursuant to ALJ Order No. 5.

On November 26, 1991, the Commission designated the investigation as "more complicated" and established an administrative deadline of January 29, 1992, for completion of the investigation.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.59(a) of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. 210.59(a)(1991)).

Issued: January 24, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc.92-2740 Filed 2-4-92; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514-4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian.

(2) None. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. The information requested is used in support of Form I-360 to assure financial support for P.L. 97-359 Amerasians. The Affidavit is used only to sponsor individuals eligible for immigration under Public Law 97-359.

(5) 50 annual responses at .5 hours per response.

(6) 25 annual burden hours.

(7) Not applicable under 3504(h).

1. Alien Crewman's Landing Permit.
2. I-95A. Immigration and Naturalization Service.
3. On occasion.
4. Individuals or households. Vessel and Air Crewman must complete this form as part of the admission process to the United States as provided by sections 251 & 252 of the Immigration & Nationality Act.
5. 433,000 annual responses at .083 hours per response.
6. 30,310 annual burden hours.
7. Not applicable under 3504(h).

1. Judicial Recommendations Against Deportation; Controlled Substance Violations Rule.
2. None. Immigration and Naturalization Service.
3. On occasion.
4. Individuals or households. This will aid INS in not placing unnecessary detainers on alien criminals and will help ensure that deportation proceedings will not be commenced in error.
5. 3,000 annual responses at .25 hours per response.
6. 750 annual burden hours.
7. Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: January 30, 1992.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-2711 Filed 2-4-92; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-26,316]

Worthington Precision Metals; Mentor, OH; Negative Determination Regarding Application for Reconsideration

By an application dated January 16, 1992, Local #70 of the United Auto Workers (UAW) requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on December 23, 1991 and will soon be published in the **Federal Register**.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce components for automobiles—transmission parts and power steering parts.

The union states that governor sleeve production for one of Worthington's major customers was phased out in 1988 and that this production is currently being performed in Canada. Also, the union claims that the market loss to imported automobiles has adversely affected their business.

Any declines in sales or production and employment in 1988 are outside the scope of this investigation. Section 223(b)(1) of the Trade Act does not permit the certification of workers who were laid off prior to one year of the petition date. The date of the union's petition is August 28, 1991.

Further, the market loss due to automobile imports would not form a basis for certification of workers producing automobile components. The issue of components was addressed early in the administration of the worker adjustment assistance program. In *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 502 F2d (D.C. Cir. 1974) the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Accordingly, increased imports of autos cannot be considered in determining injury to workers producing

transmission parts and power steering parts. In determining import injury to workers at Mentor, the Department must consider the finished article produced at Mentor—transmission parts and power steering parts.

The Department's denial was based on the fact that the contributed importantly test of the Group Eligibility Requirements of the Trade Act was not met. The respondents to the Department's survey of Worthington's major customers showed that they did not import power steering components. The respondents also indicated that they did not increase their import purchases of automotive transmission parts in 1991 compared to 1990.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 28th day of January 1992.

Barbara Ann Farmer,

Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 92-2719 Filed 2-4-92; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: These additions to the annual list of labor surplus areas are effective February 1, 1992.

SUMMARY: The purpose of this notice is to announce additions to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue NW., room N-4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0189.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation Part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation Part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 25, 1991, (56 FR 55339).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and are effective February 1, 1992.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on January 29, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

Additions to the Annual List of Labor Surplus Areas.

(February 1, 1992)

Labor surplus areas	Civil jurisdictions included
Kentucky:	
Greenup County	Greenup County.
Simpson County	Simpson County.
Maine:	
Piscataquis County	Piscataquis County.

[FR Doc. 92-2720 Filed 2-4-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by March 6, 1992. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected

Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. *Applicant:* Peter Peterson, Antarctic Support Associates, 61 Inverness Drive E., Englewood, CO 80112.

Activity for Which Permit Requested: Taking. The applicant requests permission to take by harassment elephant seals. During the austral summer at Palmer Station, Antarctica, elephant seals will attempt to access the Palmer Station pier. If a seal is on the pier when a ship arrives to dock, the seal may move and be crushed by the incoming ship. As a preventative measure, the applicant requests permission to "herd" the seals from the pier and out of danger.

Location: Palmer Station, Antarctic peninsula.

Dates: 1992–1997.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 92–2702 Filed 2–4–92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Boiling Water Reactors; Meeting

The Subcommittees on Advanced Boiling Water Reactors will hold a meeting on February 20–21, 1992, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, February 20, 1992—8:30 a.m. until the conclusion of business.

Friday, February 21, 1992—8:30 a.m. until the conclusion of business.

The Subcommittee will review SECY–91–320 and SECY–91–355, addressing two DSERs related to different chapters of the GE/Standard Safety Analysis Report for the ABWR design, and other related issues.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the General Electric Corporation, NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Medhat M. El-Zeftawy, (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 28, 1992.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–2752 Filed 2–4–92; 8:45 am]

BILLING CODE 7590-01-M

Second Meeting of the SCDAP/RELAPS Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Meeting.

SUMMARY: The SCDAP/RELAPS Peer Review Committee will hold its second meeting to review the technical adequacy of the SCDAP/RELAPS code.

DATES: April 7–10, 1992.

TIME: 8 a.m. each day.

ADDRESSES: University Place, Idaho Falls, Idaho.

FOR FURTHER INFORMATION CONTACT: Dr. Y.S. Chen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 492–3566.

SUPPLEMENTARY INFORMATION: The SCDAP/RELAP5 Peer Review Committee will hold its second meeting to review the technical adequacy of the SCDAP/RELAP5 code on April 7–10, 1992, in Idaho Falls, ID. The SCDAP/RELAP5 code has been developed for best-estimate transient simulation of light water reactor coolant systems during severe accidents as well as large and small break loss-of-coolant accidents, and operational transients such as anticipated transient without SCRAM, loss of offsite power, loss of feedwater, and loss of flow. The code is based on three separate codes: RELAP5, SCDAP, and TRAP-MELT, which are combined to model the coupled interactions that occur between the Reactor Coolant System (RCS), the core, and the fission products during a severe accident. The newest version of the code is SCDAP/RELAP5/MOD3. A number of organizations inside and outside the NRC are using or planning to use the current version. Although the quality control and validation efforts are seen to be proceeding, there is a need to have a broad technical review by recognized experts to determine the technical adequacy of the SCDAP and TRAP-MELT portions of SCDAP/RELAP5 for the serious and complex analyses it is expected to perform.

The meeting will focus on preliminary Committee findings on technical adequacy of detailed code models. During the meeting held on Tuesday and Wednesday, April 7–8, 1992, the Committee members will present their findings on "Bottom-Up"—detailed model reviews. Thursday through Friday, April 9–10, 1992, detailed "Top-Down" modeling input will be presented by the Idaho National Engineering Laboratory (INEL). On Friday the Committee will also discuss Final Report outline and plans for the third Peer Review Meeting.

SUBJECT: SCDAP/RELAP5 Peer Review Committee meeting.

Dated at Rockville, Maryland, this 29th day of January, 1992.

For the U.S. Nuclear Regulatory Commission

Farouk Eltawila,

Chief, Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 92–2747 Filed 2–4–92; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any

amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 10, 1992, through January 24, 1992. The last biweekly notice was published on January 22, 1992 (57 FR 2584).

Notice Of Consideration Of Issuance Of Amendment To Facility Operating License And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 6, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for

example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: January 4, 1991, as supplemented June 24 and December 19, 1991.

Description of amendments request: This amendment request was originally noticed on March 20, 1991 (56 FR 11722). Although the original request remains unchanged, the proposed change adds a new requirement for the Plant Nuclear Safety Committee (PNSC) to review changes to the Fire Protection Program and implementing procedures and submit any changes approved by the PNSC to the Nuclear Assessment Department (NAD) for review.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Change does not involve a significant hazards consideration for the following reasons:

1. The proposed change requires the additional review by the PNSC and the NAD of future changes to the Fire Protection Program and implementing procedures. The change is a new Technical Specification requirement that is consistent with the requirements of NRC Generic Letters 86-10 and 88-12. The proposed change is an administrative control that does not physically alter the facility in any manner and, as such, does not affect the means by which any safety-related system performs its intended safety function. As such, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in Item 1 above, the proposed change requires the additional review by the PNSC and the NAD of future changes to the Fire Protection Program and implementing procedures. As such, the proposed change does not involve physical alterations of the plant configuration or changes in setpoints or operating parameters. The proposed change adds a new requirement to Technical Specification 6.5.3.8 which is administrative in nature.

3. The proposed change does not involve a significant reduction in the margin of safety. The proposed change requires the additional review by the PNSC and the NAD of future changes to the Fire Protection Program and implementing procedures. Future changes to the Fire Protection Program and the associated implementing procedures will be subject to controlled review in accordance with both the requirements of Section 6 of the Technical Specifications and in accordance the existing requirements of 10 CFR 50.59. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 30, 1991

Description of amendment request: The licensee has proposed to modify the technical specifications for the Control Room Air Filtration System to delete the requirement to monitor hydrogen cyanide and to increase the existing anhydrous ammonia monitor alarm/trip setpoint from 3.5 ppm to 25 ppm.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the requirements of 10 CFR 50.92, the proposed changes to Technical Specification 3.3.H.3 is deemed not to involve a "Significant Hazards Consideration" because operation of Indian Point Unit No. 2 in accordance with this change would not:

1) Involve a significant increase in the probability of consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of a previously analyzed accident. [The Code of Federal Regulations at] 10 CFR [Part] 50 Appendix A, General Design Criteria (GDC) 19 requires that a control room be provided from which actions can be taken to operate the nuclear power unit safely under normal conditions and to maintain it in a safe condition under accident conditions. The accident postulated is the discharge of a hazardous chemical in sufficient quantity to render the control room uninhabitable. The original habitability study performed in 1981, identified three hazardous chemicals within a 5 mile radius of IP-2 required to be monitored. This study

provided the basis for the existing toxic gas monitoring system.

The new habitability study performed in 1991, supersedes the previously performed study. The results of this new study confirm that the need to monitor hydrogen cyanide is no longer necessary. Therefore, the proposed change to delete the requirement to monitor hydrogen cyanide does not increase the probability or consequences of a previously analyzed accident, because the probability of a hydrogen cyanide accident has actually decreased.

The proposed change to the anhydrous ammonia alarm/trip setpoint from 3.5 ppm to 25 ppm does not involve a significant increase in the probability or consequences of a previously analyzed accident. The proposed increase of the setpoint is at a value which is recognized by the American Conference of Government Industrial Hygienists as the Threshold Limit Value time weighed average concentration at which all workers may be repeatly exposed, day after day, without adverse effect. Therefore, the proposed change to increase the anhydrous ammonia alarm/trip setpoint does not significantly increase the probability or consequences of a previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident. The deletion of the hydrogen cyanide monitor and the increase of the alarm/trip monitor setpoint for anhydrous ammonia do not affect the storage or the use of any hazardous chemicals.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety. The deletion of the hydrogen cyanide monitor does not reduce any margin of safety since the requirement to detect hydrogen cyanide has been eliminated. The increase of the alarm/trip monitor setpoint for anhydrous ammonia does not significantly reduce the margin of safety since the new setpoint is at the Threshold Limit Value time weighed average concentration at which all workers may be exposed, day after day, without adverse effect.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: November 12, 1991

Description of amendment request: Change the Palisades Technical Specifications to remove the schedule for withdrawal of the reactor vessel material specimens. A revised reactor vessel surveillance coupon removal schedule has been submitted for approval which reflects the actual operating cycle that will be included in the next revision of the FSAR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the possibility or consequences of an accident previously evaluated.

The relocation of the surveillance specimen removal schedule is an administrative change removing a duplication of the requirement already contained in Appendix H to 10 CFR 50. Therefore, the change has no effect on the possibility or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The relocation of the surveillance specimen removal schedule is an adminstrative change removing a duplication of the requirement already contained in Appendix H to 10 CFR 50. Therefore, the change does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The relocation of the surveillance specimen removal schedule is an administrative change removing a duplication of the requirement already contained in Appendix H to 10 CFR 50. Therefore, the margin of safety, as defined by the plant licensing bases, is unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: L. B. Marsh.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 18, 1991

Description of amendment request: The requested Technical Specification (TS) changes which support the McGuire Unit 2 Cycle 8 reload are administrative in nature and make the McGuire Unit 2 TS identical to the previously approved McGuire Unit 1 TS (approved November 27, 1991). The methodology and analyses that supported the previously approved Unit 1 TS amendment are applicable to both McGuire Units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The [Technical Specification] changes . . . are administrative in nature, to reflect the application of a previously approved methodology to McGuire Unit 2. The changes delete references to specific units on individual Technical Specification (TS) pages, and delete superseded (previously Unit 2 only) pages. The unit-specific references became necessary upon application of a new safety analysis methodology for McGuire Unit 1 Cycle 8, and resulted in parallel, but different, sets of TSs; notably in the Power Distribution chapter. The analysis which made the changes necessary in the Unit 1 reload submittal is a generic one, applicable equally to both McGuire units and Duke's two Catawba units. Therefore, there is no new significant hazards consideration (SHC) which will be raised by this amendment. This determination is in keeping with staff guidance which was published in the Federal Register (48 FR 14864) to assist in determining whether or not proposed amendments are likely to raise an SHC. This guidance cites as an example of an amendment not likely to involve a significant hazards consideration "a purely administrative change to technical specifications: for example, a change to achieve consistency . . ."

Since these changes are considered administrative, no further analysis is required.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South

Church Street, Charlotte, North Carolina 28242

NRC Project Director: David J. Lange, Acting

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: August 16, 1991

Description of amendment request: The proposed amendment would delete Sebring Utilites Commission as a participating owner. Florida Power Corporation, which owns 90 percent of Crystal River Unit 3 (CR-3), will purchase the Sebring share (0.4473 percent).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

...[t]he amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because no operational restrictions are modified by deleting a previous owner from the facility's operati[ng] license. In addition, the proposed change does not involve plant equipment, plant systems, procedural changes[,] the number or technical qualifications of operating personnel or nuclear plant management. Rather, the [change] relates to a minor adjustment in ownership shares.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require physical modification to the plant.

3. Involve a significant reduction in the margin of safety. No reduction in the margin of safety will result since the purpose of the change is solely administrative in nature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Attorney for licensee: A. H. Stephens, General Counsel, Florida Power Corporation, MAC - A5D, P. O. Box 14042, St. Petersburg, Florida 33733

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: December 17, 1991

Description of amendment request: The proposed amendment would revise Technical Specification Section 3.1.1.4.c., "Moderator Temperature Coefficient" (MTC). This proposal would change the MTC value from -27 pcm/degree F to -30 pcm/degree F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the Technical Specification negative MTC limit is an input parameter in various transient and accident analysis. Allowing the operating MTC to be more negative does not influence whether or not the transient is more or less likely to occur. Safety analyses have been performed to demonstrate that any transients or accidents whose results would be adversely affected by a more negative MTC limit do not have consequences that are significantly worse than previously evaluated. In addition, the revised analyses, incorporating the proposed change in MTC limit, continue to demonstrate that all appropriate analyses criteria reported in the Reload Analysis Report are met. In particular, the change does not cause any violations of the appropriate fuel design criteria, increase previously calculated site boundary doses, or result in [reactor coolant system] pressures above the upset pressure limit. Therefore, the proposed change in the Technical Specification MTC limit does not involve any increase in the probability or consequences of an accident previously evaluated.

In addition to the [a]ccident analysis, the effect on the [b]oric [a]cid [m]akeup [t]ank boron concentration limits were evaluated. This evaluation shows that this change will not affect the current limit. The proposed change does not alter any equipment performance requirements, or the probability of consequences of equipment malfunction.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change in the negative Technical Specification MTC limit does not constitute any change in procedures for plant operation or hardware nor does it require any change in the accident analysis methodology or the [d]esign [b]asis [e]vent analyzed. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with this proposed amendment would not involve a significant reduction in a margin of safety.

Safety analysis calculations show that incorporation of the more negative MTC limit yields results which are still within the existing acceptance criteria without the need to change any other Technical Specification [Limiting Conditions for Operation] or [Limiting Safety System Setting] limits. Therefore, the operation of the facility in accordance with the proposed amendment involves no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, N.W., Washington, D.C. 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 23, 1991, as supplemented December 20, 1991.

Description of amendment request: The proposed amendment would revise Section 3.13 of the Oyster Creek Nuclear Generating Station Technical Specifications. The change incorporates an NRC requirement derived from the BWR Technical Specifications to have available a preplanned alternate method to provide an estimate of radioactive material in containment under accident conditions if both Containment High Radiation Monitors are inoperable for 7 days or more. The "Bases" section of Technical Specification 3.13 was clarified as described in the licensee's letter of December 20, 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below: The proposed amendment would not:

1. Involve an increase in the probability or consequences of an accident previously evaluated.

The proposed change documents that the post accident sampling system provides capability for monitoring post accident

containment radioactivity, and represents no change to plant configuration or procedures. As such, there is no increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Because the proposed Tech. Spec. change involves no change to the plant configuration or procedures, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

Because the proposed Tech. Spec. change involves no change to the plant configuration or procedures, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: July 11, 1990, supplemented May 7, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications in response to NRC Generic Letter (GL) 88-01. The proposed revisions would add a commitment to perform the Inservice Inspection Program for piping as identified in GL 88-01, would revise the Actions for out of service leakage detection systems, and add a Limiting Condition For Operation and Action for sudden increases in Reactor Coolant System leakage. (55 FR 36345 September 5, 1990)

Subsequent to the application for amendment dated July 11, 1990, the licensee received the NRC staff's Safety Evaluation (SE) of this previously submitted response to GL 88-01. The SE concluded that the licensee's response was acceptable with two exceptions, one of which was related to the proposed TS change, frequency for monitoring the unidentified leakage rate. The licensee has addressed this issue in their response dated May 7, 1991, by including a requirement to monitor the unidentified leakage rate at least once per 8 hours consistent with the NRC staff SE.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes incorporate additional and more stringent requirements into the Technical Specifications for monitoring and responding to reactor coolant leakage, particularly with respect to leakage from piping made of austenitic stainless steel. Under the revised Technical specifications as proposed, an IGSCC condition in austenitic stainless steel piping may be recognized and appropriate action taken well before the gross failure of stainless steel piping could occur. The proposed changes are consistent with the "Staff Position on Leak Detection" section of Attachment A to Generic Letter 88-01. The change to specification 4.0.5 enforces implementation of the applicable NRC Staff positions in the ISI program from the standpoint of the Technical Specifications, thus enhancing inspection and sampling practices for piping subject to intergranular stress corrosion cracking.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not involve any changes to plant design or any new mode of operation such that a new or different kind of accident must be considered.

3. The proposed changes do not involve a significant reduction in a margin of safety because the proposed changes should enhance recognition and evaluation of a possible degradation (increased leakage due to cracked piping or welds) before a more severe condition or accident occurs.

The NRC staff has reviewed the licensee's analysis and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes doe not involve a significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensee: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: John N. Hannon

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 20, 1991

Description of amendment request: The amendment would revise the Technical Specifications by: (1) incorporating programmatic controls in the Administrative Controls section of the Technical Specifications (TS) that satisfy the requirements of 10 CFR 20.106, 40 CFR Part 190, 10 CFR 50.36a, and Appendix I to 10 CFR Part 50; (2) relocating from the TS to the Offsite Dose Assessment Manual (ODAM) procedural details or specific requirements in the current TS involving radioactive effluent monitoring instrumentation, the control of liquid and gaseous effluent, equipment requirements for liquid and gaseous effluent, radiological environmental monitoring, and radiological reporting details; (3) relocating from the TS to the Process Control Program (PCP) procedural details or specific requirements on solid radioactive wastes; (4) simplifying the associated reporting requirements; (5) simplifying the administrative controls for changes to the ODAM and PCP, (6) adding record retention requirements for changes to the ODAM and PCP; and (7) updating the definitions of the ODAM and PCP consistent with these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve any increase in the probability of occurrence or consequences of an accident previously evaluated. This change is administrative in nature since the existing RETS [Radiological Effluent Technical Specifications] requirements will be relocated to the ODAM and PCP and will be controlled by the requirements stipulated in the administrative section of the TS.

2. Operation of the facility with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the requirements of RETS will be incorporated into the ODAM and PCP with specific administrative controls remaining in the Technical Specifications. This change is administrative in nature and is consistent with the guidance provided in GL 89-01.

3. Operation of the facility in accordance with the proposed amendment would not involve any reduction in a margin of safety. The margin of safety remains the same; as the existing requirements will be maintained as part of the ODAM and PCP and will provide for adequate control over radioactive effluent releases and for radiological environmental monitoring activities.

The proposed changes will not increase the probability or consequences of any previously analyzed accident, introduce any new or different kind of accident, or reduce any existing margin of safety. Therefore, the proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: December 30, 1991

Description of amendment request: The amendment would revise the Technical Specifications by combining the Recirculation Pump Limiting Condition for Operation (LCO) and Surveillance Requirements into one section, consolidating Single Loop Operation (SLO) requirements from other sections, and making minor editorial changes and corrections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not increase the probability or consequences of an accident occurring because it does not result in any physical or operational changes to the plant. The change serves only to clarify current operational requirements previously approved in Amendment No. 119 by incorporating "human-factors" improvements to the SLO TS.

2. The proposed change does not result in any physical or operational changes to the plant nor does it change current operating practice, and therefore cannot create the possibility of any new or different type of accident.

3. The margin of safety as defined by TS will not be reduced, since the proposed change makes no modifications to plant equipment and only serves to clarify current operational requirements previously approved in Amendment No. 119.

The consolidation of requirements from other TS sections into the SLO section and the addition of TS guidance for operation in certain regions of Figure 3.3-1 are consistent with current operating practice and incorporate human-factors improvements, and do not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: January 7, 1992

Description of amendment request: The proposed amendment would delete the fire protection technical specifications and their associated Bases and definitions from the Nine Mile Point Unit 1 Technical Specifications. The deleted requirements would be relocated to the Nine Mile Point Unit 1 Fire Hazards Analysis, which is incorporated by reference into the Nine Mile Point Unit 1 Final Safety Analysis Report (Updated). The proposed amendment would augment the Administrative Controls section of the Technical Specifications to require (1) that written procedures be established, implemented, and maintained for activities involving implementation of the Fire Protection Program, (2) periodic review of the Fire Protection Program and implementing procedures by a qualified individual/organization, and (3) submittal of recommended changes to the Fire Protection Program and implementing procedures to the Safety Review and Audit Board. Conforming changes would also be made to the Index for the technical specifications. License Condition 2.D.(7) would be revised to permit the licensee to make changes to the approved Fire Protection Program without prior approval of the NRC only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire. The proposed changes are in accordance with the guidance provided in NRC Generic Letter 88-12, "Removal of Fire Protection Requirements from Technical Specifications," dated August 2, 1988, and NRC Generic Letter 86-10, "Implementation of Fire Protection Requirements," dated April 24, 1986.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated, because no changes to safety systems or setpoints are proposed. The proposed changes simply relocate the fire protection requirements from the Technical Specifications to the [Final Safety Analysis Report] FSAR (Updated) in accordance with the guidance in Generic Letters 86-10 and 88-12. The proposed changes are administrative only and do not affect current plant practices; therefore, they will not significantly increase the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because these changes do not affect the operation or function of any equipment necessary for the safe operation or shutdown of the plant. The proposed changes do not involve any physical alterations of plant configurations, changes to setpoints, or operating parameters. The changes are administrative only and all existing fire protection requirements are maintained. Therefore, these changes do not create the possibility of a new or different kind of accident.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in a margin of safety. These changes are in accordance with Generic Letter[s] 86-10 and 88-12 guidelines for incorporating the Fire Protection Program into the Nine Mile Point Unit 1 FSAR (Updated). The changes are administrative only and ensure that the Fire Protection Program will be on a consistent status with other plant features described in the FSAR (Updated). The Nine Mile Point Unit 1 Fire Protection Program retains all existing fire protection requirements and therefore, an equivalent level of protection has been assured without a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State

University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: December 16, 1991

Description of amendment request: The proposed amendment would change references to the spent fuel pool area radiation monitors in the Technical Specifications to remove any inference that they perform a criticality monitoring function, thereby making the Technical Specifications consistent with the NRC exemption issued October 18, 1991.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed change clarifies the safety function of the spent fuel area radiation monitors by deleting the wording that termed these monitors as criticality monitors in Tables 3.3-6 and 4.3-3. There are no design basis accidents adversely affected due to the change.

2. Create the possibility of a new or different kind of accident from any previously analyzed. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created.

3. Involve a significant reduction in a margin of safety. Since the change does not affect the consequences of any accident previously analyzed, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment request: December 13, 1991

Description of amendment request: The proposed amendment would revise the Technical Specifications, Section 3.13, Control Room Air Treatment System, by deleting the requirement for a chlorine detection system. Specifically, Section 3.13.B. and the associated Bases would be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Toxic chemical releases have been shown to have such a low probability of occurrence [at Prairie Island] that they are not a safety concern. [An] analysis demonstrates compliance with the NRC Standard Review Plan. The lack of chlorine detection might impact a toxic spill accident if it were to occur but the probability has been shown to be below established levels of concern.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The removal of toxic chemical instruments will not create the possibility of a new kind of accident or different kind of accident.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

The margin of safety will not be significantly reduced by the removal of these instruments. Established margins of safety have been met or exceeded as demonstrated by analysis.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, Goodhue County, Minnesota

Date of amendment request: January 10, 1992

Description of amendment request: The proposed amendment consists of two parts. The first part would revise the Technical Specifications (TS) in response to Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions," which provides an alternate schedule for visual inspection of snubbers which maintains the same confidence level. Specifically, the current snubber visual inspection schedule in TS Section 4.13.A is being replaced with a reference to a new TS Table TS.4.13-1, and the current snubber visual inspection acceptance criteria in TS Section 4.13.B are being revised per the guidance in Generic Letter 90-09.

In the second part, the proposed amendment would revise TS Section 4.13.C and associated Bases to remove the requirement that functional testing of snubbers be done during cold shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Part 1 - Alternate schedule for visual inspection of snubbers.

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes incorporate the requirements of the Standard Technical Specifications and the guidance of Generic Letter 90-09 into the Prairie Island snubber visual inspection program. The NRC staff concluded in Generic Letter 90-09, that the alternative snubber visual inspection schedule, described in Generic Letter 90-09, maintains the same confidence level in the operability of snubbers as the existing visual inspection schedule.

Therefore, since the proposed changes conform with the Standard Technical Specifications and the guidance in Generic Letter 90-09, the confidence level in the operability of the snubbers is unchanged, and the proposed changes will not significantly affect the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no new failure modes or mechanisms associated with the proposed changes. The proposed changes do not involve any modification in operational

limits. Only the snubber inspection program is being changed.

Replacing the current snubber visual inspection requirements with requirements consistent with the Standard Technical Specifications and the guidance of Generic Letter 90-09, will not affect the capability of the Prairie Island snubbers to perform their intended function during normal or accident conditions. The resulting snubber visual inspection program will continue to assure the ability of snubbers to provide dynamic load support during a seismic event.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated, and the acccident analyses presented in the Updated Safety Analysis Report will remain bounding.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed snubber visual inspection requirements are consistent with the Standard Technical Specifications and the guidance in Generic Letter 90-09, and are equivalent to the previous requirements with regard to assuring the capability of the systems which are supported. The snubber functional testing continues to provide incentive for proper maintenance and assurance of the capability of the snubbers.

Therefore, the proposed changes will not result in any reduction in the plant's margin of safety.

Part 2 - Functional testing of snubbers.

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The use of existing Prairie Island administrative controls in place of the requirement for testing during cold shutdown will provide adequate assurance that the removal of snubbers from service for functional testing will be properly evaluated and controlled, and that systems supported by the subject snubbers would remain within the requirements of Section 3 of the Prairie Island Technical Specifications during the period of functional testing.

Therefore, since administrative controls will maintain the operability of affected systems within the requirements of the current Prairie Island Technical Specifications, the elimination of the requirement for snubber functional testing only during cold shutdown will not significantly affect the probability or consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no new failure modes or mechanisms associated with the proposed changes. The proposed changes do not involve any modification in operational limits. Only the snubber functional test program is being changed.

The use of existing Prairie Island administrative controls in place of the requirement for testing during cold shutdown will provide adequate assurance that the removal of snubbers from service for functional testing will be properly evaluated and controlled, and that systems supported by the subject snubbers would remain within the requirements of Section 3 of the Prairie Island Technical Specifications during the period of functional testing.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated, and the accident analyses presented in the Updated Safety Analysis Report will remain bounding.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

The Prairie Island administrative control procedures clearly state that the voluntary entrance into a Technical Specification action statement should be based on the premise that it will increase plant safety.

The use of existing Prairie Island adminstrative controls in place of the requirement for testing during cold shutdown will provide adequate assurance that the removal of snubbers from service for functional testing will be properly evaluated and controlled, such that plant safety will not be adversely affected.

Therefore, the proposed changes will not result in any reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: L. B. Marsh.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 9, 1992

Description of amendment request: The proposed amendment would implement Generic Letter 90-09 concerning snubber visual inspection testing in Technical Specification 3.14. The amendment would also delete Technical Specification 3.14(2) since it is no longer needed and correct a typographical error in the Basis for 3.14. The issues dealing with Generic Letter 90-01 will be addressed separately.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because operation of Fort Calhoun Station Unit 1 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Specification 3.14 concerning the selection criteria for the visual inspection of snubbers do not affect the 95 percent probability that 90 to 100 percent of the snubbers will perform within established acceptance criteria established by the functional testing of the snubbers. Visual inspections are a separate process that complements the functional testing program and provides additional confidence in snubber operability. The proposed changes reflect a selection criteria for conducting the visual testing as stated in NRC Generic Letter 90-09 based on the number of inoperable snubbers found during the previous visual inspection. Therefore this change does not increase the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

It has been determined that no new or different kind of accident will be possible due to these proposed changes. No new or different modes of operation are proposed for the plant as a result of these proposed changes. Therefore, no new or different kind of accident from any previously analyzed is possible.

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not involve any reduction in a margin of safety.... The proposed changes to Specification 3.14 reflect a selection criteria for conducting visual inspections of snubbers as stated in Generic Letter 90-09 based on the number of inoperable snubbers found during the previous visual inspection. The proposed changes do not affect the level of confidence that snubbers will perform within established acceptance criteria established by the functional testing. Therefore the proposed changes will not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036

NRC Project Director: John T. Larkins

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 9, 1992

Description of amendment request: The proposed amendment would implement Generic Letter 91-01

concerning vessel specimen withdrawal schedules in Technical Specification 3.3(1)c. The issues dealing with Generic Letter 90-09 will be addressed separately.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve significant hazards consideration because operation of Fort Calhoun Station Unit 1 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated....

The proposed changes to Specification 3.3 are administrative in nature which follow the guidance as specified in Generic Letter 91-01. Generic Letter 91-01 states that Section II.B.3 of Appendix H to 10 CFR Part 50 requires the submittal to, and approval by, the NRC of a proposed withdrawal schedule for material specimens before implementation. Hence, the placement of this schedule in the Technical Specifications duplicates the controls on changes to this schedule that have been established by Appendix H. Therefore this duplication is unnecessary and the proposed change will not increase the probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

It has been determined that no new or different kind of accident will be possible due to these proposed changes. No new or different modes of operation are proposed for the plant as a result of these proposed changes. Therefore, no new or different kind of accident from any previously analyzed is possible.

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not involve any reduction in a margin of safety. The proposed changes to Specification 3.3 delete a duplicate requirement of Appendix H to 10 CFR Part 50, therefore no changes in the actual material specimen withdrawal program is [sic] proposed.... Therefore, the proposed changes will not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036

NRC Project Director: John T. Larkins

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: November 4, 1991

Description of amendment request: These amendments propose changes to Technical Specification Section 6.0, "Administrative Controls," to reflect organizational changes within the Nuclear Department Organization of Pennsylvania Power & Light Company (PP&L) made as a result of an Operational Effectiveness Review.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously addressed.

These organization and Plant Operational Review Committee (PORC) membership changes were undertaken to improve the overall efficiency of the PP&L Nuclear Department. These changes are viewed as enhancements and such will not cause nor effect the results of an accident previously evaluated.

II. This proposal does not create the possibility of a new or different type of accident from any accident previously addressed [evaluated].

Neither the design, installation, function nor operation of any plant system or component is proposed to be modified. Changes to the organization have been preformed to improve the effectiveness of that organization, and will not create the possibility of a new or different event.

III. This change does not involve a significant reduction in a margin of safety.

As stated in the safety analysis, the changes to the PORC composition will continue to assure that the plant is operated in a safe and efficient manner, i.e., that issues affecting plant safety are addressed by an adequate level of oversight and review. These changes do not decrease the responsibilities of PORC nor its ability to perform its function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, D.C. 20037

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: January 10, 1992

Description of amendment request: The amendment proposes changes to the Technical Specification (TS) Section 3.9.C. Allowable Out of Service Times (AOT) for the Emergency Service Water (ESW) pumps. The proposed changes delete Section 3.9.C.3 of the TS which addresses use of the Emergency Cooling Water (ECW) pump as an equivalent ESW pump. The proposed changes also modify surveillance requirements for the ECW pump, the ESW Booster Pumps and the Emergency Cooling Water Tower Fans. The proposed amendment modifies the TS Bases to reflect the above changes. Finally, the proposed changes modify terminology and numbering in Sections 3.9.C and 4.9.C to make the TS consistent with the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The change requests proposed in this Application do not constitute a significant hazards consideration in that:

(i) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes will not increase the probability or consequences of an accident previously evaluated.

The changes to Allowable Out of Service Times do not change any of the operating functions or render inoperable any equipment necessary to mitigate the consequences of an accident. By decreasing the allowable out of service times, the equipment will more likely be available to respond to mitigate the consequences of an accident.

The addition of new surveillance requirements and changes to existing surveillance requirements has a similar affect on plant equipment and has no affect on the probability or consequences of an accident. By inspecting the pump pit and the valve line up on a regular basis the probability that the equipment will be available to mitigate the consequences of an accident will be increased. In addition the increased

surveillance of the Emergency Service Water Booster pumps and the Emergency Cooling Tower Fans can only improve the likelihood that this equipment will be operable when required.

(ii) The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the TS impact equipment that is important to safety and that mitigates the consequences of an accident. This equipment and the changes being proposed do not change the operation of PBAPS and therefore, the changes cannot introduce any new or different kind of accident.

(iii) The proposed changes do not involve a significant reduction in a margin of safety.

The margin of safety is not reduced by these changes. No credit was taken in accident analysis for the ECW pump to act as an equivalent ESW pump. The other changes being proposed will give a greater assurance that equipment important to safety will be available to mitigate the consequences of an accident.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for Licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: December 30, 1991

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications (TS) requests changes to TS Section 6.0, "Administrative Controls," to reflect a management reorganization designed to improve operations at the plant. The management reorganization includes position title changes, the creation of two new senior level management positions on the same level as Superintendent of Power, the reassignment of position responsibilities, and the proposed restructuring of the Plant Operating Review Committee (PORC).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with this proposed amendment would not involve a significant hazards consideration, as defined in 10 CFR 50.92, since the proposed changes would not:

1. involve a significant increase in the probability of an accident or consequence previously evaluated.

None of the proposed changes affect assumptions contained in plant safety analyses, or the physical design or operation of the plant.

The reorganization of senior plant management does not compromise the safe operation of the plant since position qualifications have not been decreased. The reorganization will improve communication, responsiveness, and effectiveness of operations at the plant by creating specific functional lines of responsibility. Although the distribution of responsibilities has changed, the responsibilities themselves have not been decreased. The changes do not alter the Authority's commitment to maintain a management structure that contributes to the safe operation and maintenance of the plant.

The proposed changes to the Plant Operating Review Committee (PORC or Committee) reflect the management reorganization, enhance the Committee's expertise and allow greater flexibility in achieving a quorum.

The level and quality of the PORC's review would not be adversely altered by the proposed changes. The PORC is currently composed of six members, a chairman and a vice-chairman from the FitzPatrick onsite operating organization at the Superintendent level or above, except for the Reactor Analyst. The new members would hold positions at or above the Superintendent level, and would meet or exceed the minimum qualifications of ANSI N18.1-1971 for comparable positions. The work experience/knowledge of the new members would enhance the Committee's expertise. Consistency is maintained from meeting to meeting by requiring that, at a minimum, a majority of the members be present.

The position title changes are administrative in nature and, other than assuring the correctness and readability of Technical Specifications, are of no significance to the safe operation of the plant.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. None of the proposed changes affect assumptions contained in plant safety analyses, or the physical design or operation of the plant.

The reorganization of senior plant management does not compromise the safe operation of the plant since position qualifications have not been decreased. The reorganization will improve communication, responsiveness, and effectiveness of operations at the plant by creating specific functional lines of responsibility. Although the distribution of position responsibilities has changed, the responsibilities themselves have not been decreased. The changes do not alter the Authority's commitment to maintain a management structure that contributes to the safe operation and maintenance of the plant.

The proposed changes to the Plant Operating Review Committee (PORC or Committee) reflect the management reorganization, enhance the Committee's expertise and allow greater flexibility in achieving a quorum.

The level and quality of the PORC's review would not be adversely altered by the proposed changes. The PORC is currently composed of six members, a chairman and vice-chairman from the FitzPatrick onsite operating organization at the Superintendent level or above, except for the Reactor Analyst title. The new members would hold positions at or above the Superintendent level, and would meet or exceed the minimum qualifications of ANSI N18.1-1971 for comparable positions. The work experience/knowledge of the new members would enhance the Committee's expertise. Consistency is maintained from meeting to meeting by requiring that, at a minimum, a majority of the members be present.

The position title changes are administrative in nature and, other than assuring the correctness and readability of Technical Specifications, are of no significance to the safe operation of the plant.

3. involve a significant reduction in the margin of safety as defined in the basis for Technical Specifications.

The proposed amendment does not involve a significant reduction in a margin of safety. The proposed changes do not relate to or modify the safety margins defined in and maintained by the Technical Specifications.

The reorganization changes do not alter the Authority's commitment to maintain a management structure that contributes to the safe operation and maintenance of the plant.

The reorganization of senior plant management does not compromise the safe operation of the plant since position qualifications have not been decreased. The reorganization will improve communication, responsiveness, and effectiveness of operations at the plant by creating specific functional lines of responsibility. Although the distribution of position responsibilities has changed, the responsibilities themselves have not been decreased.

The level and quality of the PORC's review would not be adversely altered by the proposed changes. The PORC is currently composed of six members, a chairman and a vice-chairman from the FitzPatrick onsite operating organization at the Superintendent level or above, except for the Reactor Analyst title. The new members would hold positions at or above the Superintendent level, and would meet or exceed the minimum qualifications of ANSI N18.1-1971 for comparable positions. The work

experience/knowledge of the new members would enhance the Committee's expertise. Consistency is maintained from meeting to meeting by requiring that, at a minimum, a majority of the members be present.

The position title changes are administrative in nature and do not affect plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: January 9, 1992

Description of amendment request: This proposed amendment to the James A. FitzPatrick Technical Specifications would allow performance of the inservice hydrostatic pressure and leak testing of the reactor vessel at temperatures exceeding 212 ° F.

Hydrostatic testing and system leakage testing of the Reactor Coolant System (RCS) are required by Section XI of the American Society of Mechanical Engineers (ASME) code. NRC Generic Letter 88-11 is used to calculate the reactor pressure vessel pressure and temperature (P-T) limits required for this test. The P-T curves defining these limits are periodically recalculated to consider the results of analyses of irradiated surveillance specimens to account for accumulated reactor fluence.

The current curves require that these tests be conducted at RCS temperatures approaching 190 ° F. Because decay heat and mechanical heat used to heat the reactor coolant do not allow exact control, the operators require margin to maintain the test temperature between the minimum temperature limit and the maximum temperature limit of 212 ° F. That margin is small at this time. As the accumulated neutron fluence on the reactor vessel increases, the methodology used to calculate hydrostatic testing pressure-temperature limits will ultimately require that these tests be conducted above 212 ° F. The technical specifications define hot shutdown mode as the condition when the reactor mode switch is in shutdown and reactor coolant temperature is above 212 ° F. Applying this definition will require that hydrostatic tests be conducted while the plant is in hot shutdown. However, the current technical specifications require systems to be operable in this shutdown mode that cannot be made operable during the test. The proposed changes will allow hydrostatic testing of the Reactor Coolant System (RCS) above 212 ° F without requiring the High Pressure Coolant Injection (HPCI), Reactor Core Isolation Cooling (RCIC), or Automatic Depressurization System/Safety Relief Valves (ADS/SRV) be operable. All other systems required by the technical specifications will be maintained operable during the test to protect public health and safety.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment revisions involve no hardware changes, no changes to the operation of any systems or components, no changes to structures, and alters procedures only to the extent that the 212° F limit can be exceeded with certain systems inoperable. These systems are required for core cooling at high pressure. Any event requiring core cooling will rapidly depressurize the system. The increased temperature adds enthalpy to the reactor coolant during the test but the consequences of previously evaluated accidents envelope any potential events. The probability of an accident during testing is expected to increase by a minimal amount, but this probability is still below that for operations. The test temperatures and pressures are still within system design limits. The test is required to demonstrate the pressure retaining capabilities of the RCS pressure boundary.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed amendment revisions involve no hardware changes, no changes to the operation of any systems or components, no changes to structures, and alters procedures only to the extent that the 212° F limit can be exceeded with certain systems inoperable. The testing procedure will not change the test process but will allow increased temperature during testing to meet NRC guidance and allow margin to the minimum temperature limits.

3. involve a significant reduction in the margin of safety.

The proposed amendment revisions involve no hardware changes, no changes to the operation of any systems, no changes to structures, and alter procedures only to the extent that the 212° F limit can be exceeded with certain systems inoperable. Primary containment and most other systems required for plant transients and accidents are available. The core cooling function can be maintained with no change to the margin of safety. The additional enthalpy to the reactor coolant will reduce by a small amount the margin that existed during prior hydrostatic tests but remains within the envelope of previously evaluated plant conditions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Company of Colorado, Docket No. 50-267, Fort St. Vrain Nuclear Generating Station, Weld County, Colorado

Date of amendment request: December 24, 1991

Description of amendment request: This proposed amendment would revise management titles to be consistent with PSC reorganization; delete staff requirements that are not necessary after all nuclear fuel has been removed to the ISFSI or Idaho; delete requirements for technical advisors and monthly operating reports; and add controls for high radiation areas.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Public Service Company of Colorado (PSC) has submitted a no significant hazards consideration analysis in accordance with the requirements of 10 CFR 50.91 and 50.92. PSC's submittal and analysis is summarized as follows: the proposed amendment to delete requirements for a security program, licensed operators, and the fire brigade after all fuel has been removed from the reactor facility to the ISFSI or Idaho, does not involve a significant hazards consideration because without fuel no reactor accidents or fuel handling accidents can occur and therefore, there can be no increase in the probability or consequences of such accidents; no new or different kind of accidents; and no reduction in a margin of safety. Other proposed changes are administrative in nature that reflect new PSC titles and organization or add new, more restrictive radiation controls and therefore, do not increase accident probability or consequences, do not involve any new or different type of accidents and do not reduce any margin of safety.

The staff has reviewed the licensee's submittal and it's no significant hazards consideration determination and based on it's review proposes to determine that the proposed changes do not involve a significant hazards considerations.

Local Public Document Room location: Greeley Public Library, City Complex Building, Greeley, Colorado 80631

Attorney for licensee: J. K. Tarpey, Public Service Company Building, Room 900, 550 15th Street, Denver, Colorado 80202

NRC Project Director: Seymour H. Weiss

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: January 10, 1992 (TS 297)

Description of amendment request: The proposed amendments would transfer detailed lists of components from Technical Specifications (TS) to controlled plant procedures in accordance with Generic Letter (GL) 91-08.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided the NRC staff with its analysis of the issue of no significant hazards consideration. The licensee's analysis pursuant to the standards of 10 CFR 50.92(c) is presented below.

1. The proposed amendment does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed amendment would revise the TS to conform to current NRC guidance to remove component lists from TS. The proposed TS changes result in an acceptable alternative to identifying every component by its plant identification number as it is currently listed in the tables of TS components. The removal of the component lists tables from the TS included in the incorporation of these lists into plant procedures that are subject to the change control provisions for plant procedures in the administrative controls section (Chapter 6) of the TS. Consequently, the change control provisions of the TS provide an adequate means to control changes to these component lists without processing a license amendment. [Furthermore, existing requirements for operating and maintaining the plant remain uneffected.] Therefore, this change cannot increase the probability or consequences of any previously evaluated accident.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes deal exclusively with an administrative process to remove the components lists from the TS. The components lists will move from one controlled location (TS) to another controlled location, that of plant procedures. The plant procedures are subject to the requirements specified in the administrative controls section of the TS (Chapter 6).

The removal of component lists does not alter existing TS requirements or those components to which they apply. Therefore, there is no possibility of a new or different kind of accident being created from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed TS changes conform to the guidance contained in Generic Letter 91-08. The component lists have been removed to permit administrative control of changes to these lists without processing a license amendment. [These changes do not effect operation of the plant and are purely administrative in nature.] Therefore, the proposed changes will not reduce the margin of safety.

The NRC staff has conducted an initial review of the licensee's amendment application and analysis of no significant hazards. Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the TS amendment request does not involve significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902

NRC Project Director: Mr. Frederick J. Hebdon

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 7, 1991

Description of amendment request: The proposed changes would revise Section 6 of the Technical Specifications (TS) for the Surry Power Station, Units No. 1 and No. 2 (SPS-1&2). The proposed changes would remove language describing, or committing to, any previous operator training programs since the training programs at SPS-1&2 have been accredited and certified in accordance with Regulatory Guide 1.8, Revision 2, "Qualification and Training of Personnel for Nuclear Power Plants." The proposed changes would also delete reference to the March 28, 1980 NRC letter and substitute Virginia Electric and Power Company accredited training programs (including Shift Supervisor, Assistant Shift Supervisor, Control Room Operator-Nuclear, and Shift Technical Advisor) for the previous training requirements.

In addition, the proposed changes redefine the responsibilities of the Manager-Nuclear Training to encompass the responsibilities for ensuring retraining and replacement programs that have achieved accreditation and the responsibility for maintaining accreditation. The proposed TS changes have been determined to administrative in nature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes have no adverse impact upon potential accident probability or consequence. The proposed changes allow for substitution of regulatory requirements for training programs which have been accredited and certified. [The SPS-1&2] training programs are accredited and certified as permitted by the regulation. Likewise, the consequences of the accidents will not increase as a result of the proposed [SPS-1&2 TS] changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes allow for substitution of regulatory requirements for training programs which have been accredited and certified. [The SPS-1&2] training programs are accredited and certified as permitted by the regulation. . .

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes allow for substitution of regulatory requirements for training programs which have been accredited and certified. [The SPS-1&2] training programs are accredited and certified as permitted by the regulation. Therefore, the proposed changes do not involve a reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: August 9, 1991

Description of amendments request: The proposed changes would revise Specification 15.4.6.A.2 to eliminate the requirement that, during testing, the emergency diesel generator start and assume loads in less than the time periods listed in the Point Beach Nuclear Plant Final Safety Analysis Report (FSAR) and replace it with the requirement that the loads be assumed in the timing sequence listed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Operation of a facility in accordance with a proposed amendment does not present a significant hazard if it does not result in an increase in the probability or consequences of an accident previously evaluated.

The present requirement that loads sequence on the diesel generator in times less than those listed in the FSAR could result in two or more major loads sequencing onto the diesel at the same time or prior to generator voltage and frequency recovering following the start of an earlier load. This presents the possibility of overloading the generator, resulting in generator trip and unavailability of systems and components necessary for accident mitigation, thereby increasing the probability or consequences of an accident. By establishing appropriate tolerance on the load sequence times, assurance is gained that sufficient time is allotted between equipment starts to allow generator voltage and frequency to return to nominal system voltage and frequency. This decreases the possibility of a transient diesel overload. Maximum start times including the tolerances will remain within the times assumed in the FSAR analyses. Test frequencies or conditions for the diesel generators will not change. Overall, since the probability of a diesel generator overload decreases while maintaining assurance that the diesel generator will start and loads energize within the maximum times prescribed by accident analyses, the probability or consequences of accidents previously analyzed will decrease.

Operation of a facility in accordance with a proposed amendment does not present a significant hazard if it cannot create the possibility of an accident different from any previously evaluated.

This change does not result from any physical change to the facility or its operation. The operability of equipment that is necessary for safe shutdown or accident prevention and mitigation is not affected. Testing intervals for the diesel generator will not change; so adequate assurance of diesel generator and system operability is maintained. Load sequence times will remain within conservative accident analyses assumptions, and added assurance is provided that a generator overload will not occur. Therefore, a new or different kind of accident cannot result.

Operation of a facility in accordance with a proposed amendment will not present a significant hazard if it does not result in a significant reduction in a margin of safety.

The surveillance interval for testing the diesel generator and its capability to assume loads required for accident mitigation are not changed. Continued assurance of generator and system operability under scenarios of an accident coupled with a loss of off-site AC power is maintained. This acceptance criterion for load sequence times provides added assurance that a generator overload condition will not occur while maintaining load sequence times within accident analyses assumptions. This may provide an added margin of safety under conditions where a diesel generator is required to assume accident loads. Therefore, a margin of safety cannot be reduced and may be increased.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendments request: September 13, 1991

Description of amendments request: The proposed amendments would remove Tables 15.3.1-1 (Unit 1) and 15.3.1-2 (Unit 2) which contain the schedules for removing the reactor pressure vessel materials surveillance capsules from the Point Beach, Unit Nos. 1 and 2, Technical Specifications (TSs). These tables would be placed in and maintained in the Point Beach Final Safety Analysis Report (FSAR). The associated basis section would also be revised to reflect this proposed change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed TS changes will not create a significant increase in the probability or consequences of an accident previously evaluated. These amendments would only remove two tables from the Technical Specifications, place them in the FSAR and remove all references of these tables from the TSs. Appendix H to 10 CFR Part 50 will continue to control any changes to these withdrawal schedules. Additionally, the surveillance requirements on pressure and temperature in the PBNP TSs require that these specimens be removed and examined to determine changes in material properties. The results of these examinations will continue to be considered in the method used to update pressure and temperature limits. Therefore, there is no change in the required actions that will be performed and there is no physical change to the facility, its systems, or its operation. Accordingly, an increased probability or consequences of an accident previously evaluated will not occur.

The proposed TS changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. These amendments would only remove two tables from the PBNS TSs and place them in the FSAR. Appendix H to 10 CFR Part 50 will continue to control any changes to these withdrawal schedules. Since there is no physical change to the facility, its systems, or its operations, a

new or different kind of accident will not occur.

The proposed TS changes will not create a significant reduction in a margin of safety. These proposed amendments would only remove two tables from the PBNS TSs and place them in the FSAR.

These proposed amendments would not change the present specimen withdrawal schedules. The actions to be taken subsequent to specimen withdrawal remain unchanged. Since the amendments do not change the facility, its systems, or its operation, a significant reduction in a margin of safety will not occur.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: December 10, 1991

Description of amendment request: The proposed amendment would increase the minimum fuel oil storage volume for the emergency diesel generators (EDGs). In addition, surveillance requirements for the emergency diesel generators would be revised in order to attain consistency with the Standard Technical Specifications, NUREG-0452, Rev. 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This change is requested to modify the Technical Specifications for the YNPS EDGs and provides a significant improvement in surveillance testing to demonstrate the operability of the EDGs. The increased fuel oil storage requirement provides an increased margin above the actual load demand requirements. As such, this proposed change would not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. This change provides for significant improvements in the EDG surveillance requirements which have been developed consistent with current industry and regulatory guidelines.

2. Create the possibility of a new or different kind of accident from any previously evaluated. Verification of EDG operability by performance of enhanced periodic surveillance testing will not create the possibility of a different type of accident.

3. Involve a significant reduction in a margin of safety. Both the modified EDG surveillance testing and the increased fuel oil storage requirement provide for an increase in the margin of safety. The new EDGs provide an increased margin in generating capacity above the actual loading requirements. The modified surveillance requirements provide for verification of the increased generating capacity.

Based on the discussion above, it is concluded that there is reasonable assurance that operation of the Yankee plant consistent with the proposed Technical Specifications will not endanger the health and safety of the public. This proposed change has been reviewed and approved by the Plant Operation Review Committee and Nuclear Safety Audit and Review Committee.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Previously Published Notices Of Consideration Of Issuance Of Amendments To Operating Licenses And Proposed No Significant Hazards Consideration Determination And Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket No. 50-295 and 50-304, Zion Nuclear Power Station, Units 1 and 2, Lake County, Illinois

Date of application for amendment: December 26, 1991

Brief description of amendment: The proposed amendment would change Technical Specifications Definitions section to address the planned upgrade of the Process Protection System from the current Westinghouse 7100 series analog system to the Westinghouse EAGLE-21 digital system.

Date of individual notice in Federal Register: January 16, 1992 (57 FR 1930)

Expiration date of individual notice: February 18, 1992

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Notice Of Issuance Of Amendment To Facility Operating License

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and

(3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: July 2, 1991, as supplemented November 15, 1991.

Brief description of amendments: The amendments eliminate restrictions on the movement of heavy loads greater than 1600 pounds over fuel assemblies by the spent fuel cask handling crane which is to be upgraded to a single-failure-proof design.

Date of issuance: January 17, 1992

Effective date: January 17, 1992

Amendment Nos.: 166 and 146

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37577) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated January 17, 1992.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Entergy Operations, Inc., Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Unit Nos. 1 and 2, Pope County, Arkansas

Date of amendment request: October 15, 1991

Brief description of amendments: The amendments revised the ANO-1 Technical Specifications (TS) 3.16 and 4.16 and ANO-2 TS 3/4.7.8 by replacing the existing snubber visual inspection schedule in the respective surveillance requirements with the snubber visual inspection schedule recommended in NRC Generic Letter (GL) 90-09. The amendments also revise the surveillance requirements for visual inspection acceptance criteria to conform with the recommendations of GL 90-09. Some changes to the wording recommended in GL 90-09 are included; however, the intent of GL 90-09 is maintained or the changes are editorial in nature. Additionally, a change to the TS ACTIONS is made to reformat the required actions and allow possible continued operation with an inoperable snubber.

Date of issuance: January 15, 1992

Effective date: 30 days from the date of issuance

Amendment Nos.: 156 and 129

Facility Operating License Nos. DPR-51 and NPF-6. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 27, 1991 (56 FR 60116). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 15, 1992

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: July 15, 1991

Brief description of amendments: The amendments revise Hatch Unit 1 Bases Section 3.6.B, "Reactor Vessel Temperature and Pressure," and Hatch Unit 2 Technical Specification 3/4.4.6, "Pressure/Temperature Limits," and its associated Bases.

Date of issuance: January 10, 1992

Effective date: January 10, 1992

Amendment Nos.: 177 and 118

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 27, 1991 (56 FR 60117) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 10, 1992.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: November 6, 1991

Brief description of amendment: This amendment removes the Maine Yankee Technical Specification that limits the combined time interval for any three consecutive surveillance intervals to less than 3.25 times the specified surveillance interval. The amendment is consistent with the guidance of U. S. Nuclear Regulatory Commission Generic Letter 89-14, Line-item improvements in Technical Specifications—Removal of the 3.25 Limit on Extending Surveillance Intervals, dated August 21, 1989.

Date of issuance: January 13, 1992

Effective date: January 13, 1992

Amendment No.: 127

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64656) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1991.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of applications for amendment: August 1, 1989 (Licensee's letter B13298), as superseded November 19, 1991, and application dated November 8, 1991.

Brief description of amendment: The amendment changes the Technical Specifications (TS) as recommended in NUREG-0737 and as detailed in Generic Letter 83-36. These changes deal with post-accident sampling, noble gas effluent monitors and sampling and analysis of plant effluents. No changes to the Technical Specifications were required for high point vents. The TS associated with containment high range radiation monitor, containment pressure and water level monitors, containment hydrogen monitors, and control room habitability will be addressed in future correspondence. Section 5 of the TS was also changed to correct references to the Updated Final Safety Analysis Report.

Date of issuance: January 13, 1992

Effective date: January 13, 1992

Amendment No.: 55

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 20, 1989 (54 FR 38765) and December 11, 1991 (56 FR 64657). The Commission's related evaluation of the amendment is

contained in a Safety Evaluation dated January 13, 1992.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: April 18, 1991 and supplemented September 27, 1991 and January 3, 1992. The supplemental letters did not change the no significant hazards determination.

Brief description of amendments: These amendments made changes to the Susquehanna Steam Electric Station (SSES), Unit 1 and Unit 2 Technical Specifications to revise the pressure-temperature curves for compliance with 10 CFR Part 50, Appendix G, as requested in Generic Letter 88-11, and to delete the specimen withdrawal schedule as allowed by Generic Letter 91-01. The proposed changes affect Technical Specification Section 3.4.4.6, "Pressure/Temperature Limits" and Bases Section 3/4.4.6, "Pressure/Temperature Limits" and Bases Section 3/4.4.6, "Pressure/Temperature Limits."

Date of issuance: January 10, 1992

Effective date: As of date of issuance and shall be implemented within 30 days of its date of issuance.

Amendment Nos.: 116 and 85

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22472) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 10, 1992.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: October 28, 1986 and supplemented by letters dated May 19, 1988, and December 30, 1988

Brief description of amendment: These amendments revise the Trojan Technical Specification Section 2.2, Table 2.2-1, and associated Bases, and Section 3.3, Table 3.3-4. These changes delineate new, more conservative setpoints for the steam generator low-low level reactor trip and auxiliary feedwater pump start signals.

Date of issuance: January 14, 1992

Effective date: January 14, 1992

Amendment No.: 173

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64659) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1992.

No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

NRC Project Director: Theodore R. Quay

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 19, 1991.

Brief description of amendment: This amendment revises Technical Specification (TS) Sections 3.12.F and 4.12.F, "Fire Barrier Penetration Seals," and the associated Bases to be more consistent with the NRC's Standard Technical Specifications, NUREG-0123, "Standard Technical Specifications for General Electric Boiling Water Reactors," dated fall 1980. Specifically, TSs 3.12.F.1.a and 4.12.F.1.a were revised to clarify which fire barriers are covered by the associated Limiting Conditions for Operation (LCO) and what actions are required when a fire barrier penetration is found not in the as-designed condition, respectively. Furthermore, TS 3.12.F.1.b was revised to allow the use of hourly fire watch patrols supplementing operable fire detectors in lieu of continuous fire watches when a fire barrier penetration is deemed non-functional. Administrative changes were also made in this amendment.

Date of issuance: January 16, 1992

Effective date: January 16, 1992

Amendment No.: 176

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Public comments requested as to proposed no significant hazards consideration: Yes (56 FR 67641 dated December 31, 1991). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice published December 31, 1991, also provided for an opportunity to request a hearing by January 30, 1991, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 1992.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of Oswego, Oswego, New York 13126.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: December 18, 1989

Brief description of amendment: The amendment revised Technical Specification 4.0.2, by removing the 3.25 limit on the interval for three consecutive surveillance tests, in accordance with NRC Generic Letter 89-14.

Date of issuance: January 13, 1992

Effective date: January 13, 1992

Amendment No. 39

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2433) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1992

No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: May 31, 1990

Brief description of amendment: The amendment revised TS 3/4.6.4.1, Combustible Gas Control - Hydrogen

Analyzers by adding an additional action statement which would apply when both hydrogen analyzers are inoperable, and allow 72 hours to return one of the two inoperable analyzers to operable status or be in at least Hot Standby within the next 6 hours.

Date of issuance: January 16, 1992

Effective date: January 16, 1992

Amendment No. 168

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 3, 1991 (56 FR 13670) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January16, 1992

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: November 15, 1991

Brief description of amendment: The amendment revised Callaway Plant Technical Specification Surveillance Requirement 4.8.1.1.2.f. (2) concerning emergency diesel generator load reject testing, by removing an unnecessary reference to a numerical value for the largest single load.

Date of issuance: January 15, 1992

Effective date: January 15, 1992

Amendment No.: 65

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 27, 1991 (56 FR 60125) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 15, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 15, 1991, clarified August 15, 1991 and January 23, 1992.

Brief description of amendment: The amendment revised Technical Specification 3.4.6.2.f and the associated bases to change the maximum allowable leakage rate of the reactor coolant system pressure isolation valves (PIVs). It also revised Table 3.4-1 to provide a more detailed description of the affected PIVs, including the addition of the maximum allowable leakage rate.

Date of issuance: January 24, 1992

Effective date: January 24, 1992

Amendment No.: 66

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 29, 1991 (56 FR 24220) The licensee submitted clarifying information by letters dated August 15, 1991 and January 23, 1992. These submittals provided supplemental clarification only and did not change the staff's original proposed determination of no significant hazard considerations. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of application for amendment: June 28, 1991

Brief description of amendment: The amendment revises the Technical Specifications (TS) by relocating the procedural details of the current Radiological Effluent Technical Specifications (RETS) to the licensee's Offsite Dose Calculation Manual (ODCM). The amendment also implements programmatic controls in the Administrative Controls section of the TS to satisfy existing regulatory requirements for RETS.

Date of issuance: December 26, 1991

Effective date: December 26, 1991

Amendment No.: 98

Facility Operating License No. NPF-21: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 30, 1991 (56 FR 55951) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 26, 1991.

No significant hazards consideration comments requested: No.

Local Public Document Room location: Richland Public Library, 955 Northgate Street, Richland, Washington 99352

Notice Of Issuance Of Amendment To Facility Operating License And Final Determination Of No Significant Hazards Consideration And Opportunity For Hearing (Exigent Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event,

the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By March 6, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be

granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: December 16, 1991

Brief description of amendment: The amendment adds a reference to Technical Specification 6.9.1.9, Technical Report Supporting Cycle Operation, to include the analytical methods used to determine the core operating limits relative to Zircaloy fuel.

Date of Issuance: January 17, 1992

Effective date: January 17, 1992

Amendment No.: 148

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Public Comments requested as to proposed no significant hazards consideration: Yes (56 FR 66937 dated December 26, 1991). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by January 27, 1992, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment and final no significant hazards consideration determination is contained in a Safety Evaluation dated January 17, 1992.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 29th day of January 1992.

For the Nuclear Regulatory Commission

Martin J. Virgilio,

Acting Director, Division of Reactor Projects - III/IV/V Office of Nuclear Reactor Regulation

[Doc. 92-2647 Filed 2-4-92; 8:45 am]

BILLING CODE 7590-01-D

Request for Comments on the Compatibility of Agreement States Programs With NRC Regulatory Programs; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for Comments of Interested Parties. Extension of comment period.

SUMMARY: On December 23, 1991 (56 FR 66457), the NRC published a request for comments on the compatibility of Agreement States Programs with NRC Regulatory Programs. The notice requested public comments from interested parties and established a comment closing date of February 3, 1992. In response to requests from potential commentors, the NRC is extending the comment period for 45 days from the original comment closing date. The comment period now expires on March 19, 1992.

DATES: The comment period has been extended and now expires March 19, 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: Send written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m., 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: Kathleen Schneider, State Agreements Program, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2320.

Dated at Rockville, Maryland, this 30th day of January, 1992.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 92-2753 Filed 2-4-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 04008989-ML; ASLBP No. 91-638-01-ML]

Envirocare of Utah, Inc.; Byproduct Material Waste Disposal License; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for Envirocare of Utah, Inc. (Byproduct Material Waste Disposal License), Docket No. 04008989-ML, is hereby reconstituted by appointing Administrative Judge Charles Bechhoefer as Chairman in place of Administrative Judge John H Frye, III, who has resigned from the panel.

As reconstituted, the Board is comprised of the following Administrative Judges: Charles Bechhoefer, Chairman, Richard F. Foster, Frederick J. Shon.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Charles Bechhoefer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 27th day of January 1992.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92-2750 Filed 2-4-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320-OLA-2; ASLBP No. 91-643-11-OLA-2]

General Public Utilities Nuclear Corporation Three Mile Island Nuclear Station, Unit 2 (Possession Only License—Long Term Storage) Facility Operating License No. DPR-73; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721 (1980), the Atomic Safety and Licensing Board for General Public Utilities Nuclear Corporation (Three Mile Island Nuclear Station, Unit 2, Possession Only License—Long Term Storage), Docket No. 50-320-OLA-2, is hereby reconstituted by appointing Administrative Judge Peter B. Bloch as Chairman in place of Administrative Judge John H. Frye, III, who has resigned from the panel.

As reconstituted, the Board is comprised of the following Administrative Judges: Peter B. Bloch, Chairman, Frank F. Hooper, Charles N. Kelber.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980) The address of the new Board member is: Administrative Judge Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 27th day of January 1992.

B. Paul Cotter, Jr.,

Chief, Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92-2749 Filed 2-4-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Virginia Electric & Power Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-4, issued to Virginia Electric and Power Company for operation of the North Anna Power Station, Unit No. 1 (NA-1) located in Louisa County, Virginia.

The proposed amendment would revise the NA-1 Facility Operating License NPF-4 by limiting the maximum reactor power to 95% of rated thermal power for an interim period of operation until steam generator (SG) replacement. The proposed change would also revise the Technical Specifications (TS) by imposing more restrictive equipment operability requirements for the emergency core cooling system (ECCS). These changes are necessary to accommodate the interim effects of increases SG tube plugging on the large break loss-of-coolant accident (LOCA) analysis.

NA-1 is currently involved in a mid-cycle SG inspection outage. An extensive eddy current inspection of the NA-1 SG tubes in being performed using very conservative analysis guidelines and plugging criteria. As such, a substantially increased number of tubes are expected to be plugged. The predictions of potential SG tube plugging during the current mid-cycle outage are such that the effects of increased reactor coolant system (RCS) loop resistance on the large break LOCA analysis would not permit full rated power operation for the remainder of NA-1 Cycle 9. The existing large break LOCA analysis has obtained margin by taking credit for available Cycle 9 core characteristics and will not support 100% power operation with more than 30% SG tube plugging. The large break LOCA analysis supporting the proposed changes would extend the SG tube plugging limit value to 35%, but with a reduced power level of 95% of rated thermal power. At this reduced power level, all analyses would meet the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50. Because the large break LOCA presents the limiting considerations for core power and total core power peaking, it was necessary to reduce the maximum core power level from 2893 megawatts (thermal) to 2748 megawatts (thermal) and the maximum allowable hot channel peaking factor (Fq) to 2.11 at the core mid-plane. The change to the power level is proposed as a modification to the NA-1 license condition 2.D.(1), Maximum Power Level, by adding a footnote limiting maximum reactor power to 2748 megawatts (thermal) until SG replacement is accomplished.

In addition, an associated change to the TS is required to accommodate the effects of the revised assumptions for the large break LOCA analysis. The proposed change to the TS would impose more restrictive equipment operability requirements for the ECCS. This is accomplished by modifying action statement "a" of TS 3.5.2 to ensure that both low head safety injection pumps or one low head injection pump and two high head safety injection pumps remain operable during power operation. This change would effectively maintain consistency between the TS action statements and the revised assumptions for the large break LOCA analysis. A revised K(Z) surveillance function and a reduced enthalpy rise hot channel factor were utilized to provide additional analysis margin. With these changes, the analysis supports power operation up to 95% of rated thermal power for NA-1 for the remainder of Cycle 9. Changes to the peaking factor and K(Z) surveillance function would be accomplished by way of the TS Core Operating Limits Report (COLR). The large break LOCA analysis assumed uniform SG tube plugging of 35% which supports operation with peak SG tube plugging levels up to 35%. With the exception of the parameters described above, which will be incorporated by way of the proposed license change and the forthcoming COLR, all analysis parameters were equivalent to, or conservative with respect to, those assumed in the existing analyses. All analysis parameters are expected to be conservative with respect to actual plant conditions for the remainder of the NA-1 Cycle 9.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. (The proposed change) does not involve a significant increase in the probability or consequences of an accident previously evaluated. The impact of the increased level of [SG] tube plugging (up to 35% peak) with a maximum reactor power of 95% on the large break LOCA was analyzed. The analysis demonstrated that operation with increased [SG] tube plugging will not result in more severe consequences than those of the currently applicable analyses. The probability of occurrence of these accidents is not increased, because an increased level of [SG] tube plugging as an initial condition for the accident has no bearing on the probability of occurrence of these accidents.

2. (The proposed change) does not create the possibility of a new or different kind of accident from any accident previously evaluated. The implementation of the increased [SG] tube plugging large break LOCA analysis into the [NA-1] design basis will not create the possibility of an accident of a different type than was previously evaluated in the [Updated Final Safety Analysis Report (UFSAR)]. No changes to plant configuration or modes of operation are implemented by the revised accident analysis. Therefore, no new mechanisms for the initiation of accidents are created by the implementation of the analysis.

3. (The proposed change) does not involve a significant reduction in a margin of safety. The [NA-1] operating characteristics, and accident analyses which support [NA-1] operation, have been fully assessed. The results of the revised large break LOCA analysis [demonstrate] that the consequences of this accident are not increased as a result of the increased [SG] tube plugging up to 35% with a maximum reactor power of 95%. The results of the accident analysis remain below the limits established by the currently applicable [UFSAR] analyses. Therefore, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 6, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 28, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Dated at Rockville, Maryland, this 31st day of January, 1992.

For the Nuclear Regulatory Commission.

Leon B. Engle,

Project Manager, Project Directorate II-2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-2748 Filed 2-4-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Director's Advisory Committee on Law Enforcement and Protective Occupations

February 5, 1992.

AGENCY: Office of Personnel Management.

ACTION: Notice of Open Meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Public Law 92-463), notice is hereby given that the fourth meeting of the Director's Advisory Committee on Law Enforcement and Protective Occupations will be held at the time and place shown below:

DATES: February 20, 1992, 2 p.m.

PLACE: Capital Hilton, 1001 16th Street, NW., Washington, DC.

AGENDA: The focus of the February 20th meeting will be to discuss the definition of law enforcement work and various pay and classification issues related to such work.

FOR FURTHER INFORMATION CONTACT: Phyllis G. Foley, Director, Law Enforcement and Protective Occupations Task Force, Office of Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, room 7H30, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. If time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views. Persons wishing to address the Advisory Committee orally at the meeting should submit a written request no later than the close of business on February 13, 1992. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and the amount of time desired.

Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 92-2863 Filed 2-3-92; 8:45 am]

BILLING CODE 6325-01-M

POSTAL RATE COMMISSION

[Docket No. A92-7; Order No. 917]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued January 30, 1992.

Before Commissioners: George W. Haley, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc III; H. Edward Quick, Jr.

In the Matter of: Nooksack, Washington 98276 (Barbara Burke, Petitioner)

Docket Number: A92-7.
Name of Affected Post Office: Nooksack, Washington 98276.
Name(s) of Petitioner(s): Barbara Burke.
Type of Determination: Consolidation.
Date of Filing of Appeal Papers: January 27, 1992.
Categories of Issues Apparently Raised:

1. Effect on the community (39 U.S.C. 404(b)(2)(A));
2. Effect on postal services (39 U.S.C. 404(b)(2)(C));
3. Economic savings (39 U.S.C. 404(b)(2)(D)).

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule (39 U.S.C. 404(b)(5)), the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before February 11, 1992.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

January 27, 1992—Filing of Petition.
January 30, 1992—Notice and Order of Filing of Appeal.
February 21, 1992—Last day for filing of petitions to intervene (see 39 CFR 3001.111(b)).
March 2, 1992—Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b)).
March 23, 1992—Postal Service Answering Brief (see 39 CFR 3001.115(c)).
April 7, 1992—Petitioner's Reply Brief should petitioner choose to file one (see 39 CFR 3001.115(d)).
April 14, 1992—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
May 26, 1992—Expiration of 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 92-2705 Filed 2-4-92; 8:45 am]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-30299; File No. SR-CBOE-91-40]

Self-Regulatory Organizations; Filing of a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Exchange Policy With Respect to Joint Account Trading in OEX and SPX Options

January 28, 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 October 25, 1991, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to issue a Regulatory Circular that modifies Exchange policies and procedures regarding permissible trading activity by joint account participants in Standard and Poor's ("S&P") 100 Index options ("OEX") and S&P 500 Index options ("SPX") classes.[1] For a discussion of these changes, see Item I.A. (1) below.

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 self-regulatory organization included statements concerning the purpose of, and statutory 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 self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Currently, Exchange policies and procedures regarding permissible joint account trading activity by Exchange members in OEX and SPX options are contained in four separate Exchange documents, specifically (1) an Exchange Memo to members regarding joint account members simultaneously trading in the same class of options, dated May 31, 1984; (2) an Exchange Bulletin to members regarding joint account participants simultaneously trading in the same class of options, dated April 15, 1987; (3) an Exchange Surveillance Memo, dated 1980; and (4) an Exchange Circular to members regarding joint account identification, dated August 14, 1990.

The Exchange proposes to codify these existing policies and procedures in one circular and to make three modifications to existing Exchange policy regarding permissible joint account trading activity by Exchange members in OEX and SPX options. First, the Exchange proposes that joint accounts participants who are not trading in-person in an index option trading crowd, may enter orders for the joint account with floor brokers, even if other joint account participants are trading the same joint account in-person in the same trading crowd. Second, the Exchange proposes that RAES group managers may enter orders with floor brokers for the RAES joint account even if the manager is trading in-person for his individual account in the same index option crowd. Second, the Exchange proposes that RAES group managers may enter orders with floor brokers for the RAES joint account even if the manager is trading in-person for his individual account in the same index option crowd. If the manager in trading in-person for the joint account, however, the manager may not enter an order for the joint account with a floor broker. Third, joint account members may alternate trading in-person for their individual account and their joint account while in the crowd.

In support of its proposal, the Exchange represents that, with regard to SPX and OEX options, RAES managers have expressed concern over their inability to manager effectively their RAES account while at the same time trading for their individual account. In addition, the Exchange also indicates the ability of members who are part of joint account that has nominees in both the OEX and SPX trading crowd to hedge between the two options classes is restricted because currently such members are not permitted to have an order executed by a floor broker in the other index trading crowd, if another member of their joint account is trading in person in the other index trading crowd. The Exchange believes that the current policy should be expanded to allow for the trading described above in certain instances. In addition, the Exchange believes that to remain fair and consistent the provisions should apply to all joint accounts trading OEX and SPX options.

(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)(5) in particular in that it promotes just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 26, 1992.

[1] The Exchange originally submitted its proposal pursuant to section 19(b)(3) of the Act, but on November 25, 1991, the CBOE submitted amendment no. 1 to its proposal which indicated that the Exchange was submitting its proposal pursuant to section 19(b)(2) of the Act. On December 5, 1991, the CBOE sent the Commission additional information on the Exchange's existing joint account trading procedures for OEX and SPX options classes. See letter from Patricia L. Cerney, Director, Department of Market Surveillance, CBOE, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, dated December 5, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-2706 Filed 2-4-92; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Carnival Cruise Lines, Inc., Class A Common Stock, $.01 Par Value) File No. 1-9610

January 30, 1992.

Carnival Cruise Lines, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In addition to being listed on the Amex, the Company's common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's stock commenced trading on the NYSE at the opening of business on November 26, 1991 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before February 21, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-2738 Filed 2-4-92; 8:45 am]

BILLING CODE 8010-01-M

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Unisys Corporation, Common Stock, $0.01 Par Value; Preferred Shares Purchase Rights) File No. 1-8611

January 30, 1992.

Unisys Corporation ("Company") has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange, Inc. ("PSE") and Midwest Stock Exchange, Inc. ("MSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, the trading volume has been relatively low on both the PSE and the MSE, trading on each exchange amounting to approximately ten percent of the total trading in the Company's Common Stock. Continued listing of the Common Stock on both the PSE and the MSE is costly to the Company. The Company's Common Stock will continue to be listed and traded on the New York Stock Exchange, Inc.

Any interested person may, on or before February 21, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-2739 Filed 2-4-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Transportation Personnel Training and Qualifications Advisory Committee

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of termination of Air Transportation Personnel Training and Qualifications Advisory Committee.

SUMMARY: Notice is hereby given of the termination of the Air Transportation Personnel Training and Qualifications Advisory Committee. The committee was established to provide the Administrator with recommendations to improve the training and qualifications of air carrier crewmembers and other air transportation employees, including aircraft dispatchers and certain other operations personnel. This committee has been terminated as its continuation is no longer in the public interest in connection with the performance of duties imposed on FAA by law. Any further advisory committee activity on this subject will be conducted under the Training and Qualifications Subcommittee of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. Chris A. Christie, Director, Office of Rulemaking, ARM-1, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267-9677; fax (202) 267-5075.

Issued in Washington, DC, on January 30, 1992.

David R. Harrington,

Executive Director, Air Transportation Personnel Training and Qualifications Advisory Committee.

[FR Doc. 92-2723 Filed 2-4-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-92-2]

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 February 25, 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) 267-3132.

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 January 29, 1992.

Denise D. Castaldo,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 005SW.
Petitioner: McDonnell Douglas Helicopter Company.
Sections of the FAR Affected: 14 CFR 27.1(a).
Description of Relief Sought: To permit the MDHC Model MD900 helicopter to exceed the 6000 pounds maximum weight limit requirement for FAR 27 Normal Category rotocraft.

Docket No.: 20044.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 61.63(b) and (c), and 121.43(c).
Descriptions of Relief Sought: To extend Exemption No. 2965 that allows pilots employed by Part 121 certificate holders to be issued additional category and class ratings based on successful completion of an approved Part 121 second-in-command training program.

Docket No.: 23980.
Petitioner: United Hang Gliding Association, Inc.
Sections of the FAR Affected: 14 CFR 91.309 and 103.1(b).
Description of Relief Sought: To extend Exemption No. 4144, as amended, that permits members of the United States Hang Gliding Association to tow unpowered ultralights with a powered ultralight.

Docket No.: 24256.
Petitioner: Dalfort Training.
Sections of the FAR Affected: 14 CFR 61.56(b)(1), 61.57(c) and (d), 61.58(c)(1) and (d), 61.63(d)(2) and (3), 61.67(d)(2), 61.157(d)(1) and (2), and (e)(1) and (2), Appendix A of Part 61, and Appendix H of Part 121.
Description of Relief Sought: To amend and extend Exemption No. 4955, as amended, that allows Dalfort Training to use simulator instructors without the inflight observation training course consisting of two hours in an airplane of the same class and type.

Docket No.: 26029
Petitioner: ABX Air, Inc.
Sections of the FAR Affected: 14 CFR 121.505(a).
Descriptions of Relief Sought: To amend Exemption No. 5167 which permits the petitioner's pilots to complete any flight schedules which satisfy the requirements of § 121.505(a) of the Federal Aviation Regulations before being provided at least 16 hours of rest.

Docket No.: 26103.
Petitioner: Northwest Seaplanes, Inc.
Sections of the FAR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought: To extend Exemption No. 166 that allows the petitioner to conduct operations at an altitude below 500 feet over water outside of controlled airspace.

Docket No.: 26160.
Petitioner: Massachusetts Institute of Technology.
Sections of the FAR Affected: 14 CFR 91.319(c).
Description of Relief Sought: To extend Exemption No. 5210 that allows Massachusetts Institute of Technology to operate in a congested airway or over densely populated areas using aircraft having experimental airworthiness certificates.

Docket No.: 26392.
Petitioner: Lockheed Aeronautical Systems Company.
Sections of the FAR Affected: 14 CFR 121.310(m).
Description of Relief Sought: Petition was vacated January 28 1992.

Docket No.: 26624. (Reopening of comment period).
Petitioner: Geotech International, Ltd. and The Mil Design Bureau.
Sections of the FAR Affected: 14 CFR 133.19 and 133.21.
Description of Relief Sought: To allow the petitioners to conduct external load rotorcraft operations within the United States with Soviet registered MI-26 rotorcraft operated by Soviet licensed crews.

Docket No.: 26687.
Petitioner: Allied-Signal Aerospace Company, Garrett General Aviation Services Division.
Sections of the FAR Affected: 14 CFR 21.327(e)(4).
Description of Relief Sought: To allow Allied-Signal Aerospace Company to export repaired product using the Federal Aviation Administration Form 8130-3, Airworthiness Approval Tag, without obtaining a written statement from the importing country listing the conditions not met for newly overhauled products.

Docket No.: 26697.
Petitioner: RMH Aerologging, Inc.
Sections of the FAR Affected: 14 CFR 91.609(d).
Description of Relief Sought: to allow the petitioner to operate its Sikorsky SK-61N helicopters, primarily used in helicopter logging operations, without an approved cockpit voice recorder.

Docket No.: 26704.
Petitioner: Commonwealth of Virginia.
Sections of the FAR Affected: 14 CFR 91.111, 91.119, 91.127, 91.159, and 91.209.
Description of Relief Sought: To allow the Virginia State Police Aviation Unit to:
(1) Fly in close proximity to aircraft suspected of drug smuggling and other criminal activities;
(2) Fly lower than 500 feet to conduct surveillance and identify suspect vehicles in heavy vehicular traffic;
(3) Operate within an airport traffic area without intending to land at the airport within the area;
(4) Operate at levels other than the appropriate VFR cruising altitude; and
(5) Operate aircraft at night without lights.

Docket No.: 26712.
Petitioner: Howell Enterprises, Inc.
Sections of the FAR Affected: 14 CFR 135.303, 135.337, and 135.339.
Description of Relief Sought: To allow Howell Enterprises, Inc., to train part 135 pilots in initial, transition,

upgrade, differences, and recurrent training in the MU-2B aircraft.

Docket No.: 26721.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR part 135, subparts B, E, G, and H.
Description of Relief Sought: To permit member airlines of the Regional Airline Association, and other similarly situated commuter air carriers, to conduct flight crewmember training under part 121 requirements for training, checking, qualification, and records in lieu of part 135 requirements.

Docket No.: 26732.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR 121.652 (a) and (c).
Description of Relief Sought: To allow the substitution of crosswind component and braking action restrictions, along with a requirement to utilize automatic landing and approach coupler equipment, at the destination and alternate airports in place of the existing restrictions to Decision Height (DH) and visibility minimums for pilots-in-command who have not yet accumulated 100 hours (50 if reducible) in their current aircraft type.

Docket No.: 26733.
Petitioner: United Airlines.
Sections of the FAR Affected: 14 CFR 121.437(a)
Description of Relief Sought: To allow a second-in-command in flag operations requiring three or more pilots to serve without being required to hold an airline transport pilot certificate and type rating.

Docket No.: 23736.
Petitioner: American Airlines.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.
Description of Relief Sought: To allow Executive Airlines, Inc., a subsidiary of American Airlines, to utilize certain foreign original equipment manufacturers to inspect, repair, and overhaul components and parts of ATR-42, ATR-72, and CASA-212 aircraft operated by Executive Airlines, Inc.

Docket No.: 26741.
Petitioner: Pacific Wing, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g).
Description of Relief Sought: To allow the pilots employed by Pacific Wing, Inc., to remove and/or replace passenger seats of aircraft used by the company in its FAR part 135 operations.

Docket No.: 26742.
Petitioner: Zephyrhills Parachute Center.
Sections of the FAR Affected: 14 CFR 91.111, 105.29, and 105.43.
Description of Relief Sought: To allow pilots of the Zephyrhills Parachute Center (ZPC) to operate their aircraft in formation flight while carrying passengers for hire; also this exemption, if granted, would relieve ZPC pilots from assuring (1) that each parachutist is properly equipped, and (2) that cloud clearance requirements are met for the parachutists after they exit the aircraft.

Docket No.: 26755.
Petitioner: Continental Airlines.
Sections of the FAR Affected: 14 CFR 121.314.
Description of Relief Sought: To permit a 6 month extension in the compliance time for the retrofit of Class D cargo compartment liners in Continental's Airbus A300 fleet.

Dispositions of Petitions

Docket No.: 22286.
Petitioner: Finnair OY.
Sections of the FAR Affected: 14 CFR 21.197.
Description of Relief Sought/ Disposition: To extend Exemption No. 4598 that allows Finnair to obtain a special flight permit with continuing authorization for its McDonnell Douglas Model DC-10-30 aircraft, with United States registration No. N345HC. Exemption No. 4598 permits Finnair to operate aircraft N345Hc when it does not meet all applicable airworthiness requirements but is capable of safe flight for the purpose of flying the aircraft to a base where repairs, alterations, or maintenance may be performed, providing certain conditions are complied with.
Grant, January 7, 1992, Exemption No. 4598C.

Docket No.: 24041.
Petitioner: Butler Aircraft Company.
Sections of the FAR Affected: 14 CFR 91.529(a)(1).
Description of Relief Sought/ Disposition: To extend Exemption No. 2989, as amended, that allows Butler Aircraft Company to operate its Douglas DC-6 and DC-7 airplanes without a flight engineer during flightcrew training and ferry and test flights conducted in preparation for fire fighting operations under part 137 of the FAR.
Grant, January 16, 1992, Exemption No. 2989F.

Docket No.: 25238.
Petitioner: Chromalloy American Corporation.
Sections of the FAR Affected: 14 CFR 145.49.
Description of Relief Sought/ Disposition: To restore, retroactively, an exemption from § 145.49 of the Federal Aviation Regulations to allow Chromizing Southwest (CSW), a domestic repair station and division of Chromalloy, to perform certain maintenance functions on turbine engine blades and vanes at its facility located in Mexicali, Mexico.
Partial Grant, January 21, 1992, Exemption No. 5394.

Docket No.: 25640.
Petitioner: Aerospatiale Helicopter Corporation.
Sections of the FAR Affected: 14 CFR 21.195(a).
Description of Relief Sought/ Disposition: To permit Aerospatiale Helicopter Corporation's U.S.-registered models SA366G and AS350B aircraft (and any similar aircraft models that may be developed over the next five years) to obtain an experimental certificate for the purpose of conducting market surveys in the United States.
Partial Grant, December 15, 1991, Exemption No. 5389.

Docket No.: 25983.
Petitioner: Federal Express Corporation.
Sections of the FAR Affected: 14 CFR 121.613 and 121.625
Description of Relief Sought/ Disposition: To relieve Federal Express Corporation (FEDEX) to the extent that those sections are interpreted to hold that weather reports or forecasts, or any combination thereof, which contain conditional statements (e.g. "occasionally," intermittently, "briefly," or "have a chance of,") may be below authorized minimums at the estimated time of arrival at the primary or alternate airport and do not satisfy the appropriate dispatch requirements of those sections.
Grant, January 13, 1992, Exemption No. 5392.

Docket No.: 26042.
Petitioner: Ameriflight, Inc.
Sections of the FAR Affected: 14 CFR 135.265.
Description of Relief Sought/ Disposition: To allow Ameriflight to extend its pilots' flight and duty time limits to transport financial data following a major earthquake or other natural disaster in the San Francisco Bay or Los Angeles metropolitan areas.
Denial, December 18, 1991, Exemption No. 5380.

Docket No.: 26471.
Petitioner: Classic Aviation, Inc.

Sections of the FAR Affected: 14 CFR 135.89(b)(3).
Description of Relief Sought/ Disposition: To permit Classic Aviation, Inc. to operate its Learjet aircraft above flight level 350 without one pilot having to wear and use an oxygen mask.
Denial, January 23, 1992, Exemption No. 5396.

Docket No.: 26571.
Petitioner: Sun Country Airlines.
Sections of the FAR Affected: 14 CFR 121.358.
Description of Relief Sought/ Disposition: To permit Sun Country Airlines to continue to oprate, after December 30, 1991 without at least one half of Sun Country Airlines' aircraft being equipped with either 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).
Denial, December 30, 1992, Exemption No. 5385.

Docket No.: 26575.
Petitioner: Designed Ideas, Inc.
Sections of the FAR Affected: 14 CFR 141.65
Description of Relief Sought/ Disposition: To permit purchasers of Designed Ideas AvTEST Written Examination System of computerized testing to exercise their self-examining authority for flight instructor and airline transport pilot written tests.
Denial, January 7, 1992, Exemption No. 5390.

Docket No.: 26576.
Petitioner: American Airlines.
Sections of the FAR Affected: 14 CFR Appendix H to part 121.
Description of Relief Sought/ Disposition: To permit the 1-year instructor employment requirement of the appendix H, Advanced Simulator Training Program to be acquired with either American Airlines or another Part 121 certificate holder.
Grant, January 7, 1992, Exemption No. 5391.

Docket No.: 25702.
Petitioner: Braathens South American and Far East Airtransport A-S.
Sections of the FAR Affected: 14 CFR 21.197(c).
Description of Relief Sought/ Disposition: To extend Exemption No. 5135 which allows Braathens South American and Far East Airtransport A-S to use a special flight permit with continuing authorization to conduct ferry flights for its U.S.-registered Boeing Model 737 aircraft, subject to certain conditions and limitations
Grant, January 8, 1992, Exemption No. 5135A.

Docket No.: 26715.
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.314 and 135.169(d).
Description of Relief Sought/ Disposition: To permit a 60-day extension in the compliance time for the retrofit of Class D cargo compartment liners in Boeing Model 737 airplanes.
Partial Grant, December 19, 1991, Exemption No. 5378.

Docket No.: 26716.
Petitioner: USAir.
Sections of the FAR Affected: 14 CFR 121.314 and 135.169(d).
Description of Relief Sought/ Disposition: To permit a 60-day extension in the compliance time for the retrofit of Class D cargo compartment liners in Boeing Model 737 and Fokker Model F-28 airplanes.
Partial Grant, December 179 1991, Exemption No. 5379.

[FR Doc. 92-2721 Filed 2-4-92; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Intelligent Vehicle-Highway Society of America; Public Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of public meetings.

SUMMARY: The Intelligent Vehicle-Highway Society of America (IVHS America) will hold meetings of its Executive Committee, Coordinating Council, and the Strategic Planning Subcommittee of the Coordinating Council on February 25 through February 28, 1992. IVHS America provides a forum for national discussion and recommendations on IVHS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of IVHS America as an advisory committee under the Federal Advisory Committee Act (FACA) when they provide advice or recommendations to DOT officials on IVHS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Strategic Planning Subcommittee of the Coordinating Council will meet on February 25, 1992, from 1 p.m. to 5 p.m., e.t., and on February 26, 1992, from 8 a.m. to noon, e.t. The sessions are expected to focus on: (1) Review and discuss comments on Draft B of the Strategic Plan for Intelligent Vehicle Highway Systems in the United States, and (2) Discuss required changes to the draft.

The Coordinating Council will meet on February 26, 1992, from 1 p.m. to 5 p.m., e.t., and on February 27, 1992, from 8 a.m. to noon, e.t. The sessions are expected to focus on: (1) Strategic Planning Subcommittee presentation on the comments on Draft B of the Strategic Plan; (2) Council guidance as to the final draft of the Strategic Plan; (3) Review of System Architecture program recommendations; and (4) Other technical activities of IVHS America.

The Executive Committee will meet on February 28, 1992, from 9 a.m. to 4 p.m., e.t. The session is expected to focus on (1) Strategic Plan Discussion, and (2) Annual Meeting Status and Program Committee Reports.

ADDRESSES: The Peabody Hotel; 9801 International Drive; Orlando, Florida 32819.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle Saxton, FHWA, HTV-10, room 3100, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2197, office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal holidays: or Dr. James Costantino, IVHS America, 1776 Massachusetts Avenue, NW., fifth floor, Washington, DC 20036, (202) 857-1202.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: January 30, 1992.

T.D. Larson,
Administrator.

[FR Doc. 92-2726 Filed 2-4-92; 8:45 am]
BILLING CODE 4910-22-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 24
Wednesday, February 5, 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)(8).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:05 p.m. on Sunday, February 2, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to a certain financial institution.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr., Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and Chairman William Taylor, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: February 3, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-2922 Filed 2-3-92; 1:10 pm]

BILLING CODE 6714-0-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m., Thursday, February 13, 1992.

PLACE: Board Room Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
   A. District Banks Directorate
   B. Housing Finance Directorate
2. Dividend Regulation

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approved of the January Board Minutes.
2. Completion of Chairmen/Directors Appointments.
3. Office of Finance Update.
4. Legislative/Strategic Discussion.
5. Examination Report.
6. District Bank Affordable Housing Program Performance.
7. Update on Affordable Housing Program Cases.
8. Briefing/Preparation for Chair/Appointive Director Meeting.

The above matters are exempt under one or more of sections 552b(c) (2), (6), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c) (2), (6), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

Philip L. Conover,

Deputy Executive Director.

[FR Doc. 92-2933 Filed 2-3-92; 2:10 pm]

BILLING CODE 6725-01-M

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 9:00 a.m. Friday, February 14, 1992.

PLACE: Park Hyatt Hotel, 1201 24th Street, NW, Washington, DC 20037.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Finance Board will be hosting a meeting of the Chair/Appointive Directors of the Home Loan Bank System. Matters to be considered are the following:

1. The Federal Home Loan Bank System's Role in Public Policy.
2. Role, Duties and Responsibility of a FHLBank Director.
3. FHLBank Financial and Operational Issues.
4. Strategic Planning Initiatives.
5. Housing Finance Mission.

The above matters are exempt under one or more of sections 552b(c)(2), (6), (8), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552b(c)(2), (6), (8), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

Philip L. Conover,

Deputy Executive Director.

[FR Doc. 92-2934 Filed 2-3-92; 2:10 pm]

BILLING CODE 6725-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

TIME AND DATE: 1:00 p.m. (closed portion), 2:30 p.m. (open portion), Tuesday, February 18, 1992.

PLACE: Offices of the Corporation, Fourth Floor Board Room, 1615 M Street, NW., Washington, D.C.

STATUS: The first part of the meeting from 1:00 p.m. to 2:30 p.m. will be closed to the public. The open portion of the meeting will commence at 2:30 p.m. (approximately).

MATTERS TO BE CONSIDERED: (Closed to the public 1:00 p.m. to 2:20 p.m.):

1. President's Report.
2. Insurance Project in Argentina.
3. Insurance Project in Russia.
4. Claims Report.
5. Information Reports.
6. Approval of 9/24/91 Minutes (Closed Portion).

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 2:30 p.m.).

1. Approval of 9/24/91 Minutes (Open Portion).
2. Presentation regarding move of Corporation.
3. Presentation regarding project development program for Central and Eastern Europe.
4. Notice to Board of Changes to OPIC Country List.
5. Information Reports.
6. Recommendation for meeting through end of September 1992.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202) 457-7007.

Dated: January 31, 1992.

Dennis K. Dolan,

OPIC Corporate Secretary.

[FR Doc. 92-2849 Filed 1-31-92; 8:45 am]

BILLING CODE 3210-01-M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting and Forum

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability and forum on personal assistance services. This notice also describes the functions of the National Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94–409).

DATES:

Quarterly Meeting

February 24, 1992, 8:30 a.m. to 5:00 p.m.
and
February 26, 1992, 8:30 a.m. to 12:00 noon.

Forum on Personal Assistance Services

February 25, 1992, 8:30 a.m. to 4:00 p.m.

LOCATION: Imperial Palace Hotel, 3535 Las Vegas Boulevard South, Las Vegas, Nevada 89109, (702) 731–3311.

FOR FURTHER INFORMATION CONTACT: National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, D.C. 20591, (202) 267–3846, TDD: (202) 267–3232.

The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95–602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law 98–221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People With Disabilities.

The quarterly meeting of the National Council and the forum shall be open to the public. The proposed agenda includes:

Forum on Personal Assistance Services.
Report from Chairperson and Executive Director.
Update on NIDRR.
Update on ADA Watch.
Update on Prevention.
Update on public policy studies: education; technology; and health insurance.
Committee Meetings/Committee Reports.
Unfinished Business.
New Business.
Announcements.
Adjournment.

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, D.C. on January 23, 1992.

Ethel D. Briggs,

Executive Director.

[FR Doc. 92–2885 Filed 2–3–92; 11:25 am]

BILLING CODE 6820–BS–M

Corrections

Federal Register
Vol. 57, No.24
Wednesday, February 5, 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.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1710

RIN 0572-AA43

General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Electric Loans

Corrections

In rule document 92-222, beginning on page 1044, in the issue of Thursday, January 9, 1992, make the following corrections:

1. On page 1048, in the 2d column, in *Section 1710.112*, in the 14th line, "not" should read "now".

2. On page 1049, in the 1st column, in the 15th line, insert "will" in front of "require".

3. On page 1051, in the first column, in the first full paragraph, in the fifth and sixth lines, delete "REA disagrees since this is too burdensome."

4. On the same page, in the third column, in *Section 1710.252*, in the second paragraph, in the second line from the bottom, "and" should read "any".

5. In the same column, in *Section 1710.254*, in the second paragraph, in the third line, "as been" should read "as has been".

6. On page 1053, in the third column, in the table of contents, in § 1710.118, "land" should read "load".

7. On page 1054, in the first column, in the table of contents, in § 1710.202, "Requirements" should read "Requirement".

§ 1710.2 [Corrected]

8. On the same page, in the third column, in § 1710.2(a), in the bottom line of the equation, "C−D" should read "D".

§ 1710.6 [Corrected]

9. On page 1056, in the first column, in § 1710.6(a), in the tenth line, "vote," should read "date,".

10. On the same page, in the same column, in § 1710.6(a)(5), in the first line, "With" should not be capitalized.

§ 1710.101 [Corrected]

11. On the same page, in the third column, in § 1710.101(c), in the third line, "loans" should "loads".

§ 1710.104 [Corrected]

12. On page 1057, in the first column, in § 1710.104(b)(2), in the third line, "purposes" should read "purpose".

§ 1710.105 [Corrected]

13. On the same page, in the same column, in § 1710.105(c), in the first line, "case" should read "cases".

§ 1710.112 [Corrected]

14. On page 1059, in § 1710.112(b)(3), in the ninth line, "loan" should "load".

15. On the same page, in the same column, in § 1710.112(b)(8), in the sixth line, "interest" should read "interests".

§ 1710.114 [Corrected]

16. On the same page, in the second column, § 1710.114(b)(1), in the sixth and seventh lines, delete "and 1.05 and 1.00, respectively, for distribution borrowers,".

§ 1710.204 [Corrected]

17. On page 1063, in the third column, in § 1710.204(a), in the first line, delete "are".

§ 1710.250 [Corrected]

18. On page 1064, in the third column, in § 1710.250(e), in the first line, "RES" should read "REA".

§ 1710.251 [Corrected]

19. On page 1065, in § 1710.251(b), in the sixth line, "of" should read "for".

20. On the same page, in the same column, in § 1710.251(c), in the second line, insert "a" in front of "distribution".

BILLING CODE 1505-01-D

federal register

Wednesday
February 5, 1992

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 418, et al.

Medicare and Medicaid Programs; Omnibus Nursing Home Requirements; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 418, 440, 441, 482, 483, and 488

[BPD-488-P]

RIN 0938-AD81

Medicare and Medicaid Programs; Omnibus Nursing Home Requirements

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

ACTION: Proposed rule.

SUMMARY: This rule proposes the way we would implement several provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100-203, that concern services to residents of nursing homes. The provisions include:

- Use of physical and chemical restraints in nursing facilities;
- Federal standards for evaluating State waivers of nursing facility nurse staffing requirements;
- Qualifications of nursing home administrators;
- Notice of Medicaid rights to be given to persons admitted to nursing facilities; and
- Other technical changes needed to include requirements of OBRA '87 in regulations.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 6, 1992.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-488-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept audio, video, or facsimile (FAX) copies of comments. In commenting, please refer to file code BPD-488-P. Written comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday though Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Bill Ullman, 301-966-5667.

SUPPLEMENTARY INFORMATION:

Background

General

On February 2, 1989, we published in the **Federal Register** (54 FR 5316) final regulations with a comment period which specified new and revised requirements that long-term facilities (skilled nursing facilities (SNFs) under Medicare, and SNFs, intermediate care facilities (ICFs), and, effective October 1, 1990, nursing facilities (NFs) under Medicaid) must meet in order to receive Federal funds for the care of residents who are Medicare beneficiaries or Medicaid recipients. We issued the regulations following a notice of proposed rulemaking (52 FR 38582, October 16, 1987) to refocus the requirements for participation in both programs to actual facility performance in meeting residents' needs in a safe and healthful environment. The previous set of requirements had focused on the capacity of the facility to provide appropriate care. In addition, we proposed to simplify Federal enforcement procedures by using a single set of requirements that apply to all activities common to SNFs, ICFs, and NFs.

Many of the requirements in the February 2 regulations reflected detailed, self-implementing provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100-203), which was enacted after we issued the proposed rule. Commenters were aware of the pending legislation and many commenters supported the OBRA '87 changes. An effective date of August 1, 1989 was specified for the February 2 regulations, except for those OBRA '87 provisions that relied on a statutory effective date of October 1, 1990. On July 14, 1989, the August 1 effective date was changed to January 1, 1990 (54 FR 29717) because we determined that the August 1, 1989 effective date did not give States and others adequate implementation time. On December 19, 1989, OBRA '89 was enacted. Section 6901(a) of OBRA '89 changed the January 1, 1990 effective date of the nursing home regulations to October 1, 1990. As a result, on December 29, 1989 we published in the **Federal Register** (54 FR 53611) a final rule to revise the effective date of the regulations issued in the **Federal Register** on February 2, 1989 (54 FR 5316) to October 1, 1990.

On September 26, 1991 (56 FR 48826), we published in the **Federal Register** final regulations on Requirements for Long Term Care Facilities that responded to comments on the February 2, 1989 final rule with a comment period. The provisions of this rule are effective, in general, April 1, 1992. Also on September 26, 1991, we published a related rule on Nurse Aide Competency Evaluation Programs (at 56 FR 48880) that also made changes to sections discussed in this proposed rule.

Scope of Proposed Rule

This rule describes the way we propose to implement certain OBRA '87 provisions that affect health and safety requirements for residents of long term care facilities and that require a notice and comment procedure prior to implementation. This proposal contains the following components:

- Requirements imposed on SNFs that participate in Medicare and NFs that participate in Medicaid, with respect to use of physical and chemical restraints. This portion of the proposed rule would expand upon the discussion of restraints contained in the final rule published on February 2, 1989;
- Requirements imposed on States in accordance with certain provisions of sections 1819 and 1919 of the Social Security Act (the Act) (sections 4201(a) and 4211(a) of OBRA '87), which include—

—Criteria that the Secretary would use to monitor States in granting waivers of the nurse staffing requirements of the Act, and the procedures that the Secretary would use to assume and exercise the State's authority to grant such waivers if monitoring reveals that the State has established a clear pattern and practice of granting inappropriate waivers;

—Qualifications of nursing home administrators;

—Notice of Medicaid rights to be given to persons admitted to nursing facilities;

—Conforming changes to the regulations reflecting the elimination of Medicaid coverage of SNF and ICF services (except for ICFs/MR) and replacement with coverage of nursing facility services;

—Additional requirements that a hospital must meet in order to be certified as a swing-bed facility; and

—Additional requirements that a freestanding inpatient hospice must meet.

The provisions contained in these proposed regulations pertain to long term care facility requirements, which affect several parts of the Code of Federal Regulations (CFR). We will

discuss the subject matter without regard to where it appears in the CFR.

Proposed Changes to the Long Term Care Facility (SNF and NF) Requirements

Use of Restraints

Section 4201 of OBRA '87 added sections 1819(c)(1)(A)(ii) (for Medicare) and 1919(c)(1)(A)(ii) (for Medicaid) to the Act, which provide that residents of nursing facilities have the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms. Existing § 483.13(a) implements this requirement in part by restating the statutory provision. These provisions apply to skilled nursing facilities that participate in Medicare and nursing facilities that participate in Medicaid.

In these proposed regulations, we would define physical and chemical restraints, and psychopharmacologic drugs, specify when a facility may use physical and chemical restraints, how restraints are to be applied, and what documentation is required.

We would revise paragraph (a) by deleting the term "psychoactive drug" and instead use the term "chemical restraint." This term is the one used in the statute and replaces the term psychoactive drug used previously. Sections 1819(c)(1)(A)(ii) and 1919(c)(1)(A)(ii) of the Act specify that residents have the right to be free from "* * * any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms". Restraints may only be imposed—

- To ensure the physical safety of the resident or other residents, and
- Upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary) until such an order could reasonably be obtained.

Under § 483.13(a), we would define a physical restraint as any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his or her body.

We would also propose in paragraph (a), in accordance with sections 1819(c)(l)(A)(ii) (I) and (II) and 1919(c)(1)(A)(ii) (I) and (II) of the Act, to limit physical restraints to treatment of medical symptoms or when it is necessary to ensure the safety of the resident or other residents and only if imposed in accordance with a physician's order specifying the circumstances and duration under which the restraint may be used.

We are proposing under the same section that the decision to apply physical restraints would come only after assessing each resident's capabilities, evaluating less restrictive alternatives, ruling out their use for each resident, and identifying within the plan of care rehabilitative training to enable the progressive removal of restraints or the progressive use of less restrictive means. By requiring such a systematic review before applying restraints, we hope to assure that restraints would not be applied for purposes of discipline or convenience.

We are proposing to prohibit the application of physical restraints on a standing, blanket, or "as needed" basis (the phrase "as needed" is a medical term of art, and indicates use when staff, in accordance with a physician's orders, determines it is needed to treat the resident's symptoms). We believe that restraints which are ordered on a standing, blanket or as needed basis are, in essence, being applied for purposes of discipline or convenience and are therefore prohibited by law. If there is a recognition that restraints must be applied for a specific condition on a standing, blanket or as needed basis, then that condition should be dealt with in a plan of care which endeavors to reduce or eliminate the need for the restraint.

In cases of non-emergency use, we would require that the facility obtain the written consent of the resident, or if the resident has been declared incompetent or cannot understand his or her rights, the legal representative in accordance with State law. The consent given for restraints in non-emergency situations would not relieve the facility from the requirements of § 483.13(a)(1) (ii) and (iii), which require the facility to ensure that the restraint is: necessary; imposed in accordance with a physician's order; not ordered on a standing, blanket, or "as needed" basis; enabling for the resident; imposed only as a last resort; and used in accordance with the plan of care.

In cases of emergency use, we would require that the facility obtain the order to restrain the resident as soon as an order can reasonably be obtained and to limit the time the order is in effect to 12 hours. An authorization for the emergency use of restraints for up to 12 hours would apply to situations in which a resident is so unstable that the facility has determined that the continued or intermittent use of a restraint for a 12-hour period might be needed.

Also in § 483.13(a), we would specify that staff is required to be trained in the application of physical restraints. We would also require the facility to monitor the resident's condition and assist the resident as often as necessary for the resident's safety, comfort, exercise, and elimination needs. In addition, staff would be required to keep a record of the resident's condition and any assistance provided to the resident.

As proposed, the requirements governing the use of physical restraints would be applied without exceptions. However, it has been suggested that there may be a small set of residents who have demonstrated relentless self-injurious behavior for whom the application of these requirements might prove unduly burdensome on facilities. We are especially interested in receiving comments on the appropriateness of relaxing or waiving the proposed procedural limitations on the use of physical restraints with respect to these residents, as well as the types of evidence that should be solicited to support the expedited use of restraints in such instances.

We propose to define the term "psychopharmacologic drug," which appears in sections 1819 and 1919(c)(1)(D) of the Act, as any drug that is prescribed with the intent of controlling mood, mental status or behavior. By defining psychopharmacologic drugs in this way, we include not only the obvious drug classes, such as antipsychotics, antidepressants, and the anti-anxiety/hypnotic class, but any drug that is prescribed with the intent of controlling mood, mental status, or behavior, regardless of the manner in which it is marketed by the manufacturers and regardless of labeling or other approvals by FDA. By using this definition HCFA can, for example, regulate the use of antihistamines which can have a sedative side effect, in addition to merely an antihistaminic effect. This would permit HCFA to guard against the use of drugs which are not approved or marketed as "psychopharmacologic" but which can be used for that effect. This definition also allows for the regulation of drugs not currently on the market, which could be used to affect mood, mental status or behavior.

For several reasons, we believe that State agency surveyors can determine the intent of the physician in prescribing a particular drug. First, the current regulations at § 483.25(l)(i) require the facility to have adequate indications for the use of a drug. Second, the facility

must conduct an adequate assessment of the resident as required by § 483.20 and, except for acute episodic problems, drug use must conform to this assessment. Third, when drugs are used for effects not included in the official labeling, they are usually used in dosages, dosage schedules, and durations that reveal the intent of the prescriber. Finally, guidelines can be developed which assist surveyors in making these judgments by informing them of drugs that are commonly used in this manner and enumerating some situations in which they may be used. We invite comments on this definition and how we intend to apply it.

We would require that such drugs be ordered by a physician who specifies the dose, duration and reason for the use of the drug. This proposed requirement implements sections 1819(c)(1)(D) and 1919(c)(1)(D) of the Act, which require that psychopharmacologic drugs (drugs used to alter behavior, mood or mental status) may be imposed "* * * only upon the written order of a physician." We believe that it comports with the intent of Congress as provided by sections 1819(c)(1)(D) and 1919(c)(1)(D) of the Act.

We propose to require that such drugs must be used only as an integral part of the resident's comprehensive care plan that is directed specifically towards the elimination or modification of the symptoms for which the drugs are prescribed. We believe that this use of drugs which alter behavior, mood or mental status is consistent with the intent of Congress regarding use of these drugs as provided by sections 1819(c)(1)(D) and 1919(c)(1)(D) of the Act.

We propose that such drugs must not be used until the facility can justify that the beneficial effects of the drug clearly outweigh its potential harmful effects. We are proposing this requirement because we believe that it is necessary to the health and safety of residents that there be a thoughtful analysis of the relative benefits versus the potential harm of drug use in each case. Drugs that are used to alter behavior, mood or mental status may have longlasting or permanent adverse effects on the functional level of residents and should be prescribed only where the potential adverse effects are outweighed by the benefits of drug use.

Also, in § 483.13(a), we propose that the resident who is administered such a drug must be monitored closely, in conjunction with the drug regimen review requirements at § 483.60(e) for desired responses and adverse consequences by facility staff. We believe that this requirement is also essential to resident health and safety to prevent potentially serious longlasting or permanent loss of function.

We believe that there is a tendency to continue drug therapy that has been under way for a long period of time under the assumption that it continues to be necessary. This proposed rule, in § 483.13(a), would require that, unless there is a sound clinical basis for not attempting to withdraw the resident from use of a drug used to control behavior, mood or mental status, a gradual withdrawal must be undertaken at least semi-annually (e.g., every 6 months) in a carefully monitored program so that the interdisciplinary team can reevaluate whether the use of the drug continues to be necessary. We are proposing this requirement because we believe that it is necessary to protect resident health and safety by forcing the facility to determine whether long term drug therapy continues to be essential to the health and safety of the resident.

Sections 1819(c)(1)(D) and 1919(c)(1)(D) of the Act require that skilled nursing facilities and nursing facilities undergo an annual independent, external consultant review of the appropriateness of the drug plan of each resident receiving such drugs. To implement this requirement, in § 483.13(a) we propose to require that the use of drugs intended to alter behavior, mood or mental status must be reviewed annually by a physician who has training or experience in geriatrics and psychopharmacology, for the appropriateness of the drug plan for each resident receiving such drugs. We are proposing that this review be performed by these professionals because we believe their credentials will put them in the most favorable position to influence other physician prescribing behavior. Since the law specifically requires this review to be conducted by an independent, external consultant, we are proposing to require that the reviewer of psychopharmacologic drugs not have a contractual, financial, employment or familial relationship with the facility, its owner, its attending physicians, medical director, or administrator within any of the 36 consecutive months prior to the date of the review. We particularly invite comments on the appropriateness of this proposed timeframe.

We also do not want to rule out the possibility that the annual resident review by the State mental health authority under the preadmission screening and annual resident review (PASARR) requirement could be used to satisfy the annual review of psychopharmacologic drugs required by sections 1819(c)(1)(D) and 1919(c)(1)(D) of the Act. This is why we have included a provision that would allow the States the option of using the State mental health authority to satisfy this requirement. We believe that avoidance of duplication of review function would save the taxpayer money while carrying out the fundamental requirement of the statute. We realize that this may expand the review function of the State mental health authority since more residents use psychopharmacologic drugs than are determined to be mentally ill. However, we expect the expansion of the review function to be offset substantially by avoiding duplication of review functions.

To enable health professionals in the facility to determine if drugs used to alter behavior, mood or mental status are in fact achieving the desired results, we would include recordkeeping requirements in § 483.13(a). We propose to require that such drugs must be used only when a record is maintained of the administration of the drug, the dose, the route of administration, a description of the behavior, mood or mental status which the drug is intended to alter, the effect of the drug on the behavior, mood and mental status of the resident, and any other change in behavior, mood, mental status or physical condition which occurs with the administration of the drug.

We also propose to require that the drug review conducted by an independent external consultant (a physician with experience or training in geriatrics and psychopharmacology) include a review of the appropriateness of the indications for use, the dose, the duration of therapy, and the adequacy of monitoring. We would also propose that the reviewer ascertain whether valid justification exists for using a chemical restraint as permitted under paragraph (a)(8) of this section. This provision will enlist the expertise of the independent external consultant in deciding whether the use of a chemical restraint carries with it a valid justification for its use.

In § 483.13(a)(1)(v), we propose that before a psychopharmacologic drug can be used in a non-emergency situation, the facility must explain the use of the drug as required by § 483.10(d), explain the resident's right to refuse the drug, as required by § 483.10(b)(4), and obtain written consent for the use of the drug. The requirement to obtain written consent before a psychopharmacologic drug can be used in no way relieves the facility from its responsibilities under § 483.10(a)(3) (i) through (iv), and (vi) and (vii).

We would define "chemical restraint" as a psychopharmacologic drug (i.e., any drug that affects mood, mental status or behavior) which is used in excessive dose, for excessive periods of time, without adequate monitoring, without adequate indications for its use, in the presence of "adverse consequences," which indicate the dose should be reduced or discontinued, in a manner that results in a decline in the resident's functional status, or any of the reasons above. We propose that a psychopharmacologic drug becomes a "chemical restraint" when it is used under the circumstances of "excessive dose," "inadequate indicators," etc. and invite public comment on how to define these terms. We believe this is the only way to avoid the use of all psychopharmacologic drugs with the pejorative term "chemical restraint." This proposed regulation would implement sections 1819(c)(1)(ii) and 1919(c)(1)(ii) of the Act, which give the resident the right to be free of "chemical restraints imposed for the purposes of discipline or convenience and not required to treat the resident's medical symptoms." This proposal would establish a stricter standard than the statute. The statute allows the use of a chemical restraint when not used for convenience or discipline and when used to treat medical symptoms (e.g., hallucinations, delusions, paranoia). The statute exempts the facility from the above standard when it says, "Restraints may only be imposed to ensure the physical safety of the resident or other residents." In other words, the resident need not have medical symptoms for the imposition of a chemical restraint if they represent a threat to themselves or others. However, we are concerned about the indiscriminate application of this principle in situations such as those involving a resident who strikes at another resident out of self-defense or who strikes at an abusive aide. This would be normal behavior and would not be the result of a hallucination or delusion, yet a chemical restraint would be permitted. That is why this regulatory proposal would tie the use of a chemical restraint to proper indications for use (as well as other criteria, e.g., dose, duration of therapy, monitoring and excessive side effects), instead of allowing physical safety to be the sole criterion for use of a chemical restraint.

We also note that there are frequent occasions when residents' medical symptoms (hallucinations, delusions, paranoia) may result in potential harm to themselves or others. To treat these medical symptoms should not be considered use of chemical restraints. It should be considered the reasonable and necessary practice of medicine. However, when this treatment is without proper indications, the dose is excessive, treatment is for an excessive duration, monitoring is inadequate, or side effects are too great, then this constitutes a chemical restraint.

Under § 483.13(a)(8), use of a chemical restraint would be permissible (as the Act requires at 1819(c)(1)(A)(ii)(I) and 1919(c)(1)(A)(ii)(I)) only when it is imposed to ensure the safety of the resident or other residents and properly ordered.

However, to be consistent with the concept that a chemical restraint situation should only rarely occur, we are proposing that an emergency situation should exist before a chemical restraint may be used in accordance with the statutory circumstances "to ensure the physical safety of the resident or other residents." This would serve to limit the application of this provision to rare circumstances in which the resident is acting out so violently that he or she must indeed be "chemically restrained." We would require that such drugs, when used as an emergency restraint be accompanied by physician's orders (not necessarily a written order) in effect for no longer than 12 hours, and be administered to residents only if the resident is monitored continually for the first 30 minutes after administration and every 15 minutes thereafter. This particular monitoring schedule assumes that the drug will be administered parenterally since it is in an emergency situation. We believe that these proposed requirements are necessary to protect resident health and safety by ensuring that the residents are not continuously under the influence of these drugs without careful professional monitoring being given to the continued use of them, or without careful observation of the effects of the drugs on the resident. We believe that continued use of such drugs in an emergency situation should be reevaluated by a physician no later than 12 hours after the initial order to ensure that the drug continues to be appropriate. Moreover, due to the impaired physical status of most residents, we believe that continuous monitoring for the first 30 minutes after administration of the drug, and monitoring every 15 minutes thereafter for as long as the resident is under the influence of the drug are necessary to ensure that any adverse side effects that may occur would be noticed and appropriate actions would be taken as soon as possible.

We believe the proposed regulations on psychopharmacologic drugs and chemical restraints are necessary to cope with a significant public health problem in many, but not all of this nation's long-term care facilities. For many years, there have been allegations of misuse of psychoactive drugs in these facilities. In 1975, the Special Committee on Aging of the U.S. Senate held hearings on this public health problem and made reference to "chemical straight jackets" in nursing homes. In 1980, the House Select Committee on Aging held hearings on the same subject. They entitled their report, "Drug Abuse in Nursing Homes." Most recently, articles that deal with this subject have appeared in a number of medical journals. These papers generally question the extent of the use of psychopharmacologic drugs in nursing homes and question whether adequate monitoring of the use of these drugs exists.

Congress took action on this issue by enacting the chemical restraint provisions of OBRA '87. In enacting these provisions, Congress has determined that the facility, and not only the prescribing physician, can be held responsible for the inappropriate use of chemical restraints. They did this by giving the resident the right to be free of chemical restraints except under certain circumstances and held the skilled nursing facility or the nursing facility responsible for "protecting and promoting" this right for each resident (see sections 1819(c)(1)(A) and 1919(c)(1)(A)).

Although section 1801 of the Act (no such provision exists in title XIX of the Act) prohibits Federal interference in the practice of medicine, the provisions on chemical restraints in OBRA '87 do not contradict that provision. The physician is free (within the confines of facility policy) to prescribe chemical restraints if such drug use is necessary in an emergency to "ensure the physical safety of the resident or other residents," and if such drug use is not for discipline or convenience and is required to treat medical symptoms (see sections 1819(c)(1)(A)(ii)(I) and 1919(C)(1)(A)(ii)(I)). The "chemical restraint" prohibition would apply only when such drugs are prescribed for discipline or convenience and not to treat medical symptoms. Since the prescribing of "chemical restraints" for these circumstances are not to treat a medical symptom, the Federal government's regulation of nursing home practices, by prohibiting the facility's use of chemical restraints under these circumstances, are not intended, or

expected to amount to Federal interference with the practice of medicine. We believe that this interpretation reasonably balances the general limitation contained in section 1801 of the Act with the specific and explicit requirements imposed by sections 1819(c)(1)(A)(ii) and 1919(c)(1)(A)(ii) of the Act.

As proposed, the requirements governing the use of chemical restraints would be applied without exceptions. However, it has been suggested that there may be a small set of residents who have demonstrated relentless self-injurious behavior for whom the application of these requirements might prove unduly burdensome on facilities. We are especially interested in receiving comments on the appropriateness of relaxing or waiving the proposed procedural limitations on the use of chemical restraints with respect to these residents, as well as the types of evidence that should be solicited to support the expedited use of restraints in such instances.

State and Federal Waivers of Nurse Staffing Requirements

Section 4201 of OBRA '87 added section 1819(b)(4)(C)(i) to the Act, which requires that a Medicare SNF provide 24-hour licensed nursing service, and use the services of a registered professional nurse at least 8 consecutive hours a day, 7 days a week. Section 4211 of OBRA '87 added section 1919(b)(4)(C)(i) to the Act, imposing the same requirement on Medicaid NFs. Section 1819(b)(4)(C)(ii) authorizes the Secretary to waive the requirement that a SNF use a registered professional nurse for more than 40 hours a week if certain criteria specified in section 1819(b)(4)(C)(ii)(I)–(III) of the Act are met by the facility. Section 1919(b)(4)(C)(ii) authorizes a State to waive the 24-hour licensed nursing requirement or the registered professional nurse requirement in a Medicaid NF if certain criteria specified in section 1919(b)(4)(C)(ii)(I)–(III) are met.

The proposed regulations concerning nurse staffing waivers would be located in two places in the CFR. In part 483, subpart D, new § 483.165 would add requirements that must be met by States and State agencies concerning designation of nurse staffing waiver authority, nature of waivers, effective dates, renewal of waivers, and notices. In part 488, subpart B, current rules specify survey and certification procedures that are used by the State survey agency and HCFA to determine if long term care facilities meet the requirements in part 483, subpart B.

State Requirements—Nurse Staffing Waivers

In § 483.148, we describe the scope and statutory basis of the regulatory requirements that apply to States with respect to Medicaid participating long term care facilities. In § 483.165, we propose to specify the requirements that must be met by the State in deciding whether to grant nurse staffing waivers to Medicaid participating nursing facilities and distinct parts. Specifically, in § 483.165(a), we propose to require that the Medicaid agency must designate an entity within the State, including itself, that is responsible for deciding whether to grant a waiver of the nurse staffing requirements at 42 CFR 483.30 (a) and (b). Moreover, we propose that the State cannot delegate or subcontract this function to an entity outside of the State government. We believe that it is important that nurse staffing waivers not be granted unless the State has determined that resident health and safety will not be adversely affected, and therefore, we do not intend that any entity outside of the government of the State make the decision of whether to grant a waiver of the nurse staffing requirements.

In § 483.165(b), we propose that the State may grant a waiver of these requirements for a Medicaid-only participating nursing facility or a Medicaid-only distinct part nursing facility when, at the request of the nursing facility, the State finds that the conditions in § 483.30 (c) and (e) are met by the nursing facility. A facility would be deemed to have made a diligent effort to meet the nurse staffing requirements if it can demonstrate that it (1) continuously attempts to recruit registered or licensed practical nurses, or both, to fill its vacancies by advertising, solicitation at education programs, and job fairs within a radius of 100 miles of the facility, and (2) offers salaries and benefits that are competitive with the salary and benefits offered by other nursing facilities that are located within a 100 mile radius of the facility. In addition, we propose that a State could only grant a nurse staffing waiver to a facility that had been in compliance with all of the requirements of § 483.25 regarding quality of care both at the last standard or extended survey and at the time the waiver is to be effective. We propose this requirement because we believe that it is an essential measure of minimal health and safety protection for the residents in a facility. A nursing facility or distinct part that has been found out of compliance with any of the quality of care requirements of § 483.25 should not be granted a nurse staffing waiver, since nurse staffing is crucial to the patient outcomes addressed in the quality of care standard. Although this requirement is not explicit in the statute, it is consistent with the statutory requirement that the State not find any health and safety problems (see section 1919(b)(4)(C)(ii)(II) prior to granting a waiver).

The State may not grant a waiver of the nurse staffing requirements of § 483.30 (a) and (b) to Medicare-only skilled nursing facilities or Medicare-only distinct part skilled nursing facilities. Since these facilities participate in Medicare, they will only be eligible for Medicare waivers of nurse staffing requirements. This is because a waiver of nurse staffing requirements under section 1919(b)(4)(C)(ii) of the Act, and regulations at § 483.30 (c) and (e), would cause Medicare participating facilities to be out of compliance with the Medicare requirements for participation that require 24 hour nursing. These facilities and distinct parts that participate in Medicare may be granted waivers of the nurse staffing requirements of § 483.30 only by HCFA, as provided under § 488.56. Dually-participating facilities (i.e., those which participate both as a Medicare SNF and a Medicaid NF) that seek to have nurse staffing requirements waived would need to obtain two separate waivers: A Medicare waiver from HCFA, and a Medicaid waiver from the State. The Medicare waiver authority is far more limited than is the States' authority under Medicaid since a State may waive any element of the nurse staffing requirement, whereas the Secretary may waive only the registered nurse (RN) requirement to the extent that it would entail an RN being on duty more than 40 hours a week, and only then in rural facilities. Since the scope of Medicaid's nurse staffing waiver authority under the law is far broader than Medicare's, a dually-participating facility that obtains a nurse staffing waiver under Medicaid, which is broader in scope than would be allowable under Medicare, is disqualified from further participation in Medicare. We anticipate that in situations where HCFA grants a Medicare waiver to a dually-certified facility, the State might choose to grant automatically a comparable Medicaid waiver.

In § 483.165(c), we propose that the effective date of nurse staffing waivers granted by the State may not precede the date of the facility's request and expire on the earlier of:

• The anniversary of the effective date;

• The date by which the State becomes aware that the facility acquires sufficient nurse staffing to comply with the requirements without a waiver; or

• The date that the State determines that the facility has ceased to be in compliance with any of the requirements of § 483.25 or determines that the health and safety of residents has become jeopardized.

We are limiting waivers in this way because of our concern that the waivers be granted only when continued resident health and safety are ensured.

We are also proposing at § 483.165(c) that waivers may not be granted with retroactive effective dates in order to preclude skilled nursing facilities and nursing facilities from avoiding penalties for noncompliance with the nurse staffing requirements discovered during a survey by requesting and receiving a retroactive waiver. We believe that compliance with the statutory requirement for adequate nurse staffing is essential to ensuring the health and safety of residents and that the waivers of the nurse staffing requirements are not to be granted without careful consideration and a sound belief that resident health and safety will not be adversely affected. At § 483.165(d), we would provide that the State may renew a nurse staffing waiver after it has expired (or before it expires) if the State has reevaluated the facility to ensure that the criteria continue to be met and resident health and safety has not been adversely affected by the waiver.

We believe that it is appropriate to limit the duration of a nurse staffing waiver. Requiring reassessment of the waiver at least once a year forces the facility to be able to demonstrate what it has done to acquire sufficient nurse staffing so as not to need the waiver. The automatic termination of the waiver when the facility acquires sufficient staffing to meet the statutory requirements is appropriate because the acquisition of such staffing both obviates the need for the waiver and demonstrates that the facility can find sufficient staffing to meet the requirements. The automatic termination of the waiver if the State finds that the facility is out of compliance with a quality of care requirement under § 483.25 or that the health and safety of residents has been adversely affected by the waiver is only appropriate, since the statute prohibits a waiver if resident health and safety is adversely affected by it, and for consistency with § 488.56. The focus of the requirements, and in particular of the nurse staffing requirement, is to protect resident health and safety.

In § 483.165(d), we propose that waivers of nurse staffing requirements may be renewed for a subsequent period of 12 months if the State, after full development and review of a facility's request for renewal, finds that the criteria of § 483.30(c) and (e) or (d), as applicable, continue to be met and resident health and safety are not endangered by the waiver.

In § 483.165(e), we propose that copies of each notice to a facility that allows a nurse staffing waiver and the information on which the State based its waiver must be provided to the Secretary within 30 days of the date of notice to the nursing facility. This requirement is proposed to implement section 1919(f)(9) of the Act, which requires the Secretary to monitor State grants of nurse staffing waivers under section 1919(b)(4)(C)(ii) of the Act. It is essential that we be advised of the waivers granted by the State and provided the information on which the waiver is based so that we can adequately perform our monitoring function. We believe that the 30 day timeframe will impose no hardship on States as they grant nurse staffing waivers.

In § 483.165(f), we also propose to require that when the State grants a nurse staffing waiver, it must notify the Long Term Care Ombudsman and the protection and advocacy system in the State for the mentally ill and the mentally retarded as well as the resident's immediate family within 30 days of the notice of approval of the waiver. We propose this requirement in accordance with the provisions of section 4801(e)(5)(D)(iv) of OBRA '90 and because we recognize the important role these individuals play in advocacy for residents of these facilities. We also recognize that if they are aware of waivers of nurse staffing, they can serve as onsite watchdogs of facilities that have been granted nurse staffing waivers to ensure that the quality of care does not deteriorate as a result of the waiver.

We propose this requirement, in part, as a result of the concerns expressed by consumer groups with these waivers. In particular, they are concerned that individuals who are concerned with the quality of care provided by nursing facilities be aware of such waivers when they are granted. In addition to this requirement for notification of the ombudsman, we also propose to require at § 483.30(c) that the facility post a notice of its waiver in a public place and that all current residents and new admissions be advised when a waiver is granted. We believe that these requirements sufficiently attend to the concerns of consumer representatives.

In § 483.30(c), we propose that the facility must, within 30 days of the notice of approval of a nurse staffing waiver, post in a prominent public location a notice of the services for which a nurse staffing waiver has been granted; the date of expiration of the waiver; and the name, address and phone number of the entity in the State to which complaints about the facility should be directed. We believe that it is important that individuals who have an interest in a facility be advised that the facility has been granted a waiver of the Federal nurse staffing requirements, so that if there are concerns with the absence of adequate nurse staffing they can make the appropriate entity in the State immediately aware of those concerns.

We believe that each resident of a facility that has been granted a waiver of the Federal requirements for nurse staffing has the right to know that the facility has been granted such a waiver, and as such does not meet the specific Federal requirements for nurse staffing in certified facilities. Therefore, in § 483.30(c) we propose that the facility must notify each new admission and each current resident in accordance with notification requirements under "Residents Rights" section (§ 483.10(b)) of the services for which a nurse staffing waiver has been granted within 30 days of the notice of approval of the waiver.

Some groups also want us to require that the State not be permitted to grant a nurse staffing waiver until after the State has published a proposed notice and considered public comments on the proposed nurse staffing waiver as a means of preventing waivers that might adversely affect resident health and safety. We have chosen not to impose such requirements because we believe that the result would be an unnecessary delay of the decision-making process. Moreover, we believe that the safeguards we propose to install in the Federal monitoring process, and revocation of improperly granted waivers will ensure that resident health and safety is protected when waivers of nurse staffing are granted.

In § 483.30(b) we propose to require that when a waiver under paragraph (c) of that section results in a facility not having a registered nurse on staff, the facility must—

• Designate a licensed practical nurse to supervise nursing staff;

• Contract with a registered nurse to conduct or coordinate resident assessments and sign and certify the

completion of the assessment as required by section 1919(b)(3)(B)(i) of the Act; and

• Designate a licensed practical nurse with responsibility for the resident to participate in the development of a comprehensive care plan as required by section 1919(b)(2)(B) of the Act.

When a waiver under paragraph (d) results in the facility having a registered nurse on staff less than 7 days a week, the facility must designate a licensed practical nurse to serve as the health services supervisor in the absence of the registered nurse.

We propose to include these requirements to address who may supervise health services when a nurse staffing waiver is granted by the State. We believe that they offer a reasonable solution to the questions that have arisen regarding who can supervise health services, conduct or coordinate resident assessments, and participate in the development of plans of care when there is a nurse staffing waiver in the facility.

Section 1919(b)(4)(C) of the Act requires that a facility demonstrate to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel. In § 483.30(c)(6), we propose to adopt the "diligent effort" criteria used in § 488.57(b)(2), as discussed below, for consistency and conformity.

We propose in § 488.56(a) the conditions under Medicare for waiving of nurse staffing requirements, the duration of such waivers and the nature of the effective date(s) of such waivers. Specifically, § 488.56(a) would provide that upon the request of a State, we will decide whether to waive the requirement to provide services of a registered nurse for more than 40 hours a week as specified in § 483.30(d). It would also provide that any waiver we grant must meet the requirements specified in this section.

We would only grant such a waiver if the skilled nursing facility has made and continues to make a diligent effort to comply with the requirement to have a registered nurse on duty more than 40 hours a week, but such compliance is impeded by the unavailability of registered nurses in the area (§ 483.30(d)). We would provide that a facility has made a diligent effort to meet the requirements when it continuously attempts to recruit registered nurses to fill its vacancies by advertising, soliciting at educational programs and participating in job fairs within a radius of 100 miles of the facility, and when it offers salaries and benefits that are competitive with other skilled nursing facilities within a 100 mile radius of the facility. We propose this requirement to ensure that the facility continues to try to meet the nurse staffing requirements notwithstanding the granting of the waiver. In § 488.56(a)(2), we describe what demonstrable actions we expect the SNF to take in attempting to recruit registered nurses. This reflects a longstanding policy for nurse staffing waivers in skilled nursing facilities and we continue to believe that it is appropriate. We are especially interested in receiving comments on possible ways to improve the effectiveness of these requirements.

We believe it is appropriate to grant such a waiver only if the facility has been in compliance with all of the requirements of § 483.25 both at the last standard or extended survey and at the time the waiver is to be effective. We propose this requirement because we believe that a facility that has or has recently had a deficiency in the quality of care requirements demonstrates a problem in quality of care and that these problems would likely be exacerbated by the absence of registered nurse staffing. We invite public comments on our use of this standard of compliance with quality of care requirements in this context.

Section 1819(b)(4)(C) of the Act requires that such waivers shall be subject to annual review. We believe that nurse staffing is sufficiently important to the quality of care of residents that the waiver should only be continued after one year where there has been another request by the State, review by HCFA and specific approval for another one year period. Consequently, we propose in § 488.56(a)(4) that we would permit waivers of nurse staffing to extend for a period of no more than 12 months from the date the waiver goes into effect.

We propose to specify that a waiver can only be effective on or after the date of the facility's request for the waiver (but not earlier than that date), to ensure that facilities that are cited for being out of compliance with the nurse staffing requirements are not sheltered from sanctions by seeking and receiving retroactive waivers.

Also in § 488.56(a), we propose that HCFA would revoke the waiver effective on the date the facility is found to be out of compliance with any requirement of § 483.25. We believe that lack of compliance with a requirement under § 483.25 demonstrates the presence of a problem in the quality of nursing care in particular, and that it would not be appropriate to continue a waiver in such a facility.

We propose in § 488.57 to address how HCFA will monitor nurse staffing waivers granted by States and the circumstances under which HCFA would revoke the State's authority to grant nurse staffing waivers. Section 1919(b)(4)(C)(ii) of the Act states that a waiver granted by the State "* * * shall be accepted by the Secretary for purposes of this title to the same extent as is the State's certification of the facility." Moreover, section 1919(b)(4)(C)(iii) requires that "if the Secretary determines that a State has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements, the Secretary shall assume and exercise the authority of the State to grant waivers." Therefore, we propose to establish requirements for HCFA's monitoring of State nurse staffing waivers and procedures that will govern HCFA's assumption and exercise of the State's authority to grant waivers.

We propose in § 488.57(a) that HCFA will monitor each nurse staffing waiver granted by each State under § 483.30(c) to determine if the waiver meets the criteria specified in paragraph (b) of this section. In proposing to monitor every waiver that is granted, we assumed that there would be relatively few waivers granted and that the potential for quality of care problems when such a waiver is granted is sufficient to justify individualized Federal oversight. However, we would be interested in receiving comments on whether the number of waivers granted may be too great to support our assumption and whether monitoring of a sample of the waivers would be sufficient to ensure adequate Federal oversight. In determining if a waiver meets the criteria of paragraph (b) of this paragraph, HCFA will evaluate the information used by the State to grant the waiver and the information available from any survey of the facility.

We believe that not only should the State not grant a waiver if the statutory requirements are not met, but that no waiver should be granted to a facility that has a recent history of noncompliance with the quality of care requirements, and that waivers should be revoked from facilities that are found out of compliance with quality of care requirements. These requirements are almost totally based on the quality of nursing and nursing related services, and where deficiencies exist in any of them, we believe that a State reasonably could conclude that health and safety of

residents would be adversely affected by a nurse staffing waiver. Therefore, we propose that HCFA will find that a waiver was inappropriate if HCFA determines that the statutory requirements for a waiver as found in § 483.30(d) were not met when the waiver was granted or if the State granted a waiver to a facility that had one or more deficiencies under § 483.25 (the quality of care requirements for facilities) at the last standard or extended survey prior to the waiver or at the time the waiver became effective.

When we find that the State has granted a waiver that is inappropriate as defined in paragraph (b) of § 488.57, we propose to notify the State of these findings, and HCFA may perform a survey to determine if resident health and safety is in jeopardy. In providing for the performance of a survey in this context, we considered specifying in the regulations that such a survey must be a standard rather than an abbreviated one. However, we anticipate that our survey requirements will be adaptable in such a manner as to allow a survey to be upgraded in thoroughness as evidence is uncovered to warrant such an action. Therefore, rather than prescribing at the outset the type of survey that must be conducted, we believe it is preferable to let the surveyor determine this as the survey progresses.

If we determine that resident health and safety is in jeopardy, we may subject the facility to adverse action notwithstanding the State's granting of a waiver of the nurse staffing requirements. We also propose that when we determine that the State has granted an inappropriate waiver, we will consider whether to revoke the State's authority to grant nurse staffing waivers. We want to place the emphasis in our process upon HCFA's monitoring of State waivers to minimize the likelihood that we will need to revoke a State's authority to grant waivers.

However, we propose procedures for revocation of a State's waiver authority in § 488.57(b) because the law, at section 1919(b)(4)(C)(iii) of the Act, requires us to revoke a State's authority to grant waivers if the Secretary determines that a State has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by the facility to meet nurse staffing requirements.

In § 488.57(b) we propose that our review of each nurse staffing waiver granted by the State will include an evaluation of whether the nursing facility has made a diligent effort to meet the nurse staffing requirements. We would provide that a facility has made a diligent effort to meet these requirements if it continuously attempts to recruit registered and/or licensed practical nurses to fill its vacancies by advertising, solicitation at educational programs and participating in job fairs within a radius of 100 miles of the facility, and when it offers salaries and benefits that are competitive with other nursing facilities within a 100 mile radius of the facility. We believe that these actions indicate a diligent effort.

We would assume and exercise the authority of the State to grant waivers if the State has demonstrated a clear pattern and practice of allowing waivers in the absence of diligent efforts to meet the nurse staffing requirements as specified in § 483.30 of this part. Our authority to do so is based on the requirements of section 1919(b)(4)(C)(iii) of the Act.

In § 488.57(b)(4), we propose to find that the State has demonstrated a "clear practice" of granting inappropriate waivers when HCFA's review, based upon the subsequent year's survey information or any other available information, shows that the State has a continuing practice over time of allowing waivers in the absence of diligent efforts by facilities to meet the nurse staffing requirements.

We propose to find that the State has demonstrated a "clear pattern" of allowing waivers in the absence of diligent efforts by facilities to meet the nurse staffing requirements when we determine that the State has granted waivers to more than five facilities or 5 percent of all facilities (whichever is greater) in the absence of diligent efforts by the facilities to comply with the nurse staffing requirements. We chose five or 5 percent of all facilities (whichever is greater) for this definition of a clear pattern because we thought that it was a number that was large enough so that it could reasonably be used to define a pattern, yet small enough to limit the scope of the review to reasonable levels. We request public comment on this definition for this purpose, and are particularly interested in data that would reflect the prevalence of facilities meeting the quality of care requirements in the absence of mandated nurse staffing.

When we find that the State has demonstrated a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the nurse staffing requirements, we would advise the State that HCFA intends to revoke the State's waiver authority. HCFA would allow the State to retain its authority to grant waivers only if, within 30 days of receiving this notification, the State submits evidence satisfactory to HCFA's Administrator which demonstrates diligent efforts by the facilities in question to meet the staffing requirements. We are interested in receiving comments on whether 30 days is a reasonable period of time to demonstrate that the State's waiver process is acceptable. We would publish a notice of the revocation of the State's authority in a Statewide periodical or the major newspapers of the State. The notice would include the effective date of the revocation, a statement that waivers granted by the State remain in effect until their expiration date or until the date that HCFA specifically revokes them (whichever comes first) and the procedures by which a facility may apply to HCFA for a waiver of the nurse staffing requirements. We believe that this public notice process is necessary to enable facilities and the public to know the status of facilities' waivers after revocation of the State's authority.

We considered whether to include a mechanism for States to regain lost waiver authority. Although the statute does not address returning lost waiver authority, we assume Congress did not intend to cause a permanent loss. Because we do not anticipate that many States will lose their authority, we decided to reserve rulemaking until the need arises. In the event that we do revoke waiver authority from a State, we plan to revoke it for at least one full cycle of waivers, which will allow sufficient time for rulemaking.

Qualifications of Nursing Home Administrators

Sections 1819(f)(4) and 1919(f)(4) of the Act, added by section 4201 of OBRA '87, require that the Secretary establish standards to assure the quality of nursing home administrators. Section 1819(f)(4) of the Act applies to skilled nursing facilities (Medicare), and section 1919(f)(4) applies to nursing facilities (Medicaid).

In developing these requirements, we consulted a variety of groups with programs that impose or evaluate nursing home administrator standards. We have tried to develop standards that are stringent enough to assure quality administration yet flexible enough to accommodate the current system. We invite public comment on all aspects of this proposal, and particularly on whether the use of a competency evaluation (see discussion of § 483.85(d) below) would, in itself, be sufficient to ensure high quality administration.

We propose that a skilled nursing facility or nursing facility may not employ any person as a nursing home administrator unless that person meets the following requirements. In

§ 483.85(a), we propose that the individual meet the license requirements imposed by the State in which the facility is located.

We would require, in § 483.85(b), that a nursing home administrator have at least a baccalaureate degree. In developing this requirement, we considered several options. We considered requiring only a high school education. We decided, however, that the administrator of a nursing home must be able to understand the basics of nursing practice, Federal and State laws and regulations governing the operation of nursing facilities, licensing and payment programs, and general business practices. We do not believe that a high school education provides sufficient background to enable an individual to function adequately in this respect. We also considered requiring that administrators have a graduate degree in health care administration or the health sciences. We decided, however, that such a high level of training is not characteristic of nursing home administrators and is not necessary for the effective administration of a nursing facility. (While we have not required administrators to have advanced degrees, we note that States could make such a requirement if desired.) We, therefore, came to the conclusion that a bachelor's degree is a necessary, basic requirement for administrators of nursing homes. However, we invite public comment on whether the combination of a high school education and experience would be sufficient to enable an individual to be a competent administrator.

In § 483.85(c), we propose that individuals must complete to the State's satisfaction an internship program of at least 12 weeks duration. The internship will include practical training in daily facility operation and instruction in those areas determined by the State, but at least applicable standards of environmental health and safety; applicable Federal, State and local health and safety laws and regulations; State personnel licensing and/or registration requirements; general administration of an institution, including departmental organization and management; psychology of patient care; personal care and social services; therapeutic and supportive long term care and services; and community resources and interrelationships. We believe that these areas comprise the basic level of knowledge a nursing home administrator must have. We recognize that for those individuals who have managed a nursing home for at least 1 year such an internship program may be redundant, and we will not require that they complete the internship. We emphasize that the internship program may be taken while the individual is working towards his or her degree.

We believe that a standardized examination is necessary to determine the competency of potential administrators.

Therefore, in § 483.85(d), we propose to require that individuals pass with a score of at least 75 percent a State-selected standardized examination tailored to the State, a State-developed examination, or a national standardized examination.

Because we believe that continuing education is necessary to ensure that administrators remain effective, we would require, in § 483.85(e), that administrators satisfactorily complete 20 clock hours of continuing education for any calendar year in which an individual serves as an administrator.

We believe that most long-term care facility administrators are competent and capable; therefore, in § 483.85(f), we would provide that any individual who has been continuously employed as a long-term care facility administrator by the same facility for at least one year on the date of publication of the final rule is deemed to meet the requirements of § 483.85 with the following exceptions. (This 12-month timeframe is consistent with that proposed in § 483.85(c)(2), which would waive the internship requirement for an administrator with at least one year's management experience in a long-term care facility.) We would not deem long-term care facility administrators to meet State licensure requirements and continuing education requirements. The continuing education and licensure requirements indicate ongoing activities in which all administrators should participate, while the other requirements specify initial qualifications. We request public comment both on the overall acceptability of deeming current administrators to meet the requirements and on whether provisions in addition to licensure and continuing education should be excluded from such deeming.

Finally, in § 483.85(g) we propose that hospital administrators administering hospital-based nursing facilities may meet the current State requirements for hospital administrators in lieu of these requirements to the extent permitted under State law. Some States allow hospital administrators to run hospital-based nursing facilities. To require such individuals to meet these requirements could force hospital-based nursing facilities to hire separate administrators for the nursing facilities, which would impose an undue expense on these entities.

Notice of Medicaid Rights

Section 4211 of OBRA '87 added section 1919(e)(6) to the Act, which requires, as a condition of approval of its Medicaid State plan, that each State develop and periodically update a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under Medicaid. We would implement this statutory requirement in § 483.167. We would propose that the State must develop a written notice that contains the resident rights that are provided for under §§ 483.10, 483.12, 483.13, and 483.15 and must include any other right or obligation that is granted or imposed by the State under title XIX. These sections of the requirements governing nursing facilities that participate in Medicaid address the rights and obligations of residents with which facilities must comply to participate in Medicaid. We believe that these rights and obligations are those intended by the Congress to be included in the notice to be provided by the State under the law.

In § 483.167(b), we propose to require that the notice be updated as necessary to keep the applicants and residents and their spouses notified of Medicaid rights and obligations, and published in a Statewide periodical or the major newspapers of the State at least once every 12 months.

We would also propose that printed copies must be made available to the public upon request. We propose these requirements because we believe that Congress included this provision in the law to ensure that the public would be made aware of the rights and obligations of nursing facility residents. A requirement that the State publish the notice in a Statewide periodical and make copies available to the public is essential to fulfill this intent.

Notice of Transfer or Discharge

Existing § 483.12(a)(3) requires that before a facility transfers or discharges a resident, the facility must notify the resident and, if known, a family member or legal representative of the transfer or discharge and the reasons. Section 483.12(a)(5) specifies the contents of the written notice, including the resident's right to appeal the action to the State agency designated to handle these appeals. We believe that current regulations do not go far enough to spell out sufficiently to whom and how a resident can appeal such an action. For this reason, we would require that the

facility also include the following information in the notice.

In § 483.12(a)(6)(iv) we propose to add a new paragraph (D) to require that the facility include in its notice of discharge or transfer, the name, address and phone number of the State entity to which the resident or his or her legal representative can appeal the decision to discharge or transfer the resident from the facility, the hours of operation of that entity and the date and means by which the appeal must be filed.

Requirements Applicable to Coverage of Nursing Facility Services Under the Medicaid Program

Part 431 of our regulations, in subpart C, contain administrative and provider relations requirements that States must meet under the Medicaid program. Parts 440 and 441 of the regulations identify covered services and limits in those services. We propose to revise §§ 440.40, 440.140, 440.150, 440.250, 440.170, 440.220, and 441.100 to implement section 4211(f) of OBRA 87. That section makes changes, effective for services provided on or after October 1, 1990, to specific sections of title XIX which eliminate Medicaid coverage of "skilled nursing facility services" and "intermediate care facility services" (except for "intermediate care facilities for the mentally retarded or persons with related conditions"), and replace them with coverage of "nursing facility services." The changes in these sections of the regulations are proposed to conform the Federal regulations to the law.

The effect of these changes is to make "nursing facility services" a mandatory service for any population for which "skilled nursing facility services" have heretofore been mandatory. Therefore, the full range of nursing facility services, as we propose to define them in this proposed rule, would now have to be provided to categorically needy individuals age 21 and over. Further, in § 440.220(c), the State would now be required to provide coverage of home health services under Medicaid for any population for which it is required, or chooses, to provide coverage of "nursing facility" services.

In order to conform our regulations to the statute as revised by section 4211(b) of OBRA 87, we propose to revise § 440.40(a) to address "Nursing facility services for individuals age 21 or older (other than services in an institution for mental diseases)." We propose to eliminate the word "skilled" wherever it appears, to reflect that, after October 1, 1990, coverage of "skilled nursing facility care" is replaced by coverage of "nursing facility care." We propose the following changes to § 440.40(a) in addition to the change of the title.

We propose that "nursing facility services" include "skilled nursing care," "rehabilitation services," and "health related services above the level of room and board." The requirement that nursing facility services be "above the level of room and board" is a fundamental element of "intermediate care facility services" at current § 440.150(a)(1)(i). We indicate that the services must be "health related" to clarify that they must be related to a health problem caused by the resident's physical or mental condition.

We propose to revise § 440.40(a) to indicate that the level of care requirements of §§ 409.31 through 409.35 do not need to be met for nursing facility services to be covered. Those sections of the regulations defined "skilled nursing facility care" under Medicare and were used in this regulation to define "skilled nursing facility care" for Medicaid also. The inclusion of "health related services above the level of room and board" as "nursing facility services" would encompass services formerly defined as "skilled nursing facility services" since services that meet the requirements of §§ 409.31 through 409.35 clearly are "health related services above the level of room and board."

In § 440.40(a), we would provide that a distinct part of a facility that meets the requirements of our proposed § 440.40(a)(2) or § 440.40(a)(1)(C) could also provide nursing facility services.

We propose to permit, at § 440.40(a), that nursing facility services may be provided in a distinct part of a facility other than a nursing facility, only if the distinct part—

- Meets all requirements for a nursing facility under subpart B of part 483;
- Is an identifiable unit, such as an entire ward, wing, floor, or building;
- Consists of all beds and related facilities in the unit;
- Houses all recipients for whom payment is being made for nursing facility services; and
- Is approved in writing by the State survey agency.

These requirements are comparable to those currently applicable to intermediate care facility services in distinct parts at § 440.150(d) and we believe that they are as applicable to "nursing facility services" as they were to "intermediate care facility services."

In § 440.40(a) (3), we would permit services provided in Christian Science sanatoria to be considered "nursing facility services." This adopts the current provision at § 440.150(b) (1) under which such services are considered "intermediate care facility services." We would also permit services provided on Indian reservations by facilities that furnish on a regular basis, health related services and are certified to meet the standards in subpart B of part 483 to be considered "nursing facility services." This adopts the current provision at § 440.150(b) under which such services are considered "intermediate care facility services."

In § 440.70(c), which defines a recipient's place of residence for Medicaid home health services, we propose to delete the existing references to home health services in intermediate care facilities, and to add nursing facilities to the list of facilities that cannot be considered a recipient's place of residence for home health coverage purposes.

We propose at § 440.140 to eliminate the discussion of "intermediate care facility services" in institutions for mental diseases, and to delete the word "skilled" from "skilled nursing facility services", to comply with the changes to the statute. Specifically, we propose to delete § 440.140(c), which discusses coverage of "intermediate care facilities for individuals age 65 or over in institutions for mental diseases", and to delete the word "skilled" from § 440.140.(b) to comply with the statute.

In § 440.140(a), we propose to revise the definition of an "institution for mental diseases" to comply with the changes made by section 411(k) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360). Specifically, we propose that an institution for mental diseases would mean a hospital, nursing facility or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services. This definition mirrors the statute.

We propose to revise the title and content of § 440.150 to discuss only "intermediate care facility services for the mentally retarded or persons with related conditions" (ICF/MR services). The current section discusses "intermediate care facility services", which, except for ICF/MR services, cease to exist as a benefit on October 1, 1990. Specifically, we propose to change the title of § 440.150 to "Intermediate care facilities services for the mentally retarded or persons with related conditions." Moreover, we propose to delete § 440.150(a), (b), and (f). The content of these sections has been moved to our new definition of "nursing facility services" at § 440.40 as we previously indicated.

We propose to define ICF/MR services as they are currently defined. The only changes we have made are organizational, and to indicate that the requirements apply only to ICFs/MR.

We propose to delete the word "skilled" from the discussion of "skilled nursing facility services" in §§ 440.170, 440.220, 440.250, and 441.100 to conform the current regulations with the statute.

The changes we propose in this NPRM do not encompass all of the changes to the Federal regulations that must be made to conform the regulations to the statute. There will be other changes made to other sections as appropriate.

"Swing-Bed" Hospital Requirements

Current regulations at § 482.66 contain special requirements that hospital providers must meet in order to be approved to provide extended care services (i.e., to be approved as "swing-bed" facilities). These regulations provide that to participate in the swing-bed program, facilities must have fewer than 100 beds, excluding beds for newborns and beds in intensive care type inpatient units or distinct parts. Facilities of from 50 to 99 beds must meet additional requirements. They must have availability agreements with SNFs in the same geographic area. Once notified of the date a SNF bed becomes available, the extended care patient must be transferred within 5 days of the date unless the patient's physician certifies that the transfer is not medically appropriate.

OBRA '87 enacted additional requirements that long term care facilities must meet in order to participate in Medicare or Medicaid, or both, as a skilled nursing facility. On February 2, 1989, we published regulations that implemented many of these additional statutory requirements at 42 CFR part 483. We have now considered which of the additional requirements or the new requirements for skilled nursing facilities at 42 CFR part 483 should be added to the requirements to be met for a hospital to be approved as a swing-bed facility.

In § 482.66(b), we propose to require that in order to receive HCFA approval to provide skilled nursing facility services, hospitals providing long term care services ("swing-bed hospitals") must meet the following requirements for skilled nursing facilities that participate in Medicare:

- Resident rights (§ 483.10(b) (3)–(6), (d), (e), (h), (i), (j), (l), and (m));
- Admissions, transfer and discharge rights (§ 483.12(a) (1)–(4) and (6)–(7));
- Resident behavior and facility practices (§ 483.13);
- Resident activities (§ 483.15(f));
- Social services (§ 483.15(g));
- Discharge planning (§ 483.20(e));
- Specialized rehabilitative services (§ 483.45);
- Dental Services (§ 483.55).

Essentially, these are the same requirements that are specified in the current § 482.66(b), with the citations updated to reflect the recodification of the long-term care facility requirements.

We propose to require that a swing-bed hospital meet these SNF requirements because we believe that they are necessary to ensure that the care provided by these hospitals to patients who are receiving skilled nursing facility services meets the statutory requirements that apply to care that would otherwise be provided in a skilled nursing facility. We did not require that other SNF requirements be met because we did not consider them necessary in light of the fact that the swing-beds are located in hospitals that meet Medicare requirements; however, we are interested in receiving comments on whether the requirements we propose to use or another set of requirements would be the most appropriate for ensuring quality of care.

We are specifically requesting comment on whether to require that swing-bed hospitals meet the nurse aide training and competency evaluation requirements and preadmission screening and annual resident review (PASARR) requirements that were imposed by OBRA '87 on nursing facilities or any other SNF requirement. Section 1883(f) of the Act permits us to exclude swing-bed hospitals from nursing facility requirements that "* * * the Secretary determines are inappropriate in the case of these services being furnished by a hospital under this section."

We believe that the nurse aide training and competency evaluation requirements and the PASARR requirements may be inappropriate for patients of swing-bed hospitals. These providers are certified to participate as hospitals, and as such provide a higher level of care than do nursing facilities and are less reliant upon nurse aides to provide care to patients. Moreover, we are not aware of any problems that have been cited by Congress or other sources with regard to the quality of nurse aide care or the improper placement of mentally ill or mentally retarded individuals in swing-bed facilities. However, if we are convinced by commenters that these requirements are appropriate for swing-bed hospitals, we will impose them in the final rule.

We are also soliciting comments on whether or not explicitly to include the quality of care requirements found at § 483.25 in the swing-bed requirements. The requirements at § 483.25 are the result of the Institute of Medicine recommendations which called for both positive and negative outcome measure of quality long-term care services. Specifically, they give the Secretary and the States authority to sanction the facility when negative outcomes result in poor resident care (e.g., pressure sores, inappropriate use of psychoactive drugs, urinary catheters, naso-gastric tubes, etc.) or when positive outcomes do not occur. We are not including these requirements in the proposed rule because we believe there is no evidence that the health care problems these outcome measures are directed toward are significant problems in small rural hospitals. We have reached this conclusion because the outcome standards found at § 483.25 are primarily directed toward long-term health care issues and swing bed residents tend to receive more medically oriented care for a shorter time than residents of SNFs and NFs.

Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and we will respond to the comments in the preamble of that rule.

Revisions to the Regulations

We propose to make the following revisions to the regulations in title 42:

1. In part 418, § 418.98, we would change "ICF" to "NF" to reflect OBRA '87 terminology.

2. In part 440, we would revise §§ 440.40, 440.70, 440.140, 440.150, 440.170, and 440.250 to reflect the OBRA'87 elimination of Medicaid coverage of skilled nursing facility and intermediate care facility services and the replacement with coverage of "nursing facility services."

3. In part 441, we would revise § 441.100 to reflect use of the same OBRA '87 term, "nursing facility services" described above.

4. In part 482, we would revise § 482.66(b) by adding requirements that hospitals providing long term care services ("swing-bed hospitals") must meet to be approved by HCFA to provide skilled nursing facility services.

5. In part 483, we would revise § 483.12 by adding additional items to be included in the discharge notice.

6. In § 483.13, we would specify requirements for the use of physical and chemical restraints in nursing facilities.

7. In § 483.30, we would include the nurse waiver requirements of OBRA '87.

8. We would add new § 483.85 to subpart B to include qualifications of nursing home administrators as required by OBRA '87.

9. In subpart D of part 483, we would add §§ 483.148, 483.165 and 483.167 to include State and State agency requirements concerning waivers of nurse staffing requirements and notice of Medicaid rights.

10. In § 488.56, we would revise the text to include OBRA '87 requirements concerning nurse staffing waivers.

11. In part 488, we would add new § 488.57 to specify when we will revoke a State's authority to grant nurse staffing waivers.

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed regulation that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or,
- 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.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all SNFs and NFs to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

This rule would conform the regulations to certain provisions of sections 4201(a) (for Medicare) and 4211(a) (for Medicaid) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100-203. Although we believe that no significant costs would be associated with these provisions, we have identified the following provisions as being the more controversial sections of the law/regulations which may also possibly result in incremental costs:

- Use of physical and chemical restraints and psychopharmacologic drugs for nursing facility.

Sections 1819(c)(1)(A)(ii) (Medicare) and 1919(c)(1)(A)(ii) (Medicaid) of the Act specify that residents of nursing facilities have the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms. Among other things we have proposed the following requirements:

+ To permit use of restraints if they are absolutely necessary to protect the resident or others from injury in an emergency.

+ Require that restraints be used no longer than 12 consecutive hours in an emergency situation.

+ Require the use of physical restraints that are designed and used so as not to cause physical injury to the resident and so as to cause the least possible discomfort.

+ Require that the drug review be conducted by an independent, external consultant (who is a physician with training or experience in geriatrics or psychopharmacology). We estimate these reviews will cost approximately $35 million per year. We base this estimate on 1.5 million Medicare and Medicaid residents in long term care facilities. We estimate that 50 percent of these residents are receiving psychoactive drugs. We estimate that the reviews will take an average of one-half hour and that they will cost approximately $100 per hour.

+ Require that continued use of drugs in an emergency situation be reevaluated by a physician no later than 12 hours after the initial order to ensure that the drug continues to be appropriate.

- State and Federal waivers of nurse staffing requirements.

Section 1819(b)(4)(C)(ii) authorizes the Secretary to waive the requirement that a Medicare SNF use a registered professional nurse for more than 40 hours a week if certain conditions in section 1819(b)(4)(C)(ii) of the Act (implemented by regulations at § 483.30(d)) are met by the facility. Section 1919(b)(4)(C)(ii) gives the State the authority (with oversight by the Secretary) to waive the 24-hour licensed nursing requirement or the registered professional nurse requirement in a Medicaid NF if certain criteria specified in section 1919(b)(4)(C)(ii)(I)-(III) (implemented by regulations at § 483.30(c)) are met. We are proposing the following requirements that we believe may result in incremental costs in this provision:

+ Require a waiver to be granted only when a facility has been in compliance with all of the requirements of § 483.25 both at the last standard or extended survey and at the time the waiver is to be effective.

+ Require a facility to attempt continuously to recruit registered and/or licensed practical nurses to fill its vacancies by advertising, soliciting at educational programs and participating in job fairs within a radius of 100 miles of the facility, and where it offers salaries and benefits that are competitive with other facilities of the same type within a 100 mile radius of the facility.

+ Require the above-mentioned procedures to be followed by States when HCFA reviews each nurse staffing waiver granted by the State. If these criteria are not followed and there is a clear pattern (the greater of five or 5 percent of all facilities) and practice of allowing waivers in the absence of diligent efforts, HCFA may revoke the State's authority.

+ Require a Medicaid agency to designate an entity within the State to grant waivers of the 24 hour nurse staffing requirements.

+ Require a facility receiving a waiver for not having a registered nurse on staff to designate a licensed practical nurse to serve as the health services supervisor.

+ Require a facility receiving a waiver for not having a registered nurse on staff to contract with a registered nurse to conduct or coordinate resident assessments.

While we are unable to make a precise estimate at this time of the costs of the combined provisions, we note that these provisions do not serve to introduce the waiver process itself, but merely define in greater detail a few specific operational aspects of that process. The waiver process itself has already been established in regulations by the February 2 interim final rule, which included a general discussion of the regulatory impact of the nurse staffing requirements (54 FR 5355-56).

- Qualifications of nursing home administrators.

Sections 1819(f)(4) and 1919(f)(4) of the Act specify that the Secretary establish standards to ensure the quality of nursing home administrators. We have proposed the following requirements to fulfill the requirements of the above-mentioned statute:

+ Require administrators to complete an internship program of at least 12 weeks duration.

+ Require administrators to be licensed in accordance with State law.

+ Require administrators to have at least a baccalaureate degree.

We believe that many States require qualifications equal to or higher than these proposed requirements for licensing administrators. Therefore we do not expect any incremental costs as a result of these provisions. However, we are interested in receiving public comments on whether additional costs would occur due to these nursing home administrator standards.

• Notice of Medicaid rights.

Section 1919(e)(6) of the Act requires each State to develop and periodically update a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under Medicaid. We do not believe facilities will incur significant costs as a result of providing residents with a copy of their rights. However, there may be minor incremental costs annually as a result of the requirement that facilities provide and publish annually a copy of these rights in a Statewide periodical or the major newspapers of the State.

Although we believe that these provisions would result in some costs, we believe that the costs would be insignificant in light of the expected increase in the quality of health care to Medicare and Medicaid beneficiaries. In that this discussion of costs and benefits is not conclusive, we encourage comments and any applicable data concerning any provisions if there is a perception that they may result in significant increased costs.

For these reasons, we have determined that the threshold criteria of E.O. 12291 would not be met, and a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared an analysis under the RFA or for small rural hospitals.

Information Collection Requirements

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements for these regulations in accordance with chapter 35 of title 44, United States Code. However, sections 4204(b) and 4214(d) of OBRA '87 provide for a waiver of Paperwork Reduction Act requirements for these regulations.

List of Subjects

42 CFR Part 418

Health facilities, Hospice care, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Part 482

Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements Safety.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR chapter IV would be amended as follows:

PART 418—HOSPICE CARE

Part 418 is amended as follows:

1. The authority citation for part 418 continues to read as follows:

Authority: Secs. 1102, 1811–1814, 1861–1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395c–1–953, 1395xf1395cc and 1395hh).

2. Section 418.98 is amended by revising paragraph (b) as follows:

§ 418.98 Condition of participation—Short term inpatient care.

* * * * *

(b) *Standard: Inpatient care for respite purposes.* Inpatient care for respite purposes must be provided by one of the following:

(1) A provider specified in paragraph (a) of this section.

(2) A NF that also meets the standards specified in § 418.100 (a) and (f) regarding 24-hour nursing service and patient areas.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows.

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for part 440 is amended by revising §§ 440.40, 440.140, and 440.150 to read as follows:

Subpart A—Definitions

Sec.

* * * * *

440.40 Nursing facility services for individuals age 21 or older (other than services in an institution for mental diseases) and EPSDT.

* * * * *

440.140 Inpatient hospital services and nursing facility services for individuals age 65 or older in institutions for mental diseases.

* * * * *

440.15 Intermediate care facility services, for the mentally retarded or persons with related conditions.

3. Section 440.40 is amended by revising the title and paragraph (a) as follows:

§ 440.40 Nursing facility services for individuals age 21 or older (other than services in an institution for mental diseases) and EPSDT.

(a) *Nursing facility services.* (1) *Nursing facility services for individuals age 21 or older, other than services in an institution for mental diseases,* means services that are—

(i)

(A) Skilled nursing care and related services;

(B) Rehabilitation services; or

(C) Health related services above the level of room and board;

(ii) Needed on a daily basis and required to be provided on an impatient basis;

(iii) Provided by (A) a facility or distinct part of a facility that is certified to meet the requirements for participation under subpart B of part 483 of this chapter, as evidenced by a valid agreement between the Medicaid agency and the facility for providing skilled nursing facility services and making payments for services under the plan;

(B) A distinct part of a facility that meets the requirements of § 440.40(a)(2); or

(C) If specified in the State plan, a swing-bed hospital that has an approval from HCFA to furnish skilled nursing

facility services in the Medicare program; and

(iv) Ordered by and provided under the direction of a physician.

(2) Nursing facility services may only be provided in a distinct part of a facility other than a nursing facility if the distinct part—

(i) Meets all requirements for a nursing facility under subpart B of part 483 of this subchapter;

(ii) Is an identifiable unit, such as an entire ward, wing, floor or building;

(iii) Consists of all beds and related facilities in the unit;

(iv) Houses all receipts for whom payment is being made for nursing facility services; and

(v) Is approved in writing by the survey agency.

(3) Nursing facility services include services—

(i) Considered appropriate by the State and provided by a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Mass.; or

(ii) Provided by a facility located on an Indian reservation that—

(A) Furnishes, on a regular basis, health-related services; and

(B) Is certified by the Secretary to meet the standards in subpart B of part 483.

* * * * *

4. Section 440.70 is amended by revising paragraph (c) to read as follows:

§ 440.70 Home health services.

* * * * *

(c) A recipient's place of residence, for home health services, does not include a hospital, skilled nursing facility, or nursing facility.

5. Section 440.140 is revised as follows:

§ 440.140 Inpatient hospital services and nursing facility services for individuals age 65 or older in institutions for mental diseases.

(a) *Inpatient hospital services.* (1) *Inpatient hospital services for individuals age 65 or older in institutions for mental diseases* means services provided under the direction of a physician for the care and treatment of recipients in an institution for mental diseases that meets the requirements specified in § 482.60 (b), (c), and (e) of this chapter and—

(i) Meets the requirements for utilization review in § 482.30 (a), (b), (d), and (e) of this chapter; or

(ii) Has been granted a waiver of those utilization review requirements under section 1903(i)(4) and subpart H of part 456 of this subchapter.

(2) *Institution for mental diseases* means a hospital, nursing facility or other institution of more than 16 beds that is primarily engaged in providing diagnosis, treatment, or care of individuals with mental diseases, including medical attention, nursing care, and related services.

(b) *Nursing facility services. Nursing facility services for individuals age 65 or older in institutions for mental diseases* means nursing facility services as defined in § 440.40 that are provided in institutions for mental diseases, as defined in paragraph (a) of this section.

6. Section 440.150 is revised as follows:

§ 440.150 Intermediate care facility services for the mentally retarded or persons with related conditions.

(a) "Intermediate care facility services" include services in an institution for the mentally retarded or persons with related conditions if—

(1) The primary purpose of the institution is to provide health or rehabilitative services for mentally retarded individuals or persons with related conditions;

(2) The institution meets the standards in subpart D of part 483 of this chapter; and

(3) The mentally retarded recipient for whom payment is requested is receiving active treatment as specified in § 483.440.

(b) "Intermediate care facility services for the mentally retarded or persons with related conditions" may include services provided in a distinct part of a facility other than an intermediate care facility if the distinct part—

(1) Meets all requirements for an intermediate care facility for the mentally retarded or persons with related conditions;

(2) Is an identifiable unit, such as an entire ward, wing, floor, or building;

(3) Consists of all beds and related facilities in the unit;

(4) Houses all recipients for whom payment is being made for intermediate care facility services, except as provided in paragraph (c) of this section;

(5) Is clearly identified; and

(6) Is approved in writing by the survey agency.

(c) If a State includes as intermediate care facility services for the mentally retarded or persons with related conditions those services provided by a distinct part of a facility other than an intermediate care facility for the mentally retarded or persons with related conditions, it may not require transfer of a recipient within or between facilities if, in the opinion of the attending physician, it might be harmful to the physical or mental health of the recipient.

§ 440.170 [Amended]

7. In § 440.170(d), the term "skilled" is removed each place it appears.

§ 440.250 [Amended]

8–9. In § 440.250 (a), the term "skilled" is removed.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

Part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Supart C—Medicaid for Individuals Age 65 or Over in Institutions for Mental Diseases

2. In subpart C, § 441.100 is revised to read as follows:

§ 441.100 Basis and purpose.

This subpart implements section 1905(a)(14) of the Act, which authorizes State plans to provide for inpatient hospital services and nursing facility services for individuals age 65 or older in an institution for mental diseases, and sections 1902(a)(20) (B) and (C) and 1902(a)(21), which prescribe the conditions a State must meet to offer these services. (See § 431.620 of this subchapter for regulations implementing section 1902(a)(20)(A), which prescribe interagency requirements related to these services.)

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

Part 482 is amended as follows:

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1138, 1814(a)(6), 1861 (e), (f), (k), (r), (v)(1)(C), (z), and (ee), 1864, 1871, 1883, 1886, 1902(a)(30), and 1905(a) of the Social Security Act (42 U.S.C. 1302, 1338, 1395f(a)(6), 1395x (e), (f), (k), (r), (v)(1)(g), (z) and (ee), 1395aa, 1395bb, 1395tt, 1395ww, 1396a(a)(30), and 1396(a)).

2. Section 482.66 is amended by revising paragraph (b) to read as follows:

§ 482.66 Condition of participation—Special requirements for hospital providers of long-term care services ("swingbeds").

* * * * *

(b) Standard: Skilled nursing facility services. The facility is substantially in compliance with the following skilled nursing facility requirements, contained

in subpart B of part 483 of this subchapter:

(1) Resident rights (§ 483.10(b)(3)–(6), (d), (e), (h), (i), (j), (l), and (m));

(2) Admissions, transfer and discharge rights (§ 483.12(a) (1)–(4) and (6)–(7));

(3) Resident behavior and facility practices (§ 483.13);

(4) Resident activities (§ 483.15(f));

(5) Social services (§ 483.15(g)):

(6) Discharge planning (§ 483.20(e));

(7) Specialized rehabilitative services (§ 483.45); and

(8) Dental Services (§ 483.55).

PART 483—CONDITIONS OF PARTICIPATION AND REQUIREMENTS FOR LONG TERM CARE FACILITIES

Part 483 in effect as of April 1, 1992 (See 56 FR 48826, Sept. 26, 1991)

1. The authority citation for part 483 continues to read as follows:

Authority: Sec. 1102,1819(a)–(d), 1861 (j) and (1), 1863, 1871, 1902(a)(28), 1905 (a) and (c), and 1919(a)–(d), of the Social Security Act (42 U.S.C. 1302. 1395(i)(3)(a)–(d), 1395x (j) and (1), 1395hh, 1396a(a)(28), and 1396d(c) and 1396r (a)–(d)), unless otherwise noted.

2. The table of contents for part 483 is amended by adding a new § 483.85 to subpart B, and adding new §§ 483.148, 483.165 and 483.167 to subpart D to read as follows:

* * * * *

Subpart B—Requirements for Long Term Care Facilities

Sec.

483.85 Qualifications of nursing home administrators.

* * * * *

Subpart D—Requirements That Must Be Met by States and State Agencies

483.148 Scope and basis.

* * * * *

483.165 State waivers of nurse staffing requirements for Medicaid-only nursing facilities and distinct parts.

483.167 Notice of Medicaid rights.

3. In subpart B, the introductory text of § 483.12(a)(6) and paragraph (a)(6)(iv) are revised to read as follows:

§ 483.12 Admission, transfer and discharge rights.

(a) Transfer and discharge—

* * * * *

(6) *Contents of the notice.* For nursing facilities, the written notice specified in paragraph (a)(3) of this section must include the following:

* * * * *

(iv) The name, address and phone number of the State entity to which the resident can appeal the decision to discharge or transfer the resident from the facility, the hours of operation of that entity and the date and means by which the appeal must be filed.

* * * * *

4. In subpart B, § 483.13 is amended by revising paragraph (a) to read as follows:

§ 483.13 Resident behavior and facility practices.

(a) *Restraints*—(1) *Physical restraints*—(i) Definition: A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, which restricts freedom of movement or access to his or her body.

(ii) Limitations on use. The facility may only impose physical restraints to treat the resident's medical symptoms, which include but are not limited to physical, emotional, and behavioral problems, if the restraint is—

(A) Necessary to ensure the safety of the resident or of other residents;

(B) Imposed in accordance with a physician's written order specifying the circumstances and duration under which the restraint is to be used; and

(C) Not ordered on a standing, blanket, or "as needed" basis.

(iii) Nonemergency use. Restraints may not be ordered in nonemergency circumstances unless the restraints are applied so as to cause no physical injury and the least possible discomfort. Except when necessary to allow the conduct of a medical or surgical procedure, restraints may not be ordered in nonemergency circumstances unless the restraints—

(A) Enable the resident to reach his or her highest practicable physical, mental, and psychosocial well-being;

(B) Are used only as a last resort if the facility, after completing, implementing, and evaluating the resident's comprehensive assessment and plan of care determines that less restrictive means have failed; and

(C) Are used in accordance with the plan of care on the comprehensive assessment, which allows for their progressive removal or the progressive use of less restrictive means.

(iv) Emergency use.

(A) Restraints may not be ordered in emergency circumstances unless they are necessary to alleviate an unanticipated immediate and serious danger to the resident or other individuals in the facility.

(B) Emergency orders for restraints may not be in effect for longer than 12 hours and must be confirmed in writing as soon as possible.

(v) Notice for non-emergency use. If a restraint is used in a non-emergency, the facility must—

(A) Explain the use of the restraint to the resident, or, if the resident has been declared to be legally incompetent or cannot understand his or her rights, to the resident's legal representative, in accordance with § 483.10(d) and State law;

(B) Explain the resident's right to refuse the restraint in accordance with § 483.10(b)(4); and

(C) Obtain the written consent of the resident or the resident's legal representative.

(vi) Restraints may be applied only—

(A) By staff who are trained in their use; and

(B) If the facility assures that the resident's condition will be closely monitored.

(vii) At a minimum, for a resident placed in a restraint, the factility must—

(A) Check the resident at least every 30 minutes;

(B) Assist the resident as often as is necessary for the resident's safety, comfort, exercises and elimination needs;

(C) Provide an opportunity for motion, exercise and elimination for not less than 10 minutes during each two hour period in which a restraint is employed;

(D) Release the resident from the restraint as quickly as possible; and

(E) Keep a record of restraint usage and checks.

(2) Definition of psychopharmacologic drug. In these regulations *psychopharmacologic Drug* means any drug prescribed with the intent of controlling mood, mental status or behavior.

(3) Any psychopharmacologic drug administered to a resident must—

(i) Be ordered by a physician who specifies the dose, duration and reason for the use of the drug;

(ii) Be used only as an integral part of the resident's comprehensive care plan that is directed specifically towards the elimination or modification of the symptoms for which the drugs are prescribed;

(iii) Not be used unless it can be justified in the clinical record that the potential beneficial effects of the drug clearly outweigh its potential harmful effects.

(iv) Be monitored closely, in conjunction with the drug regimen review requirements at § 483.60(e) for desired responses and adverse consequences by facility staff;

(v) Be gradually withdrawn at least semi-annually in a carefully monitored program conducted in conjunction with

the interdisciplinary team, unless clinical evidence demonstrates that this is contraindicated;

(vi) Be reviewed at least annually by a physician who has training or experience in geriatrics and psychopharmacology and who must not serve a facility with which he or she has had a contractual, financial, employment or familial relationship with the facility, its owner, its attending physicians, medical director, or administrator within any of the 36 consecutive months prior to the date of the review (This review may be conducted as part of the annual review and determination of residents for mental illness conducted in accordance with § 4833.114 of this part provided it is conducted by a physician with the above qualifications.);

(vii) Be used only when a record is maintained of the administration of the drug, the dose, the route of administration, side effect monitoring, a description of the behavior, mood or mental status which the drug is intended to alter, the effect of the drug on the behavior, mood and mental status of the resident, and any other change in behavior, mood, mental status or adverse drug reaction which occurs with the administration of the drug.

(4) Before a psychopharmacologic drug is used in a non-emergency situation, the facility must—

(i) Explain the use of the drug to the resident, or, if the resident has been declared to be legally incompetent or cannot understand his or her rights, to the resident's legal representative, in accordance with § 483.10(d) and State law;

(ii) Explain the resident's right to refuse the drug in accordance with § 483.10(b)(4); and

(iii) Obtain the written consent of the resident or the resident's legal representative.

(5) The drug review specified in paragraph (a) (3) (vi) of this section must—

(i) Determine whether—

(A) The drug has an appropriate indication for use;

(B) The dose is appropriate;

(C) The duration of therapy is appropriate;

(D) Valid justification exists for the use of chemical restraints as permitted under paragraph (a) (7) of this section;

(F) The benefits of using the drug outweigh the risk to the resident; and

(G) Non-drug therapy approaches have failed.

(ii) Be sent to the attending physician; and

(iii) Become a permanent part of the resident's clinical record;

(6) Chemical restraints. Except as provided in paragraph (a)(8) of this section, a facility may not use a chemical restraint.

(7) In these regulations *chemical restraint* means a psychopharmacologic drug, as defined under paragraph (a)(2) of this section, that is used for the purpose of discipline or convenience and not required to treat the resident's medical symptoms, including when the drug is used in one or more of the following ways:

(i) In excessive dose (including duplicate drug therapy);

(ii) For excessive duration;

(iii) Without adequate monitoring;

(iv) Without adequate indications for its use;

(v) In the presence of adverse consequences which indicate the dose should be reduced or discontinued; and

(vi) In a manner that results in a decline in the resident's functional status.

(8) A chemical restraint may only be ordered in an emergency situation when necessary to ensure the physical safety of the resident or other residents.

(i) The orders must be in writing, signed by a physician who specifies the duration and circumstances under which the chemical restraint is to be used.

(ii) The orders may be oral when an emergency necessitates parenteral administration of the chemical restraint but only until a written order can reasonably be obtained.

(iii) Emergency orders for chemical restraints may—

(a) Not be in effect for more than 12 hours; and

(B) Be administered only if the resident is monitored continually for the first 30 minutes after administration and every 15 minutes thereafter and for as long as the resident is under the influence of the drug to ensure that any adverse side effects would be noticed and appropriate action taken as soon as possible.

* * * * *

5. In § 483.30, new paragraphs (b) (4) and (5) are added, paragraphs (c)(1) and (c)(7) are revised, and new paragraphs (c)(8), (c)(9), and (e) are added to read as follows:

§ 483.30 Nursing services.

* * * * *

(b) *Registered nurse.*

* * * * *

(4) When a waiver under paragraph (c) of this section results in a facility not having a registered nurse on staff, the facility must—

(i) Designate a licensed practical nurse to supervise nursing personnel;

(ii) Contract with a registered nurse to conduct or coordinate resident assessments and sign and certify the completion of the assessment as required by § 483.20(c)(1)(ii); and

(iii) Designate a licensed practical nurse with responsibility for the resident to participate in the development of a comprehensive care plan as required by § 483.20(d)(2))(ii).

(5) When a waiver under paragraph (d) results in the facility having a registered nurse on staff less than 7 days a week the facility must designate a licensed practical nurse to supervise nursing personnel in the absence of the registered nurse.

(c) *Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis.* To the extent that a facility is unable to meet the requirements of paragraphs (a)(2) and (b)(1) of this section, a State may waive such requirements with respect to the facility if—

(1) The facility demonstrates to the satisfaction of the State that the facility has been unable to recruit appropriate personnel to meet the nurse staffing requirements for nursing facilities despite diligent efforts, as defined in paragraph (e) of this section.

* * * * *

(7) The facility, within 30 days of the notice of approval, posts in a prominent public location in the facility a notice of the services for which a nurse staffing waiver has been granted, the date of the expiration of the waiver and the name, address and phone number of the entity in the State to which complaints about the facility should be directed;

(8) Within 30 days of the notice of approval of the waiver, the facility notifies in writing each—

(i) New admission on legal representative that the facility has been granted a nurse staffing waiver; and

(ii) Current resident or legal representative of the services for which a nurse staffing waiver has been granted; and

(9) The facility maintains documentation of its continuing diligent effects to meet the nurse staffing requirements, and makes this documentation available to the State upon request.

* * * * *

(e) *Definition of diligent effort.* Diligent effort means that the facility can demonstrate that—

(1) It continuously attempts to recruit registered or licensed practical nurses, or both, to fill its vacancies by local and out-of-area advertising, solicitation at educational programs, and participation

in job fairs within a 100 mile radius of the facility; and

(2) It offers salaries and benefits that are competitive with the salaries and benefits offered by other nursing facilities that are located within a 100 mile radius of the facility.

6. A new § 483.85 is added to subpart B to read as follows:

§ 483.85 Qualifications of nursing home administrators.

A facility may not employ an individual as a nursing home administrator unless that individual and facility meet the requirements of this section.

(a) *State licensure.* The individual must be licensed to serve in a nursing home as an administrator in accordance with State law.

(b) *Education.* The individual must possess at least a baccalaureate degree.

(c) *Internship.* (1) The individual must complete to the State's satisfaction an internship of at least 12 weeks.

(2) The internship requirement is waived if the individual has at least one year of management experience in a nursing facility.

(3) The internship may be completed while the individual is working towards his or her degree.

(4) The internship will consist of practical training in daily facility operation and instruction in the following areas:

(i) Applicable standards of environmental health and safety;

(ii) Applicable Federal, State and local health and safety laws and regulations;

(iii) State personnel licensing and/or registration requirements;

(iv) General administration of an institution, including departmental organization and management;

(v) Psychology of patient care;

(vi) Personal care and social services;

(vii) Therapeutic and supportive long-term care and services;

(viii) Community resources and interrelationships; and

(ix) Any other areas determined by the State.

(d) *Examinations.* The individual must pass with a score of at least 75 percent one of the following:

(1) A State-selected standardized examination tailored to the State;

(2) A State-developed examination; or

(3) A national standardized examination.

(e) *Continuing education.* The individual must complete at least 20 clock hours of continuing education for any calendar year in which the individual serves as an administrator.

(f) *Individuals deemed to meet requirements.* Except for those requirements in paragraphs (a), (e), and (f) of this section, any individual continuously employed as a nursing home administrator by the same facility for at least one year on [date of publication of the final rule] is deemed to meet the requirements of this section.

(g) *Administrators of hospital-based nursing facilities.* To the extent permitted by State law, a licensed hospital administrator may serve as administrator of a hospital-based nursing facility without meeting the requirements of this section.

Subpart D—Requirements That Must Be Met by States and State Agencies

7. In part 483 the title of subpart D is revised to read as set forth above and a new § 483.148 is added to read as follows:

§ 483.148 Scope and basis.

(a) *Scope.* This subpart applies to the obligations and responsibilities of State survey agencies and Medicaid State agencies with respect to long term care facilities that participate in Medicare as skilled nursing facilities or in Medicaid as nursing facilities, or both. These obligations and responsibilities include licensure activities, survey activities, nurse aide training and competency evaluation programs, and any other activities relating to ensuring the quality of nursing facility care in Medicare or Medicaid participating facilities. Agencies that are responsible within a State for a particular function may delegate specified functions for which they are responsible to other entities as long as they fulfill their responsibility as defined in the law and maintain overall responsibility for the activity.

(b) *Basis.* (1) The requirements governing State waivers of the nurse staffing requirements of section 483.165 with respect to nursing facilities that participate in Medicaid are based upon section 1919(b)(4)(C)(ii) of the Act.

(2) The requirements of section 483.167 regarding the State's obligation to develop (and periodically update) a written notice of the Medicaid rights and obligations of residents of nursing facilities (and spouses of such residents) are based upon section 1919(e)(6) of the Act.

(3) The requirements concerning nurse aide training and competency evaluation in §§ 483.150 through 483.158 are based on sections 1819(e) (1) and (2) and 1919(e) (1) and (2) of the Act.

8. In subpart D, new §§ 483.165 and 483.167 are added to read as follows:

§ 483.165 State waivers of the nurse staffing requirements for Medicaid-only nursing facilities and distinct parts.

(a) *Designation of waiver authority.* The Medicaid agency must designate an entity within the State, including itself, responsible for granting waivers of the requirements of § 483.30 (a) and (b). The State may not delegate or subcontract the authority to grant nurse staffing waivers to an entity outside of the State government.

(b) *Nature of waivers that may be granted by States.* The State may grant a waiver of the requirement in § 483.30 (a) and (b) for nursing facility (or distinct part) that participates in Medicaid but does not participate in Medicare when, at the request of the nursing facility—

(1) The State finds that the nursing facility meets the criteria of § 483.30(c); and

(2) The facility has been in compliance with all requirements of § 483.25 during the 24 consecutive months prior to the effective date of the waiver.

(c) *Effective date.* The effective date of a waiver granted under this authority may not precede the date of the facility's request and expires on the earlier of:

(1) The 1 year anniversary of the effective date;

(2) The date by which the State becomes aware that the facility acquires sufficient nurse staffing to comply with the requirements without a waiver; or

(3) The date that the State determines, based on a routine or other survey, or other information, that the facility is out of compliance with any requirement of § 483.25 or determines by any other means that the health and safety of residents has become jeopardized by the continuance of the waiver.

(d) *Renewal of waivers.* A waiver granted under this authority may be renewed for a subsequent period of 12 months if the State, after full development and review of a facility's request for renewal, finds that—

(1) The facility continues to meet the criteria of § 483.30(c);

(2) The facility has not been out of compliance with an requirements of § 483.25 within the past waiver period; and

(3) Resident health and safety has not been adversely affected by the waiver.

(e) *Notice to HCFA.* The agency must provide HCFA within 30 days of the date of notice to the nursing facility with a copy of—

(1) Any notice to a facility granting a waiver of the requirements of § 483.30; and

(2) The information on which the State based its waiver of nurse staffing requirements.

(f) *Notice of nurse staffing waiver.* The State must notify the Long Term Care Ombudsman and the protection and advocacy system in the State for the mentally ill and the mentally retarded as well as the resident's immediate family of the granting of any nurse staffing waiver within 30 days of the date of notice of the waiver.

(g) For each nursing facility with an approved waiver in effect, the State must inspect the documenation maintained under § 483.30(c)(9) at least once during the year, at a time of the State's choosing.

§ 483.167 Notice of Medicaid rights.

The State must develop and update a written notice of the rights and obligations of residents of nursing facilities and spouses of such residents which meets the requirements of this section.

(a) *Content.* (1) The State must develop a written notice of the rights and obligations of residents of nursing facilities that receive payment under Medicaid.

(2) The notice must include the resident rights that are provided under §§ 483.10, 483.12, 483.13, and 483.15.

(3) The notice must include any other right granted or obligation imposed by the State.

(b) *Update and publication.* The State must—

(1) Update the notice as necessary to keep the residents and spouses notified of their Medicaid rights and obligations;

(2) Publish the notice in a Statewide periodical or the major newspapers of the State at least once every 12 months;

(3) Provide the notice to residents and their spouses and to applicants to nursing facilities and their spouses; and

(4) Make available to the public upon request printed copies of the notice.

PART 488—SURVEY AND CERTIFICATION PROCEDURES

Part 488 in effect as of April 1, 1992 (see 56 FR 48826, Sept. 26, 1992) is amended as follows:

1. The authority citation for part 488 continues to read as follows:

Authority: Sec. 1102, 1814, 1819, 1961, 1865, 1866, 1871, 1880, 1881, 1883, 1902(a) (28) and 1919 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395i-3, 1396r, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, 1395tt, and 1396a(a)).

2. The table of contents for part 488, subpart B, is amended by revising the title of § 488.56 and adding a new § 488.57 to read as follows:

Sec.

* * * * *

488.56 Special waivers of nursing requirements in skilled nursing facilities.

488.57 Medicaid nursing facilities: HCFA monitoring of State waivers of nurse staffing requirements and revocation of State waiver authority.

* * * * *

3. In subpart B, § 488.56 is revised as follows:

§ 488.56 Special waivers of nursing requirements in skilled nursing facilities.

(a) *Medicare skilled nursing facility waivers: requirements, duration and effective date.* Upon the request of a State, HCFA will decide whether to waive the requirement to have a registered nurse on duty more than 40 hours per week, as specified in § 483.30(d) of this chapter, in skilled nursing facilities. Any waiver granted by HCFA will—

(1) Be granted only if HCFA determines that the skilled nursing facility meets the requirements of § 483.30(d);

(2) Be granted only if the skilled nursing facility has made and continues to make a diligent effort to comply with the requirement to have a registered nurse on duty more than 40 hours per week, but such compliance is impeded by the unavailability of registered nurses in the area. A facility has made a diligent effort when it demonstrates that it—

(i) Continuously attempts to recruit registered or licensed practical nurses, or both, to fill its vacancies by advertising, solicitation at educational programs, and participation in job fairs within a radius of 100 miles of the facility; and

(ii) Offers salaries and benefits that are competitive with the salaries and benefits offered by other skilled nursing facilities that are located within a 100 mile radius of the facility;

(3) Be granted only if the facility has been in compliance with all requirements of § 483.25 at the—

(i) Last standard or extended survey of the facility; and

(ii) Time the waiver is to be effective.

(4) Extend for a period not exceeding 12 months from the effective date;

(5) Be effective on or after the date of the facility's request for the waiver (but not earlier than that date); and

(6) Be revoked by HCFA effective on the date that the facility is found to be out of compliance with any requirement of § 483.25

4. A new § 488.57 is added to read as follows:

§ 488.57 Medicaid nursing facilities: HCFA monitoring of State waivers of nurse staffing requirements and revocation of State waiver authority.

(a) HCFA will monitor each nurse staffing waiver granted by a State under § 483.30(c) to determine if the waiver meets the criteria specified in paragraph (b) of this section.

(1) HCFA will make a determination on whether a waiver meets the criteria in paragraph (b)(2) of this section by evaluating the information—

(i) On which the State based its decision to grant the waiver; and

(ii) From any survey of the facility.

(2) HCFA will conclude that a waiver is not appropriate if:

(i) The Secretary determines that any of the statutory requirements for the granting of the waiver specified in § 483.30(c), were not met at the time the waiver was granted; or

(ii) The State granted a waiver to a facility that had one or more deficiencies under § 483.25 at the last standard or extended survey prior to the waiver or at the time the waiver became effective, or failed to revoke a waiver from a facility that is found to be out of compliance with any requirement of § 483.25 during the term of the waiver.

(3) If HCFA finds that the State has granted a waiver that was not appropriate, under paragraph (b)(2) of this section, HCFA—

(i) Will notify the State of its findings; and

(ii) May perform a survey to determine if patient health or safety is in jeopardy.

(4) If HCFA determines that patient health or safety is jeopardized, in accordance with paragraph (a)(3)(ii) of this section, HCFA may subject the facility to adverse actions notwithstanding the State's granting of a waiver of the nurse staffing requirements.

(b) Revocation of the State's authority to grant nurse staffing waivers. (1) HCFA's review of each nurse staffing waiver granted by the State includes an evaluation of whether the facility has made, and is making, a diligent effort to meet the nurse staffing requirements for nursing facilities.

(2) A facility is deemed to have made, or be making a diligent effort to meet the nurse staffing requirements for nursing facilities when it meets the requirements in § 483.30(c)(6) of this subchapter.

(3) Under the procedures specified in paragraphs (b) (6) through (8) of this section, HCFA will assume and exercise the authority of the State to grant waivers if HCFA finds that the State has demonstrated a clear pattern and

practice of allowing waivers in the absence of diligent efforts by facilities to meet the nurse staffing requirements, as specified in paragraph (b) (4) and (5) of this section.

(4) HCFA will find that the State has demonstrated a "clear practice" of granting inappropriate waivers when HCFA's review, based upon the subsequent year's survey information and any other available information on the granting of waivers, shows that the State continues to have a practice of allowing waivers in the absence of diligent efforts by facilities to meet the nurse staffing requirements.

(5) If HCFA finds that the State has granted waivers to more than 5 facilities or 5 percent of all certified facilities (whichever is greater) in the absence of diligent efforts of the facilities to meet the nurse staffing requirements, HCFA will determine that the State has demonstrated a "clear pattern" of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements.

(6) When the HCFA finds under paragraphs (b) (4) and (5) of this section that the State has demonstratead a clear pattern and practice of allowing inapproprite waivers, HCFA will notify the State that HCFA intends to assume and exercise the State's authority to grant waivers.

(7) HCFA may allow the State to retain its authority to grant waivers only if, within 30 days of receiving HCFA notification specified in paragraph (b)(6) of this section, the State submits evidence satisfactory to the Administrator of HCFA which demonstrates diligent efforts by the facilities in question to met the staffing requirements.

(8) HCFA will publish a notice of the revocation of the State's authority to allow waivers of the nurse staffing requirements in a Statewide periodical or the major newspapers of the State, which includes—

(i) The effective date of the revocation;

(ii) A statement that waivers granted by the State remain in effect until their expiration the date the HCFA specifically revokes them (whichever comes first); and

(iii) The procedures by which a facility may apply to HCFA for a waiver of the nurse staffing requirements.

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance Program; No 93.773, Medicare Hospital Insurance)

Dated: January 22,1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: August 14, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-1510 Filed 2-4-92; 8:45 am]

BILLING CODE 4120-01-M

federal register

Wednesday
February 5, 1992

Part III

Department of Health and Human Services

Office of Refugee Resettlement

Refugee Resettlement Program: Program Allocations to States of FY 1992 Funds for Refugee Social Services; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Refugee Resettlement Program: Proposed Allocations to States of FY 1992 Funds for Refugee [1] Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Notice of proposed allocations to States of FY 1992 funds for refugee social services.

SUMMARY: This notice announces the proposed allocations to States of FY 1992 funds for social services under the Refugee Resettlement Program (RRP). In the final notice, allocation amounts could be adjusted after considering comments and evidence from States on population estimates.

DATES: Comments on the allocations provided for in this notice will be considered if received by March 6, 1992.

ADDRESSES: Address written comments, in duplicate, to: Toyo Biddle, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Toyo Biddle (202) 401-9250.

SUPPLEMENTARY INFORMATION:

I. Amounts Proposed for Allocation

The Office of Refugee Resettlement (ORR) has available $82,952,000 in FY 1992 refugee social service funds as part of the FY 1992 appropriations for the Department of Health and Human Services (Pub. L. 102-170).

Of the total of $82,952,000, the Director of ORR proposes to make available to States $70,509,200 (85%) under the allocation formulas set out in this notice. These funds would be made available for the purpose of providing social services to refugees. The allocation amounts proposed in this notice could be adjusted slightly in the final notice after taking into consideration any population adjustments (see section VI, below).

The population figures include refugees, Cuban/Haitian entrants, and Amerasians from Vietnam since these populations may be served through funds addressed in this notice. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

The Director proposes to allocate $70,509,200 to States in the following manner:

- $67,009,200 would be allocated on the basis of each State's proportion of the national population of refugees who had been in the U.S. 3 years or less as of October 1, 1991 (including a floor amount for States which have small refugee populations).
- $3,500,000 would be allocated on the basis of each State's proportion of the 3-year refugee population (including a floor amount of $5,000 for States with small refugee populations) in order to provide an incentive for States to fund refugee mutual assistance associations (MAAs). A written assurance that these optional funds will be used for MAAs is required in order for a State to receive the funds. Guidance to States regarding this assurance is provided below.

The use of the 3-year population base in the allocation formula is required by section 6(a)(3) of the Refugee Assistance Extension Act of 1986 (Pub. L. 99-605) which amended section 412(c) of the Immigration and Nationality Act (INA) to require that the "funds available for a fiscal year for grants and contracts (for social services) * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1991 social services notice published in the **Federal Register** of August 29, 1991, section I. "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations would be calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) a base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) for a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

ORR has consistently supported floors for small States in order to provide sufficient funds to carry out a minimum service program. Given the range in numbers of refugees in the small States, we have concluded that a variable floor, as established in the FY 1991 notice, will be more reflective of needs than previous across-the-board floors.

The $12,442,800 in remaining social service funds (15% of the total funds available) is expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program. The discretionary funds would primarily support specific program activities designed to: (1) Reduce welfare dependency in States with large numbers of refugees on welfare; and (2) address the needs of special populations who experience particular difficulty adjusting to life in the U.S. One announcement of the availability of funding and grant application procedures has been issued: Availability of Funding for Planned Secondary Resettlement of Refugees, 50 FR 20038, May 13, 1985. ORR expects to continue emphasis on discretionary grants to address problems of persistent welfare dependency and to promote favorable resettlement opportunities. Announcements will be made when discretionary initiatives are decided on. The amount proposed for discretionary use would enable valuable current efforts—such as the Key States Initiative, Job Links, Planned Secondary Resettlement, and services for Amerasians from Vietnam and former re-education camp detainees from Vietnam—to be continued as appropriate. At the same time, it would provide funds to enable ORR to address such additional needs as serious problems of dependency in areas not currently served by special projects.

The 15% proposed for discretionary use is in accordance with the

[1] In addition to persons admitted to the United States as refugees under section 207 of the Immigration and Nationality Act (INA) or granted asylum under section 208 of the INA, eligibility for refugee social services also includes: (1) Cuban and Haitian entrants, under section 501 of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422); (2) certain Amerasians from Vietnam who are admitted to the U.S. as immigrants under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988, as included in the FY 1988 Continuing Resolution (Pub. L. 100-202); and (3) certain Amerasians from Vietnam, including U.S. citizens, under title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. 100-461), 1990 (Pub. L. 101-167), and 1991 (Pub. L. 101-513). For convenience, the term "refugee" is used in this notice to encompass all such eligible persons unless the specific context indicates otherwise.

Refugees admitted to the U.S. under admissions numbers set aside for private-sector-initiative admissions are not eligible to be served under he social service program (or under other programs supported by Federal refugee funds) during their period of coverage under their sponsoring agency's agreement with the Department of State—usually two years from their date of arrival or until they obtain permanent resident alien status, whichever comes first.

Conference Report on the FY 1992 appropriation, which, states, "The conferees are agreed that not more than 15 percent of funding appropriated for social services may be used for discretionary grants." (H. Conf. Rept. 102–282, p. 36.)

Although the allocation formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only 3 years. States may provide services without regard to an individual refugee's length of residence, in accordance with the requirements of 45 CFR part 400 Subpart I—Refugee Social Services, published in the **Federal Register** of February 3, 1989 (54 FR 5481).

While 45 CFR 400.147(b) requires that in providing employability services, a State must give priority to a refugee who is receiving cash assistance, social service programs generally are not limited to refugees who are cash assistance recipients. Social services may be provided to any refugee who is unemployed, regardless of whether the refugee is receiving cash assistance.

ORR funds may not be used to provide services to United States citizens, since they are not covered under the authorizing legislation, with the following exceptions: (1) Under current regulations, services may be provided to a U.S.-born minor child in a family in which both parents are refugees or, if only one parent is present, in which that parent is a refugee; and (2) under the FY 1989 Foreign Operations Appropriations Act (Pub. L. 100–461), services may be provided to an Amerasian from Vietnam who is a U.S. citizen and who enters the U.S. after October 1, 1988.

Reflecting section 412(a)(1)(A)(iv) of the INA, the Director expects States to "insure that women have the same opportunities as men to participate in training and instruction." In addition, States are expected to make sure that services are provided in a manner that encourages the use of bilingual women on service agency staffs to ensure adequate service access by refugee women. In order to facilitate refugee self-support, the Director also strongly encourages States to implement strategies which address simultaneously the employment potential of both male and female wage earners in a family unit, particularly in the case of large families. States are encouraged to make every effort to assure the availability of day care services in order to allow women with children the opportunity to participate in employment services or to accept or retain employment. To accomplish this, day care may be treated as a priority employment-related service under the refugee social services program. States, however, are encouraged to use day care funding from other publicly funded mainstream programs as a prior resource and are encouraged to work with service providers to assure maximum access to other publicly funded resources for day care.

In accordance with 45 CFR 400.146 (54 FR 5481), if a State's cash assistance dependency rate for refugees (as defined in § 400.146(b)) is 55% or more, funds awarded under this notice for the basic and MAA incentive allocations are subject to a requirement that at least 85% of the State's award be used for employability services as set forth in § 400.154. ORR expects these funds to be used for services which directly enhance refugee employment potential, have specific employment objectives, and are designed to enable refugees to obtain jobs in less than one year as part of a plan to achieve self-sufficiency. This reflects the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on "employment-related services, English-as-a-second-language training (in non-work hours where possible), and case-management services". (INA, section 412(a)(1)(B).)

Since current welfare dependency data are not available, those States that historically have had dependency rates at 55% and above are invited to submit a request for a waiver to the 85% requirement if they can provide reliable documentation that demonstrates a lower dependency rate.

ORR would consider granting a waiver of the 85% provision if a State meets one of the following conditions:

1. The State demonstrates to the satisfaction of the Director of ORR that the dependency rate of refugees who have been in the U.S. 24 months or less is below 55% in the State.

2. The State demonstrates to the satisfaction of the Director that (a) less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees and (b) there are non-employment-related service needs which are so extreme as to justify an allowance above the basic 15%. *Or*

3. In accordance with section 412(c)(1)(C) of the INA, as amended by the Refugee Assistance Extension Act of 1986 (Pub. L. 99–605), the State submits to the Director a plan (established by or in consultation with local governments) which the Director determines provides for the maximum appropriate provision of employment-related services for, and the maximum placement of, employable refugees consistent with performance standards established under section 106 of the Job Training Partnership Act.

States should also expect to use funds available under this notice to pay for social services which are provided to refugees who participate in alternative projects. The Continuing Resolution for FY 1985 (Pub. L. 98–473) amended section 412(e)(7)(A) of the INA to provide that:

The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficienty, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate notice in the **Federal Register** with respect to applications for such projects (50 FR 24583, June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds being allocated under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. This belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore additional funds which would be targeted specifically to these organizations have been included as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official would have to provide written assurance to the Office of Refugee Resettlement that the following conditions would be observed by the State agency in using funds made available to the State under this special allocation:

1. That such funds will be used to fund refugee mutual assistance associations for the direct provision of services to refugee clients.

2. That the MAA incentive allocation is subject to and included under ORR's expectation that the majority of the total amount of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

3. That the State agency will observe the following definition of a mutual assistance association:

a. The organization must be legally incorporated as a nonprofit organization; *and*

b. Not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees or former refugees and must include both refugee men and women by August 29, 1992, as specified in the FY 1991 final social service notice.

4. That the State agency will assist MAAs in seeking other public and/or private funds for the provision of services for refugee clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447. States must respond by 30 days from the date of the final notice in order to avail themselves of this special allocation.

II. [Reserved for discussion of comments in final notice.]

III. Proposed Allocation Formula

Of the funds available for FY 1992 for social services, $67,009,200 is proposed to be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and Cuban/Haitian entrants who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated and the number of Amerasians from Vietnam eligible for refugee social services, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 1991, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State. Minimum allocations for small States are taken into account.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States, as described previously.

IV. Basis of Population Estimates

The population estimates for the allocation of funds in FY 1992 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1991, for estimated secondary migration. The data base includes refugees of all nationalities and Amerasians from Vietnam. Figures on the number of Cuban and Haitian entrants resettled are obtained from several sources, including the ORR Florida office and the Immigration and Naturalization Service.

For fiscal year 1992, ORR's formula allocations for the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1989, 1990, and 1991. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1988, and September 30, 1991, who are thought to be living in each State as of October 1, 1991. Refugees admitted under the Federal Government's private-sector initiative are not included, since their assistance and services are to be provided by the private sponsoring organizations under an agreement with the Department of State.

The figures on arrivals of refugees and Amerasians used in developing these population estimates were based on final arrival data by State for FY 1989 and FY 1990 and preliminary arrival data for FY 1991. Deductions were made based on preliminary data for refugees resettled under the private sector initiative. The figures on Cuban and Haitian entrants were based on final arrival data by State for FY 1989 and FY 1990 and preliminary arrival data for FY 1991.

The estimates of secondary migration were based on data submitted by all participating States on Form ORR–11. The total migration reported by each State was summed, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure was applied to the State's total arrival figure, resulting in a revised population estimate. Because the reporting period covered on Form ORR–11 was a maximum of only 12 months as of June 1991 for the majority of States whose reporting base was their cash/medical assistance caseload, extra weight was given to the secondary migration reported by those States to arrive at estimates of secondary migration over a 36-month period. In 1991, no count of recently-arrived refugee children was available from the Department of Education for use as a comparison.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures.

Table 1, below, shows the estimated 3-year populations, as of October 1, 1991, of refugees (col. 1), entrants (col. 2), and total refugees and entrants (col. 3); the formula amounts which the population estimates yield (col. 4); the total allocation amounts after allowing for the minimum amounts (col. 5); and the proposed amounts available as an incentive to States to use MAAs as service providers (col. 6).

These population estimates and proposed allocation amounts are intended to be as close to the final figures as possible at the time they were developed. However, revisions will be made, and all population estimates and allocation amounts will change somewhat as a result. The following revisions will be made before the final figures are developed: (1) Preliminary refugee and Amerasian arrival figures by State for FY 1991 will be replaced by final figures; (2) preliminary entrant arrival and resettlement figures for FY 1991 will be replaced by final figures; and (3) final data on refugees resettled through the private-sector initiative will be deducted from the final arrival figures for FY 1991.

A detailed explanation of the development of data used in this formula allocation can be obtained by writing to the address indicated in Section VI of this notice.

V. Proposed Allocation Amounts

Funding will be contingent upon the submittal and approval of a State annual services plan. The following amounts are proposed for allocation for refugee social services in FY 1992:

TABLE 1.—ESTIMATED 3-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND PROPOSED ALLOCATIONS FOR FY 1992 [a]

State	Refugees (1)	Entrants (2)	Total population (3)	Formula amount (4)	Proposed allocation (5)	MAA incentive allocation (6)
Alabama	775	0	775	$152,635	$152,635	$7,963
Alaska	117	1	118	23,240	75,000	5,000
Arizona	3,856	6	3,862	760,615	760,615	39,681
Arkansas	433	0	433	85,279	100,000	5,000
California	95,711	237	95,948	18,896,805	18,896,805	985,833
Colorado	3,433	4	3,437	676,912	676,912	35,314
Connecticut	3,817	11	3,828	753,918	753,918	39,331
Delaware	132	0	132	25,997	75,000	5,000
District of Columbia	2,221	22	2,243	441,755	441,755	23,046
Florida	11,687	7,077	18,764	3,695,540	3,695,540	192,794
Georgia	6,184	18	6,202	1,221,474	1,221,474	63,723
Hawaii	890	0	890	175,284	175,284	9,144
Idaho	824	0	824	162,285	162,285	8,466
Illinois	13,525	17	13,542	2,667,075	2,667,075	139,139
Indiana	810	2	812	159,922	159,922	8,343
Iowa	2,777	0	2,777	546,926	546,926	28,533
Kansas	1,885	0	1,885	371,248	371,248	19,368
Kentucky	1,448	0	1,448	285,181	285,181	14,878
Louisiana	1,983	8	1,991	392,124	392,124	20,457
Maine	765	1	766	150,862	150,862	7,870
Maryland	6,586	172	6,758	1,330,977	1,330,977	69,436
Massachusetts	12,112	18	12,130	2,388,984	2,388,984	124,632
Michigan	5,936	13	5,949	1,171,646	1,171,646	61,124
Minnesota	6,948	1	6,949	1,368,594	1,368,594	71,399
Mississippi	288	0	288	56,721	96,874	5,000
Missouri	3,990	18	4,008	789,369	789,369	41,181
Montana	257	0	257	50,616	90,768	5,000
Nebraska	1,872	2	1,874	369,081	369,081	19,255
Nevada	871	81	952	187,495	187,495	9,781
New Hampshire	712	0	712	140,227	140,227	7,316
New Jersey	6,717	1,109	7,826	1,541,318	1,541,318	80,409
New Mexico	891	0	891	175,481	175,481	9,155
New York	55,383	168	55,551	10,940,681	10,940,681	570,768
North Carolina	3,051	5	3,056	601,874	601,874	31,399
North Dakota	434	0	434	85,476	100,000	5,000
Ohio	4,813	7	4,820	949,291	949,291	49,524
Oklahoma	1,278	2	1,280	252,094	252,094	13,152
Oregon	6,184	0	6,184	1,217,929	1,217,929	63,539
Pennsylvania	10,764	9	10,773	2,121,725	2,121,725	110,689
Rhode Island	1,538	1	1,539	303,104	303,104	15,813
South Carolina	278	0	278	54,752	94,904	5,000
South Dakota	678	0	678	133,531	133,531	6,966
Tennessee	2,533	0	2,533	498,870	498,870	26,026
Texas	15,246	111	15,357	3,024,537	3,024,537	157,788
Utah	1,937	0	1,937	381,489	381,489	19,902
Vermont	624	2	626	123,290	123,290	6,432
Virginia	5,349	4	5,353	1,054,265	1,054,265	55,000
Washington	14,489	0	14,489	2,853,585	2,853,585	148,870
West Virginia	82	0	82	16,150	75,000	5,000
Wisconsin	4,043	2	4,045	796,656	796,656	41,561
Wyoming	51	0	51	10,044	75,000	5,000
Total	329,208	9,129	338,337	$66,634,929	$67,009,200	$3,500,000

[a] Based on preliminary FY 1991 refugee arrival data through September 30, 1991.

VI. State Evidence on Refugee Population

If a State wishes ORR to reconsider its population estimate, it should submit written evidence. Requests will be evaluated according to a strict standard. The following is the type of evidence which would be considered appropriate:

- Documentation and discussion should be confined to the population entering the United States during fiscal years 1989, 1990, and 1991, and should clearly identify what refugee or entrant groups are being discussed.
- Evidence should include a description of the information collection system(s) used by the State, including data sources, time period covered, timeliness, and validation procedures.
- Special studies and reports can be considered only if they are submitted for review.
- An example of acceptable evidence would be a list of refugees identified by name, alien number, date of birth, date of arrival, and case size, if appropriate. Listings of refugees who are not identified by their alien numbers will not be considered.

Any State evidence on population estimates should be submitted separately from comments on the proposed allocation formula no later than 30 days from date of publication of this notice and should be addressed to: Loren Bussert, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 401-4732.

VII. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

[Catalog of Federal Domestic Assistance No. 93.026 Refugee Assistance State Administered Programs]

Dated: January 29, 1992.

Chris Gersten,

Director, Office of Refugee Resettlement.

[FR Doc. 92-2712 Filed 2-4-92; 8:45 am]

BILLING CODE 4130-01-M

federal register

Wednesday
February 5, 1992

Part IV

Department of Education

Privacy Act: Computer Matching Program; Notice

DEPARTMENT OF EDUCATION

Computer Matching Program; Notice

AGENCY: Department of Education.

ACTION: Notice—Computer matching between the Department of Education and the Department of Justice.

Section 5301(a)(1) of the Anti-Drug Abuse Act of 1988, (now designated as section 421(a)(1) of the Controlled Substances Act, 20 U.S.C. 862(a)(1)) includes provisions regarding the judicial denial of federal benefits. Section 5301 authorizes federal and state judges to deny certain federal benefits (including student financial assistance under title IV of the Higher Education Act of 1965, as amended) to individuals convicted of drug trafficking or possession.

In order to ensure that title IV student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to section 5301, the Department of Education and the Department of Justice are implementing a computer-matching program. The Department of Education needs to obtain from the Department of Justice identifying information regarding individuals who are the subject of section 5301 denial of benefits court orders. The purpose of this notice is to announce the establishment of the computer-matching program and to provide certain required information concerning the computer-matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (see 54 FR at 25818, June 19, 1989), and OMB Bulletin 89–22, the following information is provided:

1. Name of Participating Agencies

The Department of Education (ED) and the Department of Justice (DOJ).

2. Purpose of the Match

This matching program is designed to assist ED in enforcing the sanctions imposed under section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690).

3. Authority for Conducting the Matching Program

Under section 5301 of the Anti-Drug Abuse Act of 1988, as amended (21 U.S.C. 862), ED must deny federal benefits to any individual against whom a federal or state court order has imposed a penalty denying eligibility for those benefits. Student financial assistance under title IV of the Higher Education Act of 1965 is a federal benefit under section 5301 and ED must, in order to meet its obligations under the HEA, have access to information about individuals who have been declared ineligible under section 5301.

The President's Denial of Federal Benefits

Implementation Procedures of August 30, 1989 direct DOJ to act as the information clearinghouse for federal agencies. While DOJ provides information about Section 5301 ineligible individuals to the General Services Administration (GSA) for inclusion in GSA's List of Parties Excluded from Federal Procurement and Nonprocurement Programs, DOJ and ED have determined that direct access to the DOJ data base would be more efficient and effective than access to the GSA List. The DOJ data base has specific information about the title IV, HEA programs for which individuals are ineligible and has more complete identifying information about those individuals. Both of these elements are essential to a successful match.

4. Categories of Records and Individuals Covered

A. Department of Education Records

Federal Student Aid Application File (18–40–0014): Composed of records of students applying for federal student financial assistance under title IV of the Higher Education Act of 1965, as amended (HEA). The social security number and the first two letters of an applicant's last name will be used by ED for the match.

B. Department of Justice Records

Denial of Federal Benefits Clearinghouse System (DEBAR) (OJP–0013);

Contains the names, social security numbers, dates of birth, and other identifying information regarding individuals convicted of federal or state offenses involving drug trafficking or possession of a controlled substance who have been denied federal benefits by federal or state courts. This system of records also contains information concerning the specific program(s) for which benefits have been denied. The Department of Justice will make available for the matching program the records of only those individuals who have been denied federal benefits under one or more of the title IV, HEA programs.

5. Effective Dates of the Matching Program

The matching program will begin 30 days after publication of this notice in the **Federal Register** and will continue for a period of 18 months from the date it becomes effective unless extended.

6. Address for Receipt of Public Comments or Inquiries

Ms. Joyce R. Coates, Program Specialist, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW., (room 4318, ROB–3), Telephone: (202) 708–7888.

Dated: January 29, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–2911 Filed 1–4–92; 8:45 am]

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